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EL PASO COUNTY CLERK AND RECORDER: INDEX IN GRANTEE  
INDICES UNDER PROMONTORY POINTE EPC AND  
PROMONTORY POINTE EPC OWNERS ASSOCIATION AND  
UNDER GRANTOR, MREC CLASSIC PROMONTORY LLC, A  
DELAWARE LIMITED LIABILITY COMPANY.

## **DECLARATION**

**of**

**Covenants, Conditions, Restrictions and Easements**

**for**

**PROMONTORY POINTE EPC**

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**DECLARATION**  
**of**  
**Covenants, Conditions, Restrictions and Easements**  
**for**  
**PROMONTORY POINTE EPC**

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PROMONTORY POINTE EPC is made effective as of \_\_\_\_\_, 2011 ("Declaration"), by MREC Classic Promontory LLC, a Delaware limited liability company ("Declarant").

**ARTICLE 1**  
**GENERAL**

Section 1.1 Non-CCIOA Community. The name of the community created by this Declaration is "Promontory Pointe EPC." Promontory Pointe EPC is a limited expense planned community as defined in the Colorado Common Interest Ownership Act ("CCIOA"), Colorado Revised Statutes ("C.R.S.") Section 38-33.3-116(2). Therefore, the annual average common expense liability of each Lot (including Common Assessments and Special Assessments), exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed the limitation calculated pursuant to C.R.S. Section 38-33.3-116(2) and (3). The Association may not impose assessments which are in excess of this limitation. All of Promontory Pointe EPC is located in El Paso County, Colorado.

Section 1.2 Property Affected. Declarant is the owner of real property in El Paso County, Colorado, described on **Exhibit A** attached hereto and incorporated herein by this reference. The property described on **Exhibit A** is referred to in this Declaration as the "Community Area."

Section 1.3 Purposes of Declaration. The purpose of this Declaration is to: (a) further a common and general plan for those parcels of land which are part of the Community Area; (b) protect and enhance the quality, desirability and attractiveness of all property within the Community Area; (c) provide for the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of owners of land within the Community Area; (d) define the duties, powers and rights of the Association; and (e) define certain duties, powers and rights of Owners.

Section 1.4 General Scheme and Plan of Community Area. The Community Area created by this Declaration encompasses all of the property described in **Exhibit A**.

Section 1.5 Declaration. Declarant hereby declares that the Community Area, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied,



maintained, altered and improved subject to the covenants, conditions, restrictions, easements, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 14.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of: (a) all of the property within the Community Area and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all other persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or parcel thereof or any Improvement (defined in Section 2.15) thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

## **ARTICLE 2 DEFINITIONS**

Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meanings specified in this Article 2.

Section 2.1 Architectural Control Committee. "Architectural Control Committee" shall mean the applicable approving authority then in effect as described in Section 6.1 of this Declaration.

Section 2.2 Assessment. "Assessment" shall mean a "Common Assessment," pursuant to Section 11.3, a "Special Assessment," pursuant to Section 11.8, and/or a "Site Assessment," pursuant to Section 11.9, as applicable.

Section 2.3 Association. "Association" shall mean Promontory Pointe EPC Owners Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2.4 Association Documents. "Association Documents" shall mean the various operative documents of the Association, whether recorded or adopted at this time or as the same have been or may be amended, modified, supplemented, or otherwise changed from time to time, all of which are incorporated herein by this reference, and shall include the following:

- (a) the Articles of Incorporation of the Association (the "Articles of Incorporation");
- (b) the Bylaws of the Association (the "Bylaws");
- (c) this Declaration and all amendments to this Declaration;
- (d) the Plats;
- (e) the Rules and Regulations;

- (f) the Promontory Pointe PD Site Plan and all amendments thereto; and
- (g) Community Standards.

Section 2.5 Association Properties. "Association Properties" or "Association Property" shall mean all real and personal property, together with any and all Improvements now or hereafter located within the Community Area and appurtenances and rights thereto, hereafter owned by the Association or which the Association hereafter maintains, holds or uses for the common use and enjoyment of all of the Members as provided herein, without ownership thereof, and for other purposes as may be permitted by this Declaration. The Association Properties shall include the tracts of land within the Community Area identified on the Plats as real property improvements which will be owned and/or maintained by the Association and which consist, without limitation, decorative parking areas in the street at the Community Area entry and at trail crossings within the Community Area.

The Association may, from time to time, be granted additional Association Properties. The Association shall be obligated to maintain all aspects of any Association Properties which are granted to it, other than those aspects which are specifically identified on the Plats or in the public record as being the obligation of another party. The Association will be responsible for enforcement of Lot site design, architectural design and landscape design review on a case by case basis as further provided for in this Declaration, maintenance and subject to the Promontory Site PD.

Section 2.6 Board. "Board" shall mean the Board of Directors of the Association.

Section 2.7 Community Area. "Community Area" shall mean the real property described on **Exhibit A**, together with any and all Improvements now or hereafter on such real property and appurtenances and rights to such real property. The Community Area will not be expanded to include any property, without the written approval of a majority of the Owners in the Community Area.

Section 2.8 Declarant. "Declarant" shall mean MREC Classic Promontory LLC, a Delaware limited liability company, its successors and assigns. A Person shall be deemed a "successor and assign" of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to Declarant, by consolidation or merger shall automatically be deemed a successor or assign of Declarant under this Declaration.

Section 2.9 Declaration or Covenants. "Declaration" or "Covenants" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Promontory Pointe EPC, in its entirety, including all attached exhibits and all subsequent amendments.

Section 2.10 Community Standards. "Community Standards" shall mean the Promontory Pointe EPC Design Guidelines and Community Standards.

Section 2.11 Dwelling Unit. "Dwelling Unit" shall mean an Improvement on a Lot which is intended or used as a single family detached home.

Section 2.12 Promontory Pointe PD Site Plan. "Promontory Pointe PD Site Plan" shall mean the Final PD Site Plan for Promontory Pointe EPC, as approved by the Town of Monument, Colorado (the "Town"), and all amendments thereto.

Section 2.13 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of the County of El Paso, Colorado (the "County"), pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.14 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage.

Section 2.15 Improvements. "Improvements" shall mean all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, concrete additions or pavers, swimming pools, basketball backboards and supporting structures, decks, porches, patios, patio covers or screening, awnings, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, fixtures, Landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, swamp coolers, solar equipment, and exterior air conditioning and water softener fixtures. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 2.16 Landscape. "Landscape" shall mean a type of Improvement consisting of the treatment of ground surface with live plant materials, wood chips, crushed stone, decorative rocks, mulch materials or other decorative surfacing materials. For purpose of this definition, the word "Landscape" shall include all other forms of the word Landscape, such as "Landscaped" and "Landscaping."

Section 2.17 Lot. "Lot" shall mean a parcel of land within the Community Area which is shown as a lot on the Plats upon which at least one Dwelling Unit may be constructed pursuant to Town ordinances, and which is not part of the Association Properties.

Section 2.18 Lot Lines. Front, side and rear "Lot Lines" shall be as follows: a front Lot Line is each boundary line (whether one or more) between the Lot and any street; a side Lot Line is any boundary line which meets and forms an angle with a street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street that affords the principal access to the Lot; all other Lot Lines are rear Lot Lines.

Section 2.19 Member. "Member" shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

Section 2.20 Owner. "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts under Colorado law.

Section 2.21 Person. "Person" shall mean a natural person, a corporation, a limited liability company, a partnership (including general, limited and limited liability partnerships) or any other public or private entity recognized as being capable of owning real property under Colorado law.

Section 2.22 Plats. "Plats" shall mean the plats that are the current plats of all or a portion of the Community Area, together with any supplemental plats.

Section 2.23 Related User. "Related User" shall mean: (a) any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser or any Dwelling Unit on a Lot; and (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing Persons.

Section 2.24 Rules and Regulations. "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Board as provided in Section 8.9 of this Declaration.

Section 2.25 District. "District" shall mean Triview Metropolitan District No. 2. All of the Community Area is located within the Triview Metropolitan District.

### **ARTICLE 3**

#### **DECLARATION TO PRESERVE THE RESIDENTIAL CHARACTER OF THE COMMUNITY AREA**

Section 3.1 Property Uses. Except as otherwise provided in this Article 3, all Lots in the Community Area will be used exclusively for private single-family residential purposes in accordance with the Community Area's applicable residential zoning. Human service establishments, including human service homes, human service residences, human service facilities and human service shelters, health care support facilities, hospices and youth homes and

any other similar or dissimilar group home are each prohibited on a Lot and in the Community Area. No Dwelling Unit erected or maintained within the Community Area shall be used or occupied for any purpose other than for a single family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any Lot or Dwelling Unit; provided that any uses that are permitted under the Town home occupation regulations (the "Home Occupation provisions") shall be permitted. If the Home Occupation provision is hereafter repealed, then for purposes of this Declaration and its enforcement, the provisions of the Home Occupation provision in effect at the time of the recordation of this Declaration shall be incorporated herein as a part of this Declaration. Any violation of the Home Occupation provision shall be a violation of this Declaration. The Declarant or the Association shall have the right, from time to time, to establish Rules and Regulations regarding the use of a Dwelling Unit for any home occupations, including regarding increased traffic within the Community Area.

Section 3.2 Improvements. No Improvement shall be erected within the Community Area except detached single family Dwelling Units approved by the Architectural Control Committee and other Improvements which have been approved by the Architectural Control Committee or Improvements which Declarant or its designees are authorized to place or construct within the Community Area by the terms of this Declaration. All Improvements shall be required to comply with the Promontory Pointe PD Site Plan. No Improvement, other than a Dwelling Unit, and no trailer, mobile home, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Improvement may be placed on any Lot before completion of the Dwelling Unit upon such Lot except with the permission of the Architectural Control Committee.

Section 3.3 Construction Type. All construction shall be new. No building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 3.7 for temporary construction, sales or administration buildings.

Section 3.4 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of an Association approved Improvement or its alteration unless such building materials are stored in the garage on the Lot or otherwise enclosed and fully screened in a manner approved by the Architectural Control Committee.

Section 3.5 Substantial Completion. A Dwelling Unit shall not be occupied in the course of original construction until substantially completed and, if required by applicable law, until a certificate of occupancy has been issued by Regional Building and any other necessary governmental or quasi-governmental authority. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 3.6 Construction Completion. The exterior of all Dwelling Units and final grading of Lots must be completed within **nine (9) months** after the commencement of construction. Landscaping must be completed within six (6) months after the issuance of a Certificate of Occupancy for the Dwelling Unit in accordance with the terms of Section 5.9 of

this Declaration. Construction of any Improvements on a Lot, other than a Dwelling Unit and Landscaping, must be completed within nine (9) months after commencement of construction. The deadlines set forth above shall apply, except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities and except if the Architectural Control Committee approves a longer period of construction due to unusual circumstances. For purposes of this Section 3.6, "commencement of construction" for a Dwelling Unit is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within the above time periods or such later time approved by the Architectural Control Committee, or if construction shall cease for a period of forty-five (45) days without permission of the Architectural Control Committee, the Architectural Control Committee may give the Owner of the Improvements involved written notice of such fact, and if construction on such Improvement is not diligently commenced within thirty (30) days after such notice and thereafter diligently prosecuted to completion, the unfinished Improvement or unfinished portion thereof may be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.

Section 3.7 Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Declarant or the Architectural Control Committee. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant or the Architectural Control Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 3.8 Construction Debris. During the progress of construction, the Owner of a Lot shall use commercially reasonable efforts to ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. When construction is commenced upon a Lot, the Owner shall provide a trash container and cause it to be properly used and maintained during construction. Such trash containers must be placed within the Owner's Lot unless the Declarant or the Architectural Control Committee, in its sole discretion, authorizes its location within the street. The Owner shall use commercially reasonable efforts to ensure that no construction materials, debris or trash shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly retrieved and disposed of properly. In addition, the Owner of a Lot shall cause all excess dirt which may be generated from excavation on the Lot to be removed from the Lot or street following completion of construction.

Section 3.9 Drilling Structures. No derrick or other Improvement designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

Section 3.10 Aviation Related Restrictions. The location of the Community Area within the vicinity of the Air Force Academy requires the Community Area to be subject to certain aviation related restrictions which are contained within the Plats and which are as follows:

Section 3.11 District Maintenance. The District is responsible for maintenance of the on-site water well, off-site water tank, park (including trailhead parking area), fencing on lot lines adjacent to open space tracts and Landscaping in all common open space tracts.

Section 3.12. No-Build Easements. No structures of any type will be constructed within the No-Build Easements. No disturbance, including grading, removal of plant material or construction is permitted in any buffer zone with the exception of construction of facilities or improvements shown on the Promontory Point PD Site Plan or Landscape Plan. Removal of invasive plant material (weeds), and/or dead trees and shrubs is permitted.

#### **ARTICLE 4 DENSITY, SETBACK AND QUALITY STANDARDS**

Section 4.1 Limitation on Dwellings and Subdivisions. No more than one (1) Dwelling Unit shall be constructed or maintained within any Lot. No Lot shall be replatted or otherwise subdivided without the approval of the Architectural Control Committee and applications for such approval will not be favored in the absence of extreme hardship. Lot Line adjustments which do not result in an increase in the number of Lots and which are made to accommodate building plans approved by the Architectural Control Committee may be approved by the Architectural Control Committee in its sole discretion. This section does not apply to and shall not restrict Declarant's rights under Article 10. An Owner will be solely responsible for obtaining all required governmental approvals for any such Lot line adjustments and approval by the Architectural Control Committee shall not remove that obligation.

Section 4.2 Setbacks and Easements. All construction must conform to the setback requirements of the Town building code, zoning code and subdivision regulations and all other applicable governmental or quasi-governmental agencies having appropriate jurisdiction for front, rear and side Lot lines, as of the date of commencement of construction. All Lots are subject to the minimum setbacks and easements for public utilities and drainage purposes as set forth on the Plat and Promontory Point PD Site Plan.

Section 4.3 Minimum Floor Area. No Dwelling Unit shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross liveable floor area less than as follows: (1) if a ranch or single story Dwelling Unit, 1,600 square feet, and (2) if other than a ranch or single story Dwelling Unit, 1,800 square feet. All Dwelling Units shall have a basement.

Section 4.4 Height Restrictions. The height of any Dwelling Unit or other Improvements constructed or to be constructed on any Lot within the Community Area is hereby

restricted and shall not exceed thirty-five feet (35') in height or such lower height as may be required by the Promontory Point PD Site Plan. Height shall be measured in accordance with the Town's height standards and requirements.

**Section 4.5 Exterior Colors and Materials.** All exterior colors and materials, including roofing materials, used on Dwelling Units and other Improvements shall be as determined by Declarant at the time of initial installation and thereafter must be as approved by the Architectural Control Committee and the Town of Monument, all in accordance with the Promontory Point PD Site Plan. Acceptable materials and standards for approval may be as established from time to time by the Architectural Control Committee, all in accordance with the Promontory Point PD Site Plan.

**Section 4.6 Antennae and Roof Projections; Satellite Dishes.** Except as provided below in this Section 4.6, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna or other device be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for Improvements, other than FCC Protected Structures, as defined below, must be submitted to and approved by the Architectural Control Committee prior to installation. If the Architectural Control Committee disapproves such structure, the party requesting approval may modify its plans to eliminate the Architectural Control Committee's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Architectural Control Committee, the Architectural Control Committee shall have the rights set forth in this Declaration. Notwithstanding the above, a customer-end antenna that is (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) designed to receive television broadcast signals, all as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as may be amended from time to time (collectively, "FCC Protected Structures"), shall be permitted so long as the means, method and location of such antennae comply with the rules adopted from time to time by the Architectural Control Committee. No antenna used to transmit signals to, and/or receive signals from, multiple customer locations will be permitted. No unreasonable delay or unreasonable increase in the cost or installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons.

**Section 4.7 Rebuilding or Restoration.** If any Dwelling Unit or other Improvement is destroyed in whole or in part by fire, windstorm or from any other cause or act of God, it must be rebuilt or all debris must be removed and the Lot restored to a slightly condition. Such rebuilding or restoration must be commenced within three (3) months after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed one (1) year after the date the damage occurred or such longer period of time as may be approved by the Architectural Control Committee due to unusual circumstances. If restoration, rebuilding or



removal is not completed within the above time periods or such later time approved by the Architectural Control Committee, or if the restoration, rebuilding or removal shall cease for a period of sixty (60) days without permission of the Architectural Control Committee, the Architectural Control Committee will give the Owner of the Lot involved written notice of such fact, and if the restoration, rebuilding or removal of the Improvements is not diligently commenced within thirty (30) days after such notice, the damaged or destroyed Improvements shall be deemed a nuisance. The Association shall have the right thereafter to enter upon the Lot involved and remove the damaged or destroyed Improvements at the expense of the Owner. Such an entry and removal shall not be deemed a trespass and the Owner shall be liable for all costs incurred in connection with the removal.

**Section 4.8 Fences.** The only fences (including, without limitation, privacy fences, animal pens, dog runs and other enclosures) permitted within the Community Area shall be fences constructed by the Declarant or the Association or those which have been approved pursuant to the Community Standards and that are consistent with the Promontory Pointe PD Site Plan. The height, location, and material of all fences, animal pens, dog runs, and other similar items must be approved by the Declarant or the Architectural Control Committee. Chain link or similar wire fencing shall not be allowed. The total fencing of front yards is not permitted. In addition, no fence or hedge more than two feet high (2') shall be installed or maintained (a) closer than five feet (5') to a side Lot Line adjacent to a street, or (b) closer to a front Lot Line than the dwelling or any other Improvement located on the Lot, except with the written approval of the Architectural Control Committee. The Architectural Control Committee may establish from time to time standards for fences within the Community Area, which shall be enforced pursuant to the terms of this Declaration and subject to the Promontory Pointe PD Site Plan. All fences within the Community Area will be subject to the provisions contained in Section 4.9 of this Declaration.

**Section 4.9 Open Space Fences and Landscaping.** The Declarant per the Promontory Point PD Site Plan shall install the Open Space Fencing as required by the Promontory Point PD Site Plan. **The Open Space Fencing, if installed by Declarant, shall thereafter be maintained and kept in good condition and repair by the District.** The height, design, color and/or other aspect of the Open Space Fencing may not be increased, altered or modified by any Lot Owner adjacent to such fencing. Except as otherwise approved in writing by the Architectural Control Committee, any fence proposed to be installed on a Lot which abuts an Open Space Fence shall be required to conform, in addition to the overall fencing requirements set forth in Section 4.8 and this Section 4.9, to the fencing standards which may be established from time to time by the Architectural Control Committee for such additional fencing. No additions or attachments shall be made to any Open Space Fencing, other than connecting rear and side Lot fences into the Open Space Fencing. No sign of any type shall be displayed from the Open Space Fencing, other than promotive sales signs for initial Lot or home sales by Declarant or persons authorized by the Declarant or the Architectural Control Committee, and not for home resales or unauthorized home builders. Entry on an applicable Lot by the Declarant in order to construct, maintain or repair the Open Space Fencing shall not be deemed a trespass. Except in a case of an emergency, prior notice will be given to the applicable Lot Owner before

any such entry by the Declarant. Neither the District nor Declarant shall be liable for any loss, costs or damages to any applicable Lot Owner within the Community Area on account of its performance of such construction, maintenance or repair, except for any such loss, cost or damage caused by the applicable Person's gross negligence or willful misconduct. The District may from time to time record in the real property records of the County, a map or other documentation confirming the location of Open Space Fencing within the Community Area.

Section 4.10 Underground Utilities. All utilities that will be installed within the Community Area after the date of execution of this Declaration, including electrical, telephone, and cable television service, and excepting lighting standards and customary service devices for access, control or use of utilities, shall be installed underground. The Declarant may grant approval for temporary aboveground utility lines as needed during construction.

Section 4.11 Garage and Driveway. The Dwelling Unit on each Lot shall include a **minimum of a two-car**, attached, fully enclosed garage or such equivalent garage arrangements as may be approved by the Architectural Control Committee and in accordance with the Promontory Pointe PD Site Plan. All driveways shall be improved with **concrete** unless otherwise approved by the Architectural Control Committee. No Lot shall contain more than one (1) driveway which directly accesses the garage from a public right of way. No additions, alterations, or modifications (other than repairs or equivalent replacements) shall be permitted to be made to the garage or driveway following initial construction without Architectural Control Committee approval.

Section 4.12 Access Restriction. All persons or entities having any interest in any of the Lots are required to and shall each arrange and maintain any drives, dwellings, or other Improvements so that ingress and egress to and from their respective Lots is exclusively from a publicly dedicated street and not through other private property or adjoining public lands.

Section 4.13 Compliance with Building Codes. All construction must conform to the Town building codes, zoning codes and subdivision regulations and Promontory Pointe PD Site Plan, which regulations and restrictions may vary from the provisions of this Declaration; provided, however, if this Declaration is more restrictive than such governmental codes and regulations, then the more restrictive provisions of this Declaration shall control.

Section 4.14 General Architectural Standards. Declarant shall have the right and authority to establish and amend specific architectural standards from time to time as provided in Section 6.2 hereof.

## **ARTICLE 5**

### **LIVING ENVIRONMENT STANDARDS**

Section 5.1 Building and Grounds Maintenance. Each Owner shall maintain the exterior of the Dwelling Unit and all other Improvements on his Lot in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Owner shall keep the vegetation, including turf, within his Lot trimmed and mowed and all Landscaping properly maintained. Each Owner hereby acknowledges that the requirement in this Declaration to maintain each Lot or any Improvement in "good condition" and "properly maintained" shall be based upon a standard of care which is appropriate for single family residential areas in the Town which are of a comparable quality and nature and in accordance with the Promontory Pointe PD Site Plan. If the Owner fails to properly perform such maintenance, Declarant or the Architectural Control Committee may, after giving thirty (30) days written notice and at the Owners' expense, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Community Area and assess the owner for the cost of such repairs and maintenance as a Site Assessment. Entry to effect such repairs and maintenance shall not be deemed a trespass, and the Owner shall be liable for all costs incurred in connection with the repairs and maintenance.

Section 5.2 Garage Doors. Garage doors shall be kept closed except when being used to permit ingress and egress to or from the garage.

Section 5.3 Outside Storage. When not in use, all equipment for the maintenance of a Lot or Dwelling Unit shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets.

Section 5.4 Clotheslines. No outdoor clothes poles, clotheslines or other facilities for drying or airing clothing or household goods shall be placed on any Lot, and no laundry or wash shall be dried or hung outside any Dwelling Unit or other Improvement.

Section 5.5 Swingsets and Play Areas. No swingsets, jungle gyms, slides or other similar Improvements shall be installed on a Lot unless substantially screened in a manner permitted by the Community Standards or approved by the Architectural Control Committee prior to construction or installation of such Improvements.

Section 5.6 Refuse. No unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections. After a period of two (2) weeks of continued violation of this Section 5.6, the Association or Declarant shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass, and the Owner shall be liable for all costs incurred relative thereto.

Section 5.7 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any Dwelling Unit. Expressly excluding the activities described in Articles 3 and 10 of this Declaration, no annoying lights, sounds or odors shall be permitted to emanate from any Lot or Dwelling Unit.

Section 5.8 Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Lot. With the prior approval of the Architectural Control Committee, an Owner may install exterior stereo speakers, provided that the sound levels from such speakers are not objectionable to neighbors.

Section 5.9 Landscaping. Within six (6) months following receipt of a Certificate of Occupancy for the Dwelling Unit for a Lot, or within any extension (if any) of that period granted by the Architectural Control Committee, all yards and open spaces within that Lot shall be Landscaped and thereafter maintained and kept in good condition. Prior to commencing any Landscaping within a Lot, the Owner thereof shall be required to submit his proposed Landscape plan to the Architectural Control Committee and the Town of Monument for its approval in accordance with Article 6 of this Declaration. Landscape plans and maintenance shall comply with the requirements of the Community Standards and the Promontory Pointe PD Site Plan regarding Landscaping. All buildings, including homes on Lots, shall be sited to preserve as much existing vegetation, including scrub oak and trees, and rock outcroppings.

Section 5.10 Weeds. All yards and open spaces and the entire area of every Lot on which no building has been constructed shall be kept free from plants and weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Association or Declarant, constitute a nuisance or are likely to cause the spread of infection or weeds to neighboring property, and free from brush or other growth or trash which in the reasonable opinion of the Association or Declarant causes undue danger of fire.

Section 5.11 Mowing and Pruning. In order to effect insect, weed and fire control and to prevent and remove nuisances, each Owner of a Lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from his Lot unsightly brush, weeds and other unsightly growth and shall remove trash which may collect or accumulate on the Lot.

Section 5.12 Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original, approved finish grading plan for a Lot except after first obtaining the prior consent and approval of the Declarant or the Architectural Control Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. Any construction, grading or swales should direct surface waters to a drainage easement or to the street. Surface waters should not be concentrated and directed

differently than the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts and fills to eliminate erosion.

Section 5.13 Transmitters. No electronic or radio transmitter of any kind other than garage door openers, electronic devices and transmitters permitted by Title 47, Part 15 of the United States Code and remote control devices for televisions, stereos, video cassette recorders and similar equipment shall be operated in or on any Improvement or Lot.

Section 5.14 Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and those permitted pursuant to this Section 5.14, shall be permitted within any Lot. Domesticated dogs and domesticated cats may be kept or maintained in or on any Lot within the Community Area only if kept as pets and the total number of which may not exceed three (3) animals. No animals shall be kept, bred or maintained within the Community Area for any commercial purposes. No dogs or other pets shall be chained or enclosed on a Lot outside of the Dwelling Unit for any extended period of time, except by means of underground electronic fences or other invisible barriers or fences. Dog runs and other similar enclosures are generally discouraged; an Owner must obtain prior Architectural Control Committee approval therefor, which approval will be based on the size, location, specifications, and materials used for any enclosure (as may be set forth in the Community Standards). Notwithstanding the above, no animal of any kind shall be permitted which in the opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance.

Section 5.15 Parking of Vehicles. Following construction of a Dwelling Unit, no boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes any towed trailer unit or truck shall be parked overnight on any street or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Architectural Control Committee. Pickup trucks having a 3/4 ton or less manufacturer's rated capacity, with or without bed toppers, and passenger vans for the private use of the residents of a Dwelling Unit as primary transportation on a day-to-day basis, shall not be considered trucks for purposes of the foregoing restrictions.

Section 5.16 Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring property or street, unless fully screened in a manner approved by the Architectural Control Committee. An unused vehicle shall be any vehicle which is not properly licensed or as determined by the Association. Nothing contained in this Section shall permit or be deemed to permit any Owner to maintain more than one (1) inoperative motor vehicle or part thereof, even if screened, within his Lot.

Section 5.17 Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets and from neighboring property.

Section 5.18 Signs. Subject to the signage rights created by applicable law, the only signs permitted on any Lot or Improvement shall be those permitted by the Community Standards. Except for permitted signs, there shall not be used or displayed on any Lot or Improvement any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except by the Declarant or with the prior written permission of the Declarant. All permitted signs must be professionally painted, lettered and constructed. If a permitted sign is not in compliance with the provisions of this Section 5.18, the Association may, upon notice, require it to be modified or removed.

Section 5.19 Outdoor Burning. There shall be no outdoor fires on any Lot or any of the Association Properties, except fires in barbecue, braziers and outside fireplaces contained within facilities or receptacles intended for such purpose. In no event shall any such facility or receptacle be used for burning of trash. Any such facilities or receptacles shall be subject to the Rules and Regulations, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans when deemed appropriate by the Association. No Owner shall permit any condition on such Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations adopted by the Town or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the Town or a governmental authority having jurisdiction and control over outside burning, such ban shall be observed within the Community Area.

Section 5.20 Drainage. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Dwelling Units or other Improvement and the Lot containing it if not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains, thereby resulting in consolidation and/or collapse of the soils.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Dwelling Unit to increase to an extent that would adversely affect the foundation and concrete slabs, and shall not introduce excessive water into the soil surrounding the Dwelling Unit. An Owner shall maintain the grading and drainage patterns of the Lot in accordance with the terms of Section 5.12 of this Declaration.

An Owner shall not impede or hinder in any way the water flowing on his Lot from reaching the drainage courses established for the Lot and the Property or areas shown on the approved drainage plans.

By virtue of the review and submittals described in this Section 5.20 and Section 5.12, the Declarant is in no manner certifying, guaranteeing or otherwise making any representations or warranties with respect to the adequacy, sufficiency or appropriateness of any grading plan applicable to the Lot. Each Owner of a Lot acknowledges and agrees that the Declarant shall

have no responsibility or liability whatsoever with respect to such issues and each Owner shall be fully and solely responsible for the same.

**The Owner of each Lot hereby acknowledges that it is solely responsible for any damage which results, directly or indirectly, from a change in the grading pattern of the Lot in violation of the provisions of this Section 5.20 or Section 5.12 of this Declaration.**

Section 5.21 Hazardous Materials. No materials shall be transported to, from or within the Community Area in such a way as to create a nuisance or hazard. Storage, use or disposal of asbestos or hazardous or radioactive material, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), within the Community Area is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

Section 5.22 Solar Devices, Air Conditioning Units, Etc. All solar devices, exterior air conditioning units and systems, swamp coolers and other similar devices must either be architecturally and aesthetically integrated into the building they serve or be screened from the view of adjacent Lots and streets in a manner satisfactory to the Architectural Control Committee and approved in the manner required by the Community Standards.

Section 5.23 Storage Sheds. No storage sheds of any kind will be permitted to be constructed or installed within any Lot without the prior specific written approval of the design, color, materials to be used in connection therewith and location thereof by the Architectural Control Committee in accordance with the terms of this Declaration.

Section 5.24 Outside Lighting. The Architectural Control Committee may establish various standards for exterior lighting, including, without limitation, standards for hue and intensity. All exterior floodlights and spotlights installed or maintained on any Dwelling Unit or other Improvement must be approved by the Architectural Control Committee prior to installation and shall comply with the restrictions described in Section 3.10 of this Declaration.

Section 5.25. Mandatory Trash Collection. In an effort to avoid multiple trash collections within the Community Area, the Association may select, from time to time, one residential trash collection service provider and residential trash collection plan for all completed Dwelling Units within the Community Area, which service provider will collect trash on a specified date for the entire Community Area. The Owners of Lots upon which a Dwelling Unit has been completed and occupied will be obligated to pay the applicable charge for trash services, regardless of whether or not the Association has commenced Common Assessments for the Community Area.

## **ARTICLE 6**

### **ARCHITECTURAL CONTROL**

**Section 6.1    Architectural Control Committee.** Until Declarant has sold all of the Lots in the Community Area, or until such earlier time as Declarant elects to assign the right to appoint the Architectural Control Committee, the Architectural Control Committee for the Community Area shall consist of one (1) to three (3) members appointed by Declarant from time to time. After the right to appoint the Architectural Control Committee for the Community Area has been transferred to the Board, the Architectural Control Committee for the Community Area shall consist of at least three (3) and not more than five (5) individuals, all of whom shall be appointed by the Board. All references in this Declaration to the Architectural Control Committee shall be deemed to refer to the Architectural Control Committee, whether such committee is appointed by the Declarant or the Board. The members of the Architectural Control Committee need not be Members of the Association. The Architectural Control Committee shall exercise the functions assigned to it by this Declaration and the Community Standards, including reviewing and approving all plans for Improvements as provided in this Declaration.

**Section 6.2    Community Standards.** The Architectural Control Committee has enacted the Community Standards, and may, at any time and from time to time, modify, amend, repeal, re-enact, and enforce, the Community Standards, to interpret and/or implement any provisions of this Declaration. The Community Standards may (without limitation): (i) contain guidelines to clarify the types of designs and materials that may be considered in design approval; (ii) state requirements for submission in order to obtain review by the Architectural Control Committee; (iii) state procedural requirements; and/or (iv) specify acceptable Improvements that may be installed without the prior approval of the Architectural Control Committee. Any Community Standards so adopted by the Architectural Control Committee shall be consistent, and not in conflict with, this Article 6 or this Declaration. Copies of the Community Standards will be available from the Association or the Architectural Control Committee.

**Section 6.3    Approval Required.** No Improvement shall be placed, erected, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have been submitted to and approved in writing by the Architectural Control Committee or unless otherwise permitted by the Community Standards. Matters which require the approval of the Architectural Control Committee include but are not limited to:

- (a)    the construction, installation, erection or expansion of any building, structure, or other Improvements, including the exterior appearance, finish material, color or texture thereof;
- (b)    the installation, addition or modification of Landscaping;



- (c) the demolition or destruction, by voluntary action, of any building, structure or other Improvements;
- (d) the grading, excavation, filling or similar disturbance to the surface of the land; and
- (e) any change or alteration of any previously approved Improvements, including any change of exterior appearance, finish material, color or texture.

Section 6.4 Plans Submissions. All plans, samples and other materials to be submitted to the Architectural Control Committee shall be submitted in duplicate, together with the fee described in Section 6.5 hereof. The minimum scale of such plans shall be 1/20th inch equals one foot. The plot plan shall show in scale the location of all buildings, drives, walks, fences and any other Improvements. Plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. Landscaping plans shall show the location of all Landscaping elements, including grass, ground cover, shrubs, trees and other Landscape materials for all the area of the Lot not covered by Improvements. The size and type of all new plant materials shall be indicated. The Declarant shall have no obligation to retain any submitted plans following action by the Architectural Control Committee.

In discharging its rights and obligations hereunder, the Architectural Control Committee makes no representations or warranties to the Owner or any other person or entity concerning the construction of the Improvements on the Lot, and the Architectural Control Committee shall have no liability or responsibility for defective construction or other similar matters. Each Owner of a Lot acknowledges and agrees that the Declarant, in discharging its rights and obligations hereunder, is not making any warranty or representation, expressed or implied, that any Improvement to be constructed by an Owner upon a Lot is suitable for that Lot. **Each Owner further acknowledges that each Owner, and such Owner's representatives or contractors, are ultimately and fully responsible for any construction techniques, measures and means utilized in the construction of a Improvement upon a Lot.**

Section 6.5 Approval Process. All action required or permitted to be taken by the Architectural Control Committee shall be in writing, and any such written statement shall establish the action of the Architectural Control Committee and may protect any person relying on the statement. The procedure for submitting requests and obtaining approvals shall be as established from time to time by the Architectural Control Committee. **The Architectural Control Committee may charge reasonable fees to cover expenses incurred in review of all plans (including without limitation Landscaping plans), samples and materials submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Control Committee for their services.** The Architectural Control Committee reserves the right to collect (and hold in escrow) such review fees from each Lot purchaser at the time of the first closing of the Lot following completion of a Dwelling Unit on the Lot. The Architectural Control Committee shall be entitled to retain one (1) copy of all

approved plans as part of its files and records. Approvals of all plans and specifications for an Improvement will automatically expire within one (1) year after approval if construction is not commenced within one (1) year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

Section 6.6 Approval Standards. All Improvements to be constructed or installed within the Community Area must comply with the Community Standards and this Declaration. In granting or withholding approval of matters submitted to it, the Architectural Control Committee shall consider the specific standards and specifications set forth in this Declaration. The Architectural Control Committee shall have the right to disapprove any plans, specifications or details submitted to it if it determines, in its sole discretion, that (i) the proposed Improvement is not consistent with any provision of this Declaration; (ii) the plans and specifications as submitted are incomplete; or (iii) the plans, specifications or details, or any part thereof, are contrary to the interest, welfare or rights of all or any part of the Community Area, the Association or the Owners. If the Architectural Control Committee believes there may be questions of structural integrity, it may, as part of the approval requirements, require the Owner to obtain certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Control Committee shall be final and binding.

Section 6.7 No Liability. Neither Declarant, the Board nor the Architectural Control Committee or any member thereof shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the plans, specifications or variance. Approval by the Architectural Control Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Control Committee to comply with all codes, ordinances and regulations.

Section 6.8 Variances. The Architectural Control Committee shall have the authority to grant for a Lot a variance from the terms of this Declaration or the Community Standards, if any, subject to terms and conditions which may be fixed by the Architectural Control Committee and which will not be contrary to the interests of the Owners and residents of the Community Area where, owing to exceptional and extraordinary circumstances, literal enforcement of this Declaration or the Community Standards could result in unnecessary hardship. **The Architectural Control Committee may charge reasonable fees to cover expenses incurred in review of all variances submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Control Committee for their services.**

Following an application for a variance:

(a) The Architectural Control Committee shall, within thirty (30) days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Architectural Control Committee fails to act on the request for the variance within this thirty (30) days, the variance shall be deemed not to be granted as of the expiration of such thirty (30) days.

(b) A variance granted hereunder shall run with the Lot for which it is granted.

(c) A variance shall not be granted unless the Architectural Control Committee first finds that all of the following conditions exist: (i) the variance will not authorize a use not otherwise permitted by this Declaration; (ii) owing to the exceptional and extraordinary circumstances, literal enforcement of this Declaration could result in unnecessary hardship; (iii) the variance will not substantially or permanently injure the use of other property in the Community Area; (iv) the variance will not alter the essential character of the Community Area; (v) the variance will not weaken the general purposes of this Declaration; (vi) the variance will be in harmony with the spirit and purpose of this Declaration; and (vii) the circumstances leading the applicant to seek a variance are unique to the Lot or its Owner and are not applicable generally to Lots in the Community Area or their Owners.

(d) If a variance is denied, another application for substantially the same variance for the Lot involved may not be made for a period of at least one (1) year from the date of submittal of the original request.

## ARTICLE 7 ASSOCIATION OPERATION

Section 7.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have a Board to manage its affairs. The Board shall be elected by its Members; provided, however, that the Declarant shall have the sole right to appoint a majority of the members of the Board for the period of time provided in Section 7.5.

Section 7.2 Board of Directors. The affairs of the Association shall be managed by a Board. The Board shall consist of **a minimum of three (3) members** during the Period of Declarant Control stated in Section 7.5 and thereafter shall consist of **at least three (3) but not more than seven (7) members**, as determined by the Board. All members of the Board shall be representatives of Declarant or Members of the Association. The terms and qualification of the members of the Board shall be fixed in the Articles of Incorporation and Bylaws. The Board may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be

taken by the Board or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.

Section 7.3 Membership in Community Association. Each Owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except an Owner may assign some or all of the Owner's rights as an Owner and as Member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the sales contract, tenancy, or First Mortgage. The assignment of rights by an Owner pursuant to this section shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing, and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

Section 7.4 Voting Rights of Members. Subject to the provisions of Section 7.5 which shall control, Members shall have the right to cast votes for the election of Board and on such other matters to be voted on by the Members as provided in the Association Documents. One vote is allocated to each Lot and Members shall have one vote for each Lot owned. The one vote for each Lot may not be split if there is more than one Owner of the Lot. If more than one of the multiple owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority agreement of the present owners. There is a majority agreement if any one of the multiple owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Lot. If the owners are not in majority agreement, then the Owners shall be deemed to have abstained. Voting rights and procedures may be further defined in the Articles of Incorporation and Bylaws.

Section 7.5 Declarant's Reserved Right to Appoint. Declarant hereby reserves the right to appoint the Board, to control the Association and to appoint and remove the officers and members of the Board at all times subsequent to the date of recordation of this Declaration and continuing for a period of twenty (20) years following the date on which this Declaration is recorded (the "Period of Declarant Control"). Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. It is hereby expressly acknowledged that any action by Declarant to surrender its authority over the

Association or its Board will in no way limit Declarant's rights and authority with respect to architectural control matters as provided in this Declaration, unless such rights are expressly terminated or waived by Declarant. Within sixty (60) days after the Owners, other than Declarant, elect a majority of the members of the Board, the Declarant shall deliver to the Association the following: (i) copies of all of the Association Documents, as may be amended, and the Association's minute books and other books and records; (ii) an accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends; (iii) the Association funds or control thereof; (iv) all tangible personal property that has been used exclusively in the operation of the Association Properties; (v) a copy of any plans and specifications used by Declarant in the construction of any improvements on the Association Properties; (vi) all insurance policies then in force, in which the Association or the Board or its officers are named as insured persons; (vii) a roster of Owners and mortgagees and their addresses, if known; and (viii) any employment contracts and service contracts in which the Association is a contracting party.

## **ARTICLE 8**

### **DUTIES AND POWERS OF ASSOCIATION**

Section 8.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members and to maintain the Association Property. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given non-profit corporations, including without limitation those hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Association Properties, to improve and enhance the attractiveness, desirability and safety of the Community Area, and to use Association funds to enforce this Declaration. The Association shall have and may exercise all powers authorized under the Association Documents, and shall also have the power and authority to acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to approval by Owners entitled to cast at least sixty-seven percent of the votes in the Association, including sixty-seven percent of the votes allocated to units not owned by Declarant, and to impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments. Except as expressly otherwise provided in the Association Documents or by Colorado law, the Association shall act through the Board, without the vote or meeting of the Members, and the Board may exercise all rights, powers and interests of the Association, as described in this Article or elsewhere in the Association Documents.

Section 8.2 Duty to Accept Property and Facilities Transferred by Declarant. **The Association shall accept title to any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration.** Property interests transferred to the

Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer property to the Association, except as specifically provided in Section 9.2.

**Section 8.3 Duty to Manage and Care for Property.** To the extent owned by the Association, the Association shall manage, operate, care for, maintain and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Members; provided, however, maintenance responsibilities for any Association Properties shall not commence until Assessments commence. In addition, the Association may manage, operate, care for, maintain and repair property other than Association Properties, if some or all of the Members will benefit thereby or if such Association action is required pursuant to the Plats or the Promontory Pointe PD Site Plan. It is the intent that under this Declaration that the properties, Improvements and facilities the Association will be required to maintain will include (i) the Association Properties described in Section 2.5, and (ii) all other Improvements and areas required to be maintained by the Association by this Declaration, the Declarant, the Plats, or the Promontory Pointe PD . The specific enumeration of the foregoing items shall not be a limitation on the power and authority of the Association to maintain other items not specifically listed where such repair and maintenance of other items would be in the common interests of the Association and the Owners.

**Section 8.4 Duty to Pay Taxes.** The Association shall pay all taxes and assessments levied upon the Association Properties owned by the Association and all other taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful. The Association may maintain reserves for any taxes, interest and penalties which could be incurred as a result of an adverse ruling on any position taken by the Association.

**Section 8.5 Duty to Maintain Insurance.** The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with this Declaration and as required by Colorado law.

**Section 8.6 Duty to Levy and Collect Assessments.** The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

**Section 8.7 Power to Provide Security.** The Association shall have the right, but not the obligation, to provide for the security of the Owners by hiring a security patrol and

performing any other functions relating to safety and security authorized by the Board or the Members.

**Section 8.8 Power to Acquire and Maintain Property and Construct Improvements.** The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association.

**Section 8.9 Power to Adopt Rules and Regulations.** The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots. Any such Rules and Regulations shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Rules and Regulations shall be effective upon adoption by resolution of the Board. Written notice of the adoption, amendment or repeal or any Rule or Regulation shall be provided to all Members by the Association, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the copying cost. Each Owner, Related User, Member and other Person shall comply with such Rules and Regulations, and each Owner shall be responsible for ensuring that the Related Users of such Owner comply with the Rules and Regulations. Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

**Section 8.10 Power to Enforce Declaration and Rules and Regulations.** The Architectural Control Committee, the Association or Declarant, including an assignee or delegate thereof, may give notice to the Owner of the Lot where a violation of this Declaration occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Architectural Control Committee, the Association or Declarant to invoke this Section unless within a period stated in the notice (which notice shall not be less than ten (10) calendar days unless a shorter period of time is otherwise provided for in this Declaration), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Architectural Control Committee or Declarant (whichever gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's Lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant, the Association and the Architectural Control Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration. Declarant, the Association and the Architectural Control Committee may delegate their entry and removal rights hereunder to agents and independent contractors. The

cost so incurred by the Architectural Control Committee, the Association or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen percent (18%) per annum and costs enforcement and of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. Such lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section 8.10 and Section 11.15. The Architectural Control Committee, the Association or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of enforcement and collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of enforcement and collection, and the judgment in any such action shall include interest as above provided and the costs of collection, including reasonable attorney's fees. The waiver of homestead exemption set forth above shall apply to any foreclosure action for the lien imposed by this Section 8.10 and Section 11.15. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce this Declaration pursuant to Section 11.15 or as otherwise may be provided herein or by law or equity; provided, however, that only the Declarant, the Association and the Architectural Control Committee shall have the right to proceed under this Section 8.10. In the event that the Declarant, the Association or Architectural Control Committee, whether acting for themselves or through their agents and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless (i) damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration and (ii) is caused by the willful and wanton acts of the Declarant or the Architectural Control Committee. In no event shall there be any liability for damage to an Improvement that is in violation of this Declaration.

**Section 8.11 Power and Duty to Enforce Association Documents.** The Association shall have the power to enforce the covenants, terms and provisions of the Association Documents.

**Section 8.12 Power to Provide Special Services.** The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any services to any other Person. Any such service or services shall be provided pursuant to an Agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns or the Member or group of Members or other



Persons, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

Section 8.13 Power to Operate and Charge for Facilities. The Association shall have the power to acquire, create, own and operate any and all such services as it deems appropriate, including, without limitation, Landscape maintenance and to establish charges for the use of services. Such charges or fees shall be as determined from time to time by the Board.

Section 8.14 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under Association Property for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members or to facilitate the development of the Community Area.

Section 8.15 Power to Employ Managers. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management of any functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to the manager. Any contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. No such contract or agreement shall be for a term of more than one (1) year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, power and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association after the Declarant's reserved rights under Section 7.5 terminate.

Section 8.16 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association Documents.

Section 8.17 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, subject to any limitations, restriction, or requirements expressly set forth in the Association Documents.

Section 8.18 Other Powers. The Association shall have the power to regulate the days and hours during which trash and solid waste may be collected or put out for collection in any portion of the Community Area, and the Association may require all Owners to use a common trash collection company or entity selected by the Board. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, to hire and provide a security or courtesy patrol, which shall be unarmed and shall not be a substitute for the municipal police, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services and similar services.

## **ARTICLE 9 ASSOCIATION PROPERTIES**

Section 9.1 Right of Association to Regulate Use. To the extent that the Association hereafter owns, holds or has property, the provisions of this Article 9 shall apply. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use the Association Properties.

Section 9.2 Property to be Conveyed to the Association. The Declarant shall be obligated to convey to the Association any tract of land that is identified on the Plats as a "Tract" for open space or trails that the Association is required to own pursuant to the Plat. The properties to be conveyed to the Association shall be conveyed to the Association on or before the expiration of the Period of Declarant Control under Section 7.5, and such conveyance shall exclude all water rights, if any. Declarant is not obligated to convey any other real property to the Association. The Association shall be obligated to accept title to each such Tract when conveyed to it by Declarant.

Section 9.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

Section 9.4 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of such Owner of the Association Documents. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against a Member, Owner, Lot, Related User, or other Person to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Association Documents, including without limitation, the deductible on any insurance of the Association, interest, costs, expenses and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 9.5 Damage to Association Properties. In the event of damage to or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed to make such repairs or reconstruction, unless the Owners and First Mortgagees by a majority vote agree not to repair and reconstruct such damage in accordance with the terms and provisions of this Declaration. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction or replacement, the Association may use the excess for future maintenance, repair, and operation of and improvements to Association Properties.

Section 9.6 Association Powers in the Event of Condemnation.

(a) If proceedings are initiated by any government or agency thereof seeking to take the Association Properties or any interests therein or part thereof, including any Improvements, the Association shall give prompt notice thereof, including a description of the part of or interest in the Association Properties or Improvements thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Association Properties, any part thereof, or any interest therein, and each Owner hereby appoints the Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

(b) If all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, any award or settlement shall be apportioned by the Association on such a fair and equitable basis as the Association determines to be appropriate in the circumstances, or as determined by judicial decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent that it is relevant and applicable.

(c) If less than all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the Association Properties which are damaged or taken by the condemning public authority, if such rebuilding or replacement is reasonably practical, unless Members with at least sixty-seven percent (67%) of all Member votes and at least

sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in subparagraph (b) of this section. No provision of this Declaration or any other document relating to the Association Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a First Mortgage, awarding distribution of insurance proceeds or condemnation awards for losses to or taking of Association Properties.

## **ARTICLE 10**

### **DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS**

Section 10.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties for a period of twenty (20) years after the date this Declaration is recorded in the real property records of El Paso County, Colorado. The rights and reservations set forth in this Declaration shall be deemed excepted and reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment.

Section 10.2 Declarant's Development Rights. For the period stated in Section 10.1, Declarant shall have the following development rights:

- (a) Subject to the limitation contained in Section 10.8, Declarant may create additional Lots within the Community Area; and
- (b) Declarant may create additional Association Properties within the Community Area or convert any of the Declarant owned Lots within the Community Area to Association Properties.

All of the development rights set forth above may be exercised by Declarant with respect to all or any portion of the Community Area. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them. If Declarant does exercise a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

Section 10.3 Special Declarant Rights. For the period stated in Section 10.1, and as more particularly set forth in this Article 10 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) to complete any Improvements shown on the Plats and the Promontory Pointe PD;
- (b) to exercise any development rights set forth in Section 10.2;
- (c) to maintain anywhere within the Community Area, sales offices, management offices, signs advertising the Community Area and model homes;
- (d) to use easements through the Association Properties and easements granted to the Association for the purpose of making improvements within the Community Area and completing development of the Community Area; and
- (e) to appoint or remove any officer of the Association or any member of the Board appointed by Declarant.

Section 10.4 Intentionally Reserved.

Section 10.5 Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements on Association Properties, at Declarant's cost, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and the Owners.

Section 10.6 Declarant's Rights to Use Association Properties in Promotion and Marketing. Declarant shall have and hereby reserves the right to use the Association Properties and to use services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Community Area to use Association Properties.

Section 10.7 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes, offices for construction, sales

or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Community Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to Article 6 of this Declaration by means of an amendment to this Declaration; to change any Landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in the Association Documents, which rights are incorporated in this section by this reference.

Section 10.8 Maximum Number of Lots. Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the entire development of Promontory Pointe EPC is Two Hundred Sixty-Seven (267).

Section 10.9 Declarant's Approval. Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Association Properties; mortgage the Association Properties; use Association Properties other than for the benefit of Members; levy any Special Assessment; change or repeal any rules of the Architectural Control Committee; make any substantial reduction or change in Association services; or make any amendment of Association Documents.

## **ARTICLE 11 ASSESSMENTS**

Section 11.1 Obligation for Assessments. Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments applicable to his Lot which are provided for in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein.

Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments attributable to their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by non-use of the Association Properties or the facilities contained therein, by non-use of any service provided by the Association for all Owners, by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner

shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Association Properties shall be exempt from Assessments hereunder.

Section 11.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Association Properties as more specifically provided herein.

Section 11.3 Common Assessments. The Common Assessments may include, but shall not be limited to, the following common expenses:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments upon the Association Properties, both real and personal property;
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) common services to Owners as authorized in accordance with the terms of this Declaration.
- (e) Landscaping and care of the Association Properties;
- (f) repairs and maintenance that are the responsibility of the Association, including, without limitation, the obligations described in Section 8.3 of this Declaration;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal and accounting fees for the Association
- (i) any deficit remaining from a previous Assessment year;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of Association Property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments, subject to the provisions of Section 11.20;
- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies, subject to the provisions of Section 11.20; and

- (l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

Common Assessments shall be paid as provided in Section 11.5.

Section 11.4 Declarant's Obligation. Until Common Assessments are first levied by the Association pursuant to this Article 11, Declarant shall pay all common expenses of the Association described in Section 11.3.

Section 11.5 Common Assessment Procedure. Notwithstanding any other provision of this Declaration, Assessments shall only be assessed against Lots upon which a Dwelling Unit has been completed, and at the times set forth in this Declaration. A Dwelling Unit shall be considered completed when a certificate of occupancy has been issued by Regional Building and any other necessary governmental or quasi-governmental authority for the Dwelling Unit.

- (a) Promptly after this Declaration is recorded, the Board shall set the total annual Common Assessment for 2012 based upon an estimated budget for the Association for 2012. No later than ninety (90) days before the beginning of each year after 2012, the Board shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. Within thirty (30) days after adoption of the Association's budget for each year, by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the budget summary. Unless a majority of all Owners present and voting in person or by proxy at the meeting called to discuss the budget or voting by the mailed ballot returned to the Board prior to that meeting reject the budget, the budget is ratified, whether or not a quorum is present at the meeting. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

- (b) After approval of the budget by the Owners, the Board shall cause to be prepared, delivered or mailed to each Owner who owns a Lot upon which a Dwelling Unit has been completed, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the annual Common Assessment. That annual Common Assessment shall be payable in advance in yearly installments due on the first (1st) day of each successive January unless the Board otherwise directs. All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. Common Assessments shall be applicable to all Lots upon which a Dwelling Unit has been completed, including those owned by Declarant. Declarant and other Owners of Lots upon which a Dwelling Unit has been completed at the time a Common Assessment is first levied shall become responsible for Common Assessments at that time. Each Owner who subsequently acquires a Lot upon which a Dwelling Unit



has been completed shall become responsible for Common Assessments attributable to that Lot as of the date the Lot is transferred to such Owner. The first annual Common Assessment Lot shall be adjusted according to the number of months remaining in the fiscal year as established pursuant to the Bylaws of the Association. The Board may adopt Rules and Regulations requiring the Owner, at the time when Common Assessments first commence upon that Owner's Lot as provided in this section, to prepay the Common Assessments for the balance of the year and an additional period which shall not exceed an additional twelve (12) months; such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 11.18. Notwithstanding any other provision contained in this Declaration, Common Assessments shall first be assessed in the Community Area as of the date to be determined by the Declarant in its sole discretion.

Section 11.6 Rate of Assessments. Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association. Common Assessments and Special Assessments shall be allocated equally and uniformly among all Lots upon which a Dwelling Unit has been completed, so that each Owner of a Lot upon which a Dwelling Unit has been completed is obligated to pay an equal Common Assessment and Special Assessment, as applicable, for each Lot owned upon which a Dwelling Unit has been completed. The rate for Common Assessments and Special Assessments shall be determined by dividing the total Common Assessments or Special Assessments, as applicable, payable for any Assessment period, as determined by the ratified budget, by the number of Lots upon which a Dwelling Unit has been completed. The resulting quotient shall be the amount of the Common Assessment or Special Assessment, as applicable, payable with respect to each Lot upon which a Dwelling Unit has been completed.

Section 11.7 Failure to Fix Assessment. The failure by the Board to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

Section 11.8 Special Assessments. The Board may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital Improvements upon Association Properties, including personal property relating thereto; to add to the Association Properties; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be equally, uniformly imposed upon Lots upon which a Dwelling Unit has been completed, as provided in Section 11.6. No Special Assessment shall be assessed until it has been approved in accordance with a procedure substantially identical to the procedure set forth in Section 11.5(a). At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Improvements on the Association Properties, or on any other property which the Association maintains, the Association may levy Special Assessments for the purpose of repair or

reconstruction of such damaged or destroyed Improvements; all such Special Assessments shall be equal to the amount by which the costs of repair or reconstruction of Improvements exceeds the sum of insurance proceeds awarded for the damage or destruction, and shall be set in the same manner as other Special Assessments. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified.

Section 11.9 Site Assessments. The Board may, subject to the provisions hereof, levy a Site Assessment against any Member, Owner, or Lot if additional services are provided to a Member, Owner, or Lot or if the willful or negligent acts or omissions of the Member, Owner or a Related User cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment, other than charges for additional services, shall be levied only after such notice and hearing as may be required by the Bylaws. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies. In no event will the amount of any Site Assessment levied against any Lot be counted in calculating the amount allowed pursuant to C.R.S. Section 38-33.3-116(2) and (3).

Section 11.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses ("collection expenses"), and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten (10) days after the date of any notice of default given under Section 11.12 shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of eighteen percent (18%) per annum, or the maximum percentage permitted by law, from the due date until paid.

Section 11.11 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board, in its discretion, determines.

Section 11.12 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or

before the date specified in the notice may result in the foreclosure of the lien for the Assessment against the Owner's Lot. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

**Section 11.13 Remedies to Enforce Assessments.** Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 11.15.

**Section 11.14 Lawsuit to Enforce Assessments.** The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, court costs and reasonable attorneys' fees.

**Section 11.15 Lien to Enforce Assessments.** The Association shall have a lien for Assessments (the "Lien"). The Lien under this section is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a security interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the assessments became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. The Lien may be foreclosed in like manner as a mortgage on real estate. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this Section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which has accrued thereon and which shall continue to accrue in accordance with the terms of Section 11.10 of this Declaration, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. **The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien.** The Lien shall continue until the amounts secured thereby and

all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The lien under this Section shall be subject to the provisions and restrictions of Section 14.6 hereof.

Section 11.16 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board, and upon the written request of any Member or Owner and any Person which has acquired, or intends to acquire, any right, title or interest in the Lot of such Member or Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 11.17 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association Properties, or the non-use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

Section 11.18 Working Capital Fund. The Board may, at its option, require each Lot purchaser, expressly excluding Declarant, at the time of each transfer of title to the Lot following completion of a Dwelling Unit on the applicable Lot, to make a nonrefundable contribution to the Association of an amount established from time to time by the Board, but in no event will the amount, plus the annual Common Assessment against the Lot in effect on the date of delivery of the deed conveying the Lot, exceed the amount calculated pursuant to C.R.S. Section 38-33.3-116(2) and (3). All such contributions shall be maintained in a non-segregated account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures, funding Association deficits or purchasing additional equipment, property or services. **The working capital contribution shall be in addition to the Assessment, and shall not relieve the Owners from paying all Assessments as they come due.** Declarant is excluded from the

provisions of this Section because the Association and Owners of Lots with completed Dwelling Units will receive all of the benefits from payments made under this Section.

Section 11.19 Association Reserves. Each Owner hereby acknowledges that it has purchased its Lot and Dwelling Unit within the Community Area with the knowledge and consent that the Association will NOT collect funds to establish reserve funds ("Reserves") for the Association until such time as each Lot within the entire Community Area has a Dwelling Unit constructed thereon. At such time, the Association may establish such Reserves for the Association as the Association, through its Board in consultation with its property management company, if any, determines to be reasonable in its sole discretion. Each Owner further acknowledges that the Association will NOT have any obligation to establish reserves at a level which will fully fund the replacement of all Association Properties, but merely a commercially reasonable offset of such anticipated expenses.

## **ARTICLE 12 INSURANCE**

Section 12.1 Insurance on Association Properties. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article 12, the Association may also consider, in determining the type and amount of insurance it needs to obtain, the then-existing requirements of the applicable governmental agencies.

(a) A policy of property insurance covering all insurable Association Properties for broad form covered causes of loss, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as at the time are customarily covered with respect to associations having property similar in construction, location and use, including all periods normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of commercial general liability insurance covering all of the Association Properties, insuring the Association in an amount but not less than One Million and 00/100 Dollars (\$1,000,000.00) covering bodily injury, including death,

personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, with limitation, legal liability of the insureds for property damage, bodily injuries and deaths in connection with the operation, maintenance or use of the Association Properties, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles. Such coverage may also include, if applicable, comprehensive automobile insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and insurance coverage of such other risks as are customarily required by private institutional mortgage investors with respect to associations having property similar in construction, location and use. This policy shall insure the Association, the Board, the Association's managing agent (if any), and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner of Lots. The Owners shall be included as additional insureds but only for claims and liabilities arising from the ownership, existence, use of management of the Association Properties. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, held by the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate Common Assessments on all Lots, plus the Association's reserve funds. Such fidelity coverage or bonds shall meet the following requirements:

- (1) all such fidelity coverage or bonds shall name the Association as an obligee;
- (2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression.

In the event that the Association has delegated some or all of its responsibility for handling of funds to a manager, the Association may require the manager to purchase, at the manager's expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) In addition, the Association may obtain insurance against such other risks of similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association and the members of the Architectural Control Committee and other representatives.

Section 12.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association, or its designee, as trustee and attorney-in-fact for all Owners, as the insured, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee, and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and to each First Mortgagee, insurer or guarantor of a First Mortgage. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest including First Mortgagees, upon request and payment of a reasonable fee. Any such Owner's policy shall also contain waivers of subrogation. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, and provided that Declarant reimburses the Association for any additional premium payable as a result, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

Section 12.3 Deductibles. No policy or insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of Ten Thousand and 00/100 Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Association, at the election of the Board.

Section 12.4 Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interests may appear.

Section 12.5 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current credit or financial rating, which meets any applicable requirements of the Agencies, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any

policy if: (a) the terms of the insurance company's charter, bylaws, or policy provide that contributions or assessments may be made against the mortgagor or mortgagee's designee; (b) the terms of the carrier's charter, bylaws, or policy provide that loss payments are contingent upon action by the carrier's Board, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which would prevent a First Mortgagee or any Owner from collecting insurance proceeds.

Section 12.6 Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements owned by each Owner shall be the responsibility of the Owner of such Lot.

Section 12.7 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that coverage provided by such policies adequately covers those risks insured by the Association.

Section 12.8 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner's liability therefor shall be determined by the Board at a hearing after any notice required by the Bylaws to be given to the Owner, but any determination by the Board shall be subject to judicial review as appropriate.

## **ARTICLE 13 EASEMENTS**

Section 13.1 Easement for Encroachments. If any portion of an Improvement encroaches upon the Association Property, including any future encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, the Board may grant a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

Section 13.2 Association Easement. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over in and under the Community Area, together with the right to make such use of the Community Area as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.



Section 13.3 Utilities. Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and, thereafter, to the Association;

(a) perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to other over, under, in and across each of the utility easements of each Lot as shown on the Plat or the Promontory Pointe PD for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes; and

(b) a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone and electricity.

If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Community Area to the first Owner thereof, other than Declarant. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Community Area.

Section 13.4 Easements Deemed Created. All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

Section 13.5 Easements of Record. In addition to the easements created in this Article 13 and on the Plat and in Article 4, the Community Area is subject to those easements and other matters currently of record in El Paso County, Colorado.

Section 13.6 Community Mailboxes. The U.S. Postal Service will locate one or more "community mailbox" structures within the Community Area, in accordance with U.S. Postal Service and Town regulations.

## **ARTICLE 14 MISCELLANEOUS**

Section 14.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless

terminated by agreement of the Owners with at least sixty-seven percent (67%) of the voting power of the Association.

Section 14.2 Amendment of Declaration by Declarant or the Association.

(a) Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

(b) Declarant may amend the Declaration in accordance with Article 10 as necessary to exercise any of the development rights set forth in Article 10 or elsewhere in this Declaration.

Section 14.3 Amendment of Declaration of Members. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of the Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members with at least sixty-seven percent (67%) of the voting power of the Association. Every amendment to the Declaration must be recorded in the County, and is effective only upon recordation.

Section 14.4 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot in the Community Area has been conveyed by Declarant to the first Owner other than Declarant.

Section 14.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to: (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statement, within ninety (90) days following the end of any fiscal year of the Association; (d) receive written notice of all meeting of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association of the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (i) receive

written notice of any damage to the Association Properties if the cost of reconstruction exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00), and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 14.6 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Members of the Association, except as otherwise provided by applicable law. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

Section 14.7 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies for any Association Properties, or may secure new coverage if the insurance policy on and Association Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 14.8 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of Members and approval by First Mortgagees or Agencies, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer or the Association that the approvals of the required percentages of Members, First Mortgagees and Agencies were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance.

Section 14.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second (2nd) business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 14.10 Persons Entitled to Enforce Declaration. The Association (acting by authority of the Board) or any Member (acting on his own behalf), shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents, unless otherwise expressly stated herein. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

Section 14.11 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 14.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 14.13 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 14.14 Costs and Attorneys' Fees. In addition to any other rights provided herein and not by way of limitation thereof, the party which seeks to enforce the Association Documents and prevails shall be awarded its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees in any action or proceeding under the Association Documents.

Section 14.15 Limitation on Liability. The Association, the Board, the Architectural Control Committee, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by Colorado law, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with the subject to the terms and limitations contained in the Bylaws.

Section 14.16 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 14.17 Liberal Interpretation. The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 14.18 Governing Law. The Association Documents shall be construed and governed under the laws of the State of Colorado.

Section 14.19 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 14.20 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

Section 14.21 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 14.22 Mergers and Consolidation. The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area together with the covenants and restrictions established upon any other property, as one plan. Notwithstanding the foregoing, the Association shall have the right to merge into one association upon a vote of the respective boards of directors of such associations.

Section 14.23 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 14.24 Interpretive Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of this Declaration, the

Declarant, during the Period of Declarant Control, and thereafter, the Association (the "Interpretive Authority"), shall determine the proper construction of the provisions in question and shall set forth in a written instrument duly acknowledged by the Interpretive Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect, and application of the provision. This determination will thereafter be binding on all parties so long as it is not arbitrary nor capricious.

## **ARTICLE 15 DISCLOSURES**

Section 15.1 Statutory Disclosure. Each Lot in the Community Area is within the Triview Metropolitan District, and is subject to a mill levy to pay indebtedness of such districts. C.R.S. Section 38-35.7-101 requires that the following disclosure be made to you:

**SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

Section 15.2 Exemption From Colorado Common Interest Ownership Act. Notwithstanding any other provision contained in this Declaration, the annual average common expense liability of each Lot, exclusive of optional user fees and insurance premiums paid by the Association, may not exceed the limitation provided for in C.R.S. Section 38-33.3-116(2) and (3). Therefore, the Community Area is only subject to the provisions of C.R.S. Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107 and is exempt from all other provisions of CCIOA.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the day and year first above written.

DECLARANT:

**MREC Classic Promontory LLC,**  
a Delaware limited liability company

By: **Elite Properties of America, Inc.,**  
a Colorado corporation, as Manager

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November, 2011, by Joseph Laidolt as President and Douglas Sample as CEO of **Elite Properties of America, Inc.**, a Colorado corporation, as Manager of **MREC Classic Promontory LLC**, a Delaware limited liability company.

Witness my hand and official seal.

My Commission Expires: 12-02-2013.



Christine R. Wise  
Notary Public

**EXHIBIT A  
TO  
DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR PROMONTORY POINTE EPC**

**LEGAL DESCRIPTION OF THE COMMUNITY AREA**

The land referred to in Schedule A is situated in the County of El Paso, State of Colorado and is described as follows:

A PORTION OF THE PROPERTY NOW PLATTED AS PROMONTORY POINTE SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 17, 2007 AT RECEPTION NO. 202712646, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF SECTION 30, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30, AS PLATTED IN "HOMESTEAD AT JACKSON CREEK FILING NO. 3" AND RECORDED UNDER RECEPTION NO. 202177312 OF THE RECORDS OF SAID EL PASO COUNTY, ASSUMED TO BEAR N00°18'26"E A MEASURED DISTANCE OF 1310.29 FEET.

BEGINNING AT THE NORTHEAST CORNER OF "HOMESTEAD AT JACKSON CREEK FILING NO. 3" AS RECORDED UNDER RECEPTION NO. 202177312 OF THE RECORDS OF SAID EL PASO COUNTY, SAID POINT ALSO BEING THE NORTHWEST SIXTEENTH CORNER OF SAID SECTION 30, SAID POINT ALSO BEING "POINT A";  
THENCE ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30, S89°28'07"E A DISTANCE OF 1330.38 FEET TO THE NORTH-CENTER SIXTEENTH CORNER OF SAID SECTION 30, SAID POINT ALSO BEING "POINT B";  
THENCE ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30, S01°18'05"W A DISTANCE OF 504.80 FEET TO THE NORTHEAST CORNER OF THE TRI VIEW WATER DISTRICT WATER TANK SITE, AS RECORDED IN BOOK 5513 AT PAGE 1072 AND UNDER RECEPTION NO. 202170871 OF THE RECORDS OF SAID EL PASO COUNTY;  
THENCE ON SAID TANK SITE BOUNDARY THE FOLLOWING SEVEN (7) COURSES:  
1. N88°35'01"W A DISTANCE OF 177.36 FEET;  
2. S01°24'59"W A DISTANCE OF 255.47 FEET;  
3. S27°41'05"E A DISTANCE OF 58.96 FEET;  
4. S66°20'48"E A DISTANCE OF 76.00 FEET;  
5. S43°07' 15"E A DISTANCE OF 13.50 FEET;  
6. S80°43'49"E A DISTANCE OF 43.91 FEET;  
7. S88°35'01"E A DISTANCE OF 26.08 FEET TO SAID EASTERLY BOUNDARY OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 30;  
THENCE ON SAID EASTERLY BOUNDARY, S01°18'05"W A DISTANCE OF 439.07 FEET TO THE CENTER OF SAID SECTION 30, SAID POINT ALSO BEING THE NORTHWEST CORNER OF "KINGSWOOD" AS RECORDED IN PLAT BOOK V-2 AT PAGE 65 OF THE RECORDS OF SAID EL PASO COUNTY, SAID POINT ALSO BEING "POINT C";  
THENCE ON THE BOUNDARY OF SAID "KINGSWOOD", S00°03'52"W A DISTANCE OF 2608.04 FEET;  
THENCE S89°36'11"W A DISTANCE OF 1319.31 FEET TO THE NORTH-SOUTH CENTER LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 30;  
THENCE ON SAID CENTER LINE OF THE SOUTHWEST QUARTER OF SECTION 30, N00°18'46"E A DISTANCE OF 2614.18 TO THE CENTER-WEST SIXTEENTH CORNER OF SAID SECTION 30;  
THENCE ON THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30, N00°18'26"E A DISTANCE OF 244.69 FEET TO THE SOUTHEAST CORNER OF SAID "HOMESTEAD AT JACKSON CREEK FILING NO. 3";  
THENCE CONTINUING ON THE BOUNDARY OF SAID "HOMESTEAD AT JACKSON CREEK FILING NO. 3" ON THE LAST STATED COURSE, N00°18'26"E A DISTANCE OF 1085.60 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THE FOLLOWING EIGHT (8) PARCELS:

EXCEPTION 1:

BEGINNING AT SAID "POINT A";  
THENCE ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30, S89°28'07"E A DISTANCE OF 91.74 FEET; THENCE S24°14'51"E A DISTANCE OF 133.31 FEET;  
THENCE ON A NONTANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 55.00 FEET, A CENTRAL ANGLE OF 41°59'05", AND AN ARC LENGTH OF 40.30 FEET (CHORD BEARS S45°05'05"W A DISTANCE OF 39.41 FEET);  
THENCE N89°42'10"W A DISTANCE OF 119.38 FEET TO THE BOUNDARY OF SAID "HOMESTEAD AT JACKSON CREEK FILING NO. 3";  
THENCE ON THE BOUNDARY OF SAID "HOMESTEAD AT JACKSON CREEK FILING NO. 3", N00°18'26"E A DISTANCE OF 149.61 FEET TO THE POINT OF BEGINNING OF EXCEPTION 1;

EXCEPTION 2:

COMMENCING AT SAID "POINT A"; THENCE ON THE BOUNDARY OF SAID "HOMESTEAD AT JACKSON CREEK FILING NO. 3", S00°18'26"W A DISTANCE OF 61928 FEET TO THE POINT OF BEGINNING OF EXCEPTION 2;  
THENCE CONTINUING ON THE LAST STATED COURSE, S00°18'26"W A DISTANCE OF 96.90 FEET;  
THENCE N56°22'02"E A DISTANCE OF 272.83 FEET;  
THENCE N58°42'36"W A DISTANCE OF 11.15 FEET;  
THENCE ON A TANGENT ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 20°48'31", AND AN ARC LENGTH OF 72.64 FEET;  
THENCE ON A NONTANGENT BEARING S56°29'15"W A DISTANCE OF 195.71 FEET TO THE POINT OF BEGINNING OF EXCEPTION 2;

EXCEPTION 3:

COMMENCING AT SAID "POINT A";  
THENCE ON THE BOUNDARY OF SAID "HOMESTEAD AT JACKSON CREEK FILING NO. 3", S00°18'26"W A DISTANCE OF 716.18 FEET;  
THENCE N56°22'02"E A DISTANCE OF 131.30 FEET;  
THENCE S41°01'52"E A DISTANCE OF 95.24 FEET TO THE POINT OF BEGINNING OF EXCEPTION 3;  
THENCE N52°34'05"E A DISTANCE OF 167.47 FEET;  
THENCE ON A NONTANGENT ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 150.00 FEET, A CENTRAL ANGLE OF 33°03'10", AND AN ARC LENGTH OF 86.53 FEET (CHORD BEARS S35°20'05"E A DISTANCE OF 85.34 FEET) TO A POINT OF TANGENCY;  
THENCE S18°48'33"E A DISTANCE OF 6.74 FEET;  
THENCE ON A TANGENT ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°21'29", AND AN ARC LENGTH OF 39.43 FEET TO A POINT OF REVERSE CURVE;  
THENCE ON A TANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 28°18'39", AND AN ARC LENGTH OF 126.00 FEET TO A POINT OF TANGENCY;  
THENCE N41°01'52"W A DISTANCE OF 97.02 FEET TO THE POINT OF BEGINNING OF EXCEPTION 3;

EXCEPTION 4:



COMMENCING AT SAID "POINT A";

THENCE ON THE BOUNDARY OF SAID "HOMESTEAD AT JACKSON CREEK FILING NO. 3", S00°18'26"W A DISTANCE OF 1063.05 FEET TO A POINT ON THE SOUTHERLY LINE OF A 50-FOOT-WIDE PUBLIC ACCESS AND UTILITY EASEMENT RECORDED UNDER RECEPTION NO. 202170872 OF THE RECORDS OF SAID EL PASO COUNTY, SAID POINT ALSO BEING THE POINT OF BEGINNING OF EXCEPTION 4;

THENCE CONTINUING ON THE LAST STATED COURSE, S00°18'26"W A DISTANCE OF 247.24 FEET TO THE CENTER-WEST SIXTEENTH CORNER OF SAID SECTION 30;

THENCE ON THE NORTH-SOUTH CENTER LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 30, S00°18'46" A DISTANCE OF 6.43 FEET;

THENCE S89°41'19"E A DISTANCE OF 155.72 FEET;

THENCE ON A NONTANGENT ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 780.00 FEET, A CENTRAL ANGLE OF 6°04'27", AND AN ARC LENGTH OF 82.69 FEET TO A POINT OF TANGENCY;

THENCE N19°42'41"E A DISTANCE OF 3123 FEET; THENCE ON A TANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 195.00 FEET, A CENTRAL ANGLE OF 34°17'46", AND AN ARC LENGTH OF 116.72 FEET TO A POINT OF TANGENCY;

THENCE N14°35'05"W A DISTANCE OF 64.12 FEET; THENCE ON A TANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 49°28'44", AND AN ARC LENGTH OF 21.59 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID 50-FOOT-WIDE PUBLIC ACCESS AND UTILITY EASEMENT;

THENCE ON SAID EASEMENT BOUNDARY THE FOLLOWING TWO (2) COURSES:

1. S71°11'27"W A DISTANCE OF 78.05 FEET;

2. ON A TANGENT ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 520.00 FEET, A CENTRAL ANGLE OF 10°16'17", AND AN ARC LENGTH OF 93.22 FEET TO THE POINT OF BEGINNING OF EXCEPTION 4;

EXCEPTION 5:

COMMENCING AT SAID "POINT B";

THENCE ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30, S01°18'05"W A DISTANCE OF 116.79 FEET TO THE POINT OF BEGINNING OF EXCEPTION 5;

THENCE S55°13'57"W A DISTANCE OF 198.40 FEET;

THENCE ON A NONTANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 14°11'15", AND AN ARC LENGTH OF 61.90 FEET (CHORD BEARS N40°21'32"W A DISTANCE OF 61.75 FEET);

THENCE N34°41'22"E A DISTANCE OF 158.45 FEET; THENCE S60°21'03"E A DISTANCE OF 129.78 FEET TO THE POINT OF BEGINNING OF EXCEPTION 5;

EXCEPTION 6:

COMMENCING AT SAID "POINT B";

THENCE ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 30, S01°18'05"W A DISTANCE OF 431.72 FEET TO THE POINT OF BEGINNING OF EXCEPTION 6;

THENCE S69°00'28"W A DISTANCE OF 191.69 FEET;

THENCE N80°20'07"W A DISTANCE OF 163.82 FEET;

THENCE N00°01'58"E A DISTANCE OF 75.87 FEET;

THENCE N63°47'56"E A DISTANCE OF 143.19 FEET;

THENCE ON A NONTANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 55.00 FEET, A CENTRAL ANGLE OF 115°01'50", AND AN ARC LENGTH OF 110.42 FEET (CHORD BEARS S85°21'45"E A DISTANCE OF 92.79 FEET);

THENCE S52°52'40"E A DISTANCE OF 149.82 FEET TO THE POINT OF BEGINNING OF EXCEPTIONS;

EXCEPTION 7:

COMMENCING AT SAID "POINT C"; THENCE ON THE BOUNDARY SAID "KINGSWOOD", S00°03'52"W A DISTANCE OF 295.70 FEET TO THE POINT OF BEGINNING OF EXCEPTION 7;

THENCE CONTINUING ON THE LAST STATED COURSE, ON THE BOUNDARY SAID "KINGSWOOD" S00°03'52"W A DISTANCE OF 2186.31 FEET;

THENCE S85°02'59"W A DISTANCE OF 123.84 FEET;

THENCE N42°23'40"W A DISTANCE OF 172.28 FEET;

THENCE ON A NONTANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 55.00 FEET, A CENTRAL ANGLE OF 43°26'39", AND AN ARC LENGTH OF 41.70 FEET (CHORD BEARS N17°10'24"E A DISTANCE OF 40.71 FEET);

THENCE N45°26'50"E A DISTANCE OF 141.67 FEET;

THENCE N46°27'03"W A DISTANCE OF 212.00 FEET;

THENCE ON A NONTANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 18°24'41", AND AN ARC LENGTH OF 104.44 FEET (CHORD BEARS N28°37'29"E A DISTANCE OF 103.99 FEET) TO A POINT OF TANGENCY; THENCE

N19°23'09"E A DISTANCE OF 34.77 FEET;

THENCE ON A TANGENT ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 53°07'48", AND AN ARC LENGTH OF 18.55 FEET TO A POINT OF REVERSE CURVE;

THENCE ON AN ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 55.00 FEET, A CENTRAL ANGLE OF 138°27'03", AND AN ARC LENGTH OF 132.90 FEET; THENCE N00°03'50"E A DISTANCE OF 175.05 FEET;

THENCE S87°57'38"W A DISTANCE OF 91.92 FEET; THENCE N10°39'46"E A DISTANCE OF 113.22 FEET;

THENCE ON A NONTANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 55.00 FEET, A CENTRAL ANGLE OF 123°20'42", AND AN ARC LENGTH OF 118.40 FEET (CHORD BEARS N46°56'39"E A DISTANCE OF 96.83 FEET) TO A POINT OF REVERSE CURVE;

THENCE ON AN ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 47°04'35", AND AN ARC LENGTH OF 16.43 FEET TO A POINT OF REVERSE CURVE;

THENCE ON AN ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 275.00 FEET, A CENTRAL ANGLE OF 85°43'43", AND AN ARC LENGTH OF 411.47 FEET TO A POINT OF TANGENCY;

THENCE N53°22'50"W A DISTANCE OF 10.48 FEET;

THENCE ON A TANGENT ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 78°11'50", AND AN ARC LENGTH OF 27.30 FEET TO A POINT OF REVERSE CURVE;

THENCE ON AN ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 2°26'31", AND AN ARC LENGTH OF 8.52 FEET TO A POINT OF TANGENCY;

THENCE N22°22'29"E A DISTANCE OF 244.00 FEET;

THENCE ON A TANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 25°12'36", AND AN ARC LENGTH OF 88.00 FEET TO A POINT OF TANGENCY;

THENCE N02°50'07"W A DISTANCE OF 211.9 FEET;

THENCE ON A TANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 575.00 FEET, A CENTRAL ANGLE OF 12°13'16", AND AN

ARC LENGTH OF 122.65 FEET TO A POINT OF TANGENCY;  
THENCE N15°03'23"W A DISTANCE OF 112.34 FEET;  
THENCE ON A TANGENT ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 8°11'22", AND AN  
ARC LENGTH OF 2859 FEET;  
THENCE N44°48'16"E A DISTANCE OF 256.64 FEET;  
THENCE S89°32'21"E A DISTANCE OF 49.92 FEET TO THE POINT OF BEGINNING OF EXCEPTION 7;

EXCEPTION 8:

COMMENCING AT SAID "POINT C", THENCE S09°23'20"W A DISTANCE OF 1301.93 FEET TO THE POINT OF BEGINNING OF EXCEPTION  
8;  
THENCE ON AN ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 225.00 FEET, A CENTRAL ANGLE OF 41°26'01", AND AN ARC  
LENGTH OF 162.71 FEET (CHORD BEARS S09°05'47"W A DISTANCE OF 159.19 FEET) TO A POINT OF COMPOUND CURVE; THENCE ON  
AN ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 61°05'30", AND AN ARC LENGTH OF 21.33  
FEET TO A POINT OF REVERSE CURVE;  
THENCE ON AN ARC OF CURVE TO THE LEFT WITH A RADIUS OF 55.00 FEET, A CENTRAL ANGLE OF 73°51'35", AND AN ARC  
LENGTH OF 70.90 FEET;  
THENCE N86°50'45"W A DISTANCE OF 148.93 FEET;  
THENCE N30°47'06"E A DISTANCE OF 52.44 FEET;  
THENCE N12°40'51"W A DISTANCE OF 94.47 FEET;  
THENCE N75°44'41"E A DISTANCE OF 246.48 FEET TO THE POINT OF BEGINNING OF EXCEPTION 8;