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Jefferson County, Colorado

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AMENDED AND RESTATED

DECLARATION

FOR

SIXTH AVENUE WEST ESTATES

October 10, 2004

TABLE OF CONTENTS

ARTICLE 1	Defined Terms	1	2
<u>Section 1.1</u>	<u>Defined Terms.</u>	1	
ARTICLE 2	Names/Description of Real Estate	4	
<u>Section 2.2</u>	<u>Real Estate</u>	4	
ARTICLE 3	The Association	4	
<u>Section 3.1</u>	<u>Membership</u>	4	
<u>Section 3.2</u>	<u>General Purposes and Powers of the Association</u>	4	
<u>Section 3.3</u>	<u>Authority of the Association</u>	4	
<u>Section 3.4</u>	<u>Specific Powers</u>	5	
<u>Section 3.5</u>	<u>Maintenance of Fencing</u>	5	
<u>Section 3.6</u>	<u>Allocated Interests</u>	5	
<u>Section 3.7</u>	<u>Association Management Agreements</u>	5	
<u>Section 3.8</u>	<u>Indemnification</u>	5	
<u>Section 3.9</u>	<u>Members' Easements of Enjoyment</u>	6	
<u>Section 3.10</u>	<u>Delegation of Use</u>	6	
ARTICLE 4	Covenant For Common Expense Assessments	6	
<u>Section 4.1</u>	<u>Creation of Assoc. Lien & Personal Obligation to Pay Common Expense Assessments</u>	6	
<u>Section 4.2</u>	<u>Apportionment of Common Expenses.</u>	7	
<u>Section 4.3</u>	<u>Annual Assessment.</u>	7	
<u>Section 4.4</u>	<u>Special Assessments</u>	7	
<u>Section 4.5</u>	<u>Transfer Assessment</u>	7	
<u>Section 4.6</u>	<u>Default Assessments</u>	7	
<u>Section 4.7</u>	<u>Effect of Non-Payment of Assessments</u>	8	
<u>Section 4.8</u>	<u>Lien Priority</u>	8	
<u>Section 4.9</u>	<u>Member's Negligence or Misconduct</u>	9	
ARTICLE 5	Restrictions on Use, Alienation, and Occupancy	9	
Section 5.1	Flexible Application of the Subsequent Covenants and Restrictions	9	
Section 5.2	Use/Occupancy	9	

<u>Section 5.3</u>	<u>Authority.</u>	9	3
<u>Section 5.4</u>	<u>(New) Limitation on Authority.</u>	10	
<u>Section 5.4</u>	<u>Public Street Lighting.</u>	10	
<u>Section 5.5</u>	<u>Leasing and Occupancy</u>	10	
<u>Section 5.6</u>	<u>Lots to be Maintained</u>	11	
<u>Section 5.7</u>	<u>Restrictions on Animals and Pets</u>	11	
<u>Section 5.8</u>	<u>Landscaping Requirements and Restrictions</u>	11	
<u>Section 5.9</u>	<u>Antennae</u>	11	
<u>Section 5.10</u>	<u>Nuisances.</u>	12	
<u>Section 5.11</u>	<u>Drainage</u>	12	
<u>Section 5.12</u>	<u>Construction Activities</u>	12	
<u>Section 5.13</u>	<u>Vehicular Parking, Storage, and Repairs</u>	12	
<u>Section 5.14</u>	<u>Use of Common Area</u>	13	
<u>Section 5.15</u>	<u>No Annoying Lights, Sounds or Odors</u>	13	
<u>Section 5.16</u>	<u>Compliance with Insurance Requirements</u>	13	
<u>Section 5.17</u>	<u>No Unsightliness</u>	13	
<u>Section 5.18</u>	<u>Restrictions on Clothesline and Storage</u>	14	
<u>Section 5.19</u>	<u>Restriction on Signs and Advertising Devices</u>	14	
<u>Section 5.20</u>	<u>Restrictions on Structural Alterations and Exterior Improvements</u>	14	
<u>Section 5.21</u>	<u>Fencing</u>	14	
<u>Section 5.22</u>	<u>Solar Plane Restriction</u>	14	
<u>Section 5.23</u>	<u>Plat Restrictions</u>	14	
<u>Section 5.24</u>	<u>Resolutions, Rules and Regulations</u>	14	
<u>Section 5.25</u>	<u>Compliance with Governing Documents</u>	15	

<u>ARTICLE 6</u>	<u>ARCHITECTURAL COMMITTEE</u>	15	
<u>Section 6.1</u>	<u>Required Approval</u>	15	
<u>Section 6.2</u>	<u>Approval Criteria.</u>	15	
<u>Section 6.3</u>	<u>Establishment of the Architectural Committee.</u>	16	
<u>Section 6.4</u>	<u>Appointment and Removal</u>	16	
<u>Section 6.5</u>	<u>Architectural Guidelines</u>	16	
<u>Section 6.6</u>	<u>Reply and Communication.</u>	16	
<u>Section 6.7</u>	<u>Variances</u>	16	

<u>Section 6.8</u>	<u>Right to Appeal</u>	16
<u>Section 6.9</u>	<u>Waivers</u>	16
<u>Section 6.10</u>	<u>Liability</u>	16
<u>Section 6.11</u>	<u>Records</u>	17
<u>Section 6.12</u>	<u>Enforcement</u>	17
 ARTICLE 7	INSURANCE/CONDEMNATION	17
<u>Section 7.1</u>	<u>Insurance on the Lots</u>	17
<u>Section 7.2</u>	<u>Insurance Carried by the Association.</u>	17
<u>Section 7.3</u>	<u>Hazard Insurance on the Common Area</u>	18
<u>Section 7.4</u>	<u>Association Liability Insurance</u>	18
<u>Section 7.5</u>	<u>Association Fidelity Insurance</u>	18
<u>Section 7.6</u>	<u>Association Worker's Compensation and Employer's Liability Insurance</u>	18
<u>Section 7.7</u>	<u>Officers' and Directors' Personal Liability Insurance</u>	18
<u>Section 7.8</u>	<u>Other Association Insurance</u>	18
<u>Section 7.9</u>	<u>Insurance Premium</u>	18
<u>Section 7.10</u>	<u>Managing Agent Insurance</u>	18
<u>Section 7.11</u>	<u>Annual Insurance Review</u>	18
<u>Section 7.12</u>	<u>Condemnation and Hazard Insurance Allocations and Distributions.</u>	19
 ARTICLE 8	GENERAL PROVISIONS	19
<u>Section 8.1</u>	<u>Enforcement.</u>	19
<u>Section 8.2</u>	<u>Severability</u>	19
<u>Section 8.3</u>	<u>Term of Declaration.</u>	19
<u>Section 8.4</u>	<u>Amendment of Declaration by Members</u>	19
<u>Section 8.5</u>	<u>Captions</u>	19
<u>Section 8.6</u>	<u>Interpretation</u>	20
<u>Section 8.7</u>	<u>Singular Includes the Plural</u>	20
<u>Section 8.8</u>	<u>Conflict of Provisions</u>	20
<u>Section 8.9</u>	<u>Challenge to this Amendment</u>	20
<u>Section 8.10</u>	<u>Notices</u>	20
 EXHIBIT A <u>DESCRIPTION OF REAL ESTATE</u>		23

AMENDED AND RESTATED

DECLARATION

FOR

SIXTH AVENUE WEST ESTATES

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the Sixth Avenue West Estates Master Association, a Colorado nonprofit corporation.

RECITALS:

A. Declarant, Midway Development Co. No. 3, a Colorado limited partnership, recorded that certain Master Declaration of Covenants, Conditions and Restrictions of Sixth Avenue West Estates on December 20, 1982, at Reception No. 82088979 in the Office of the Clerk and Recorder for Jefferson County, Colorado ("Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

B. The Members have amended the Original Declaration by an Amendment to Master Declaration of Covenants, Conditions and Restrictions on March 3, 1983, recorded at Reception No. 83018785 in the Office of the Clerk and Recorder for Jefferson County, Colorado;

C. The Members and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration for Sixth Avenue West Estates ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and instruments creating covenants, conditions, restrictions and reservations on the Properties, as defined below, shall be superseded and replaced by this Declaration; and

D. Members representing at least two-thirds (2/3) of the total votes of all Members in the Association have approved this Declaration, or alternatively, a Court Order pursuant to C.R.S. §38-33.3-217(7) has been entered approving this Declaration in the Jefferson County Colorado District Court.

NOW, THEREFORE, the Original Declaration is replaced and amended and restated as follows:

ARTICLE 1

Defined Terms

~~Section 1.1~~ **Defined Terms.** Each capitalized term in this Declaration shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration:

6
(a) "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended, to the extent it applies to common interest communities established prior to July 1, 1992, or as otherwise adopted herein by reference to either specific provisions or specific topics.

(b) "Architectural Review Committee" or "Architectural Committee" means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(c) "Assessment" or "Common Expense Assessment" shall include all Common Expense, insurance assessments, utility assessments, and any other expense levied against a Lot pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines and costs.

(d) "Association" shall mean Sixth Avenue West Estates Master Association, a Colorado nonprofit corporation, and its successors.

(e) "Board" or "Board of Directors" shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association.

(f) "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Members, if any.

(g) "Common Expense" shall mean any expenditure made by or on behalf of the Association, together with any allocations to reserves.

(h) "Community" or "Sixth Avenue West Estates Community" or "Planned Community" shall mean the planned community known as "Sixth Avenue West Estates", the Sixth Avenue West Estates Master Association, and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.

(i) "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sixth Avenue West Estates, as amended, recorded in the office of the Clerk and Recorder of Jefferson County, Colorado.

(j) "Governing Documents" shall mean this Declaration, the plats and maps, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(k) "Improvement(s)" shall mean structures installed within or upon a Lot.

(l) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Areas, if any. Multiple adjacent lots owned by the same owner with a single dwelling on them shall be treated as a single lot. 7

(m) "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration and as set forth herein.

(n) "Owner" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(o) "Plans and Specifications" shall mean any and all documents designed to guide or control proposed Improvements or other proposals in question, including, but not limited to, those indicated size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services and all other documentation or information relevant to the Improvement or proposal in question.

(p) "Properties" shall mean and refer to all of the real property described in or which is subject to the Governing Documents of the Sixth Avenue West Estates Master Association.

(q) "Quorum" shall mean ten percent (10%) of the Members eligible to vote.

(r) "Rules and Regulations" shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including any amendment to those instruments.

(s) "Special Assessment" or "Special Expense" shall mean any expense levied, applicable to that assessment year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors and as approved by the membership as defined in Section 4.4.

ARTICLE 2

Names/Description of Real Estate

8

Section 2.1 **Name and Type.** The type of common interest community is a Planned Community. The name of the Planned Community is "Sixth Avenue West Estates" The name of the Association is the "Sixth Avenue West Estates Master Association."

Section 2.2 **Real Estate.** The Planned Community is located in Jefferson County, Colorado. The Properties of the Planned Community are described in Exhibit A. Easements for utilities and other purposes over and across the Lots and Common Area may be as shown upon a recorded plat and on any recorded map of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

ARTICLE 3

The Association

Section 3.1 **Membership.** Every person who is a record owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds an interest in any Lot, all such persons shall be Members. Each Lot shall be allocated one (1) vote which shall be cast as a single vote and shall not be subject to fractional voting.

Section 3.2 **General Purposes and Powers of the Association.** The Association, through its Board of Directors, shall use its best efforts to perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots and to further the interests of the residents, occupants, tenants and guests of the Community and Members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management.

Section 3.3 **Authority of the Association.** The business affairs of the Sixth Avenue West Estates Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the plat, any map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 3.4 **Specific Powers.** The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the total votes allocated to Members in the Association. The Association shall be responsible for the maintenance, repair, replacement and improvement of the Common Area, and any Improvements located thereon. 9

Section 3.5 **Maintenance of Fencing.** The Association shall repair, maintain, replace as necessary, remove or redesign any fence, pillar or wall which shall be installed or constructed on the Common Areas except fences, pillars or walls surrounding and encompassing the subassociation properties. The Association has the right of access to and utilization of utility easements for maintenance of these items. No Owner shall have the right to modify such fences, pillars, or walls, even those adjoining their property, without prior approval from the Association.

Section 3.6 **Allocated Interests.** The ownership interest, Common Expense liability and votes in the Association allocated to each Lot are set as follows:

- (a) the percentage of liability for Common Expenses, equally;
- (b) the number of votes in the Association, equally.

If any Lot with individually metered utilities provides some of those utilities to the Association or to Common Area of the Association, then, with the approval of the Association, that Lot and the Member's Common Expense Assessment shall be credited by the Association for the reasonable value of the utilities provided. If Lots are added to or withdrawn from the Community, pursuant to the provisions of this Declaration and the Act, the formulas set forth above shall be used to reallocate the Allocated Interests.

Section 3.7 **Association Management Agreements.** Any agreement for professional management of the Sixth Avenue West Estates Community may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days written notice.

Section 3.8 **Indemnification.** To the full extent permitted by law, each officer, director, committee member and volunteer of the Association shall be and are hereby indemnified by the Members and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member, or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member, or volunteer of the Association at the time such expenses are incurred; except in such cases wherein such officer, director,

committee member, or volunteer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association or as otherwise provided in the Bylaws of the Association. 16

Section 3.9 **Members' Easements of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions: (a) the right of the Association to promulgate and publish Rules and Regulations with which each Member and their tenants, invitees, licensees and guests shall strictly comply; (b) the right of the Association, as provided in the Bylaws, to suspend the voting rights and right to use the Common Area and recreational facilities during any period in which Assessments or fines remain unpaid; (c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Area, provided that any transfer or conveyance of the Common Area shall be subject to the prior approval by a majority of those Members' votes present at a meeting properly called for the purpose; and (d) the right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 3.10 **Delegation of Use.** Members may delegate their rights of enjoyment to the Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lots.

ARTICLE 4

Covenant For Common Expense Assessments

Section 4.1 **Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.** Each Lot, and each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Member may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Common Expense Assessments are made. ~~All assessments shall be payable in the amounts specified in the~~ levy thereof, and no offsets or reduction thereof shall be permitted for any reason including,

without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. 11

Section 4.2 **Apportionment of Common Expenses.** Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Lots equally. Notwithstanding the foregoing, the Board of Directors may adopt a policy and procedure to provide convenience fees for irregular payment plans or discounts to induce early payment of assessments by Members.

Section 4.3 **Annual Assessment.** The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Members from their obligation to pay.

Section 4.4 **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors; provided that any such assessment shall have the assent of a majority of Members' votes at a special or annual meeting at which a Quorum is present in person or by proxy, or by a mail or electronic vote under the provisions of the Bylaws.

Section 4.5 **Transfer Assessment.** Each Owner, upon the transfer of a Lot, shall pay to the Association at the time of the closing of such transfer an amount as determined by the Board, for that transfer, to cover the costs of transferring ownership records, preparing documents, new member orientation, and other such costs incurred by a transfer of ownership. The statement of assessments which shall be prepared in accordance with the Bylaws shall include the amount of this Real Estate Transfer Assessment to be due and payable to the Association at the time of the closing of the transfer of a Lot. This Real Estate Transfer Assessment is separate from and in addition to any and all other assessments which are levied against the Lots by the Association and shall be deposited into the operating or reserve accounts of the Association as the Board determines best benefits the Association's needs at the time of the transfer. This Real Estate Transfer Assessment shall be an Association lien on the Lot as provided in Section 4.1 above if not paid at the time of closing of the transfer of the Lot.

Section 4.6 **Default Assessments.** All monetary fines assessed against a Member pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Member or which is incurred by the Association on behalf of the Member pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such

Member's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Member subject to such Assessment at least thirty (30) days prior to the due date. 12

Section 4.7 **Effect of Non-Payment of Assessments.** Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Member's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Member personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Member's Lot. An action at law or in equity by the Association against a Member to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefore. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any assessment lien, and a Member abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Member. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 4.8 **Lien Priority.** The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Original Declaration; (2) a first lien Security Interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of the Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from

continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.9 **Member's Negligence or Misconduct.** In the event that the need for maintenance, repair, or replacement of the Common Area, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Member, or the Member's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Member, and if not repaid to the Association within thirty (30) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Article, such expenses, costs, and fees shall automatically become a default assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Article. 13

ARTICLE 5

Restrictions on Use, Alienation, and Occupancy

Section 5.1 **Flexible Application of the Subsequent Covenants and Restrictions.** All Properties within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules.

Section 5.2 **Use/Occupancy.** No Lot within the Community shall be used for any purpose other than as allowed by the local zoning codes. Lots shall not be used or improved for any purpose other than a residential dwelling. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community as a first class residential Community, as reasonably determined by the Board of Directors of the Association, are prohibited, unless approved by the Association and allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

Section 5.3 **Authority.** All provisions of the Governing Documents shall apply to Members and their guests, tenants, invitees and licensees. Existing Members and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

(1) The ability of Members to use their Lots may be limited by the provisions in the Governing Documents.

(2) The Board may add, delete, modify, create exceptions to, or amend use

guidelines and restrictions, or Rules and Regulations, in accordance with this Declaration and established legal principles.

14

(3) The Board may establish fair and equitable penalties for the infraction of all regulations. Members will be responsible for penalties assessed against their tenants, guests and invitees for violations of the restrictions. Escalating penalties may be applied as necessary to encourage compliance..

(4) All penalties imposed are collectible as Assessments.

New section 5.4 **Limitation on Authority.** Any vote or decision by the Association or Board of Directors shall be subject to being overturned by a majority of Members' votes at a special meeting at which a Quorum is present in person or by proxy. Such a vote shall be held upon presentation to the Association of a petition signed by one third of Members. Implementation of the vote or decision being appealed shall be halted upon receipt of a valid petition, until the matter is decided at the special meeting.

Section 5.4 **Public Street Lighting.** All Lots are subject to and bound by Public Utilities tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided, and subject to all of the cost of public street lighting in the subdivision according to Public Service Company rates, rules and regulations including the future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

Section 5.5 **Leasing and Occupancy.** Any Member shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Member may deem advisable, subject to restrictions of record and the terms of this Declaration.

(a) Short term occupancies and rentals (of less than six (6) months) of Lots shall be prohibited, without prior written permission from the Board of Directors. Permission will not be unreasonably withheld.

(b) Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the Rules and Regulations of the Association. Members are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association.

(c) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default of the occupancy, lease or rental

agreement and of this Declaration and such default shall be enforceable by either the Association or the Owner, or by both of them.

(d) Leases shall be for or of the entire Lot.

(e) Upon leasing of their Lots, Members shall notify the Association of their new mailing address.

Section 5.6 **Lots to be Maintained.** Members are responsible for the maintenance, repair and replacement of the property and improvements located within their Lot boundaries, including landscaping; exterior lighting, including any front yard lights and lampposts; decks, patios, fences other than Association fences, driveways, sidewalks, doors, garage doors, and windows located on the Lots. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition, and all structures shall be painted as necessary. Members shall keep all exterior lights on the home and Improvements located on their Lot operating in good working order, including any front yard light and lamppost.

Section 5.7 **Restrictions on Animals and Pets.** Pets, including cats, dogs, birds, reptiles, or other animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored in a Lot, if the animal is not obnoxious to other Members or occupants. In the event a complaint is received regarding an animal's behavior, the Member or person having control of the animal shall be given a written notice to correct the problem. The written notices provided for herein shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association. Animals may not be kept for any commercial purposes. Members shall hold the Association harmless from any claim resulting from any action of or involving their animals.

Section 5.8 **Landscaping Requirements and Restrictions.** The landscaping of each Lot shall be maintained by the Member in a neat, attractive and well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequately watered as allowed by law or water company restrictions, replacement of dead, diseased or unsightly materials, and removal of weeds and debris.

Section 5.9 **Antennae.** Subject to federal statutes or regulations governing planned communities, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained within the Community, except pursuant to the Rules and Regulations of the Association. Any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type erected, installed or maintained by an Owner is subject to reasonable and valid safety restrictions, and reasonable restrictions as to screening of the device from view by neighboring Lots. All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type by an Owner, including costs of repair, replacement, improvement and maintenance of the structure to which such exterior television or other antennae, microwave

dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner.

Section 5.10 **Nuisances.** No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of significant annoyance or embarrassment to, or which could reasonably be taken to offend or disturb, any Member or which may reasonably be taken to interfere with the peaceful enjoyment or possession of a Lot or Common Area, or any portion of the Community by Members. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. 16

Section 5.11 **Drainage.** There shall be no interference with the established drainage patterns over any property within the Properties, unless adequate provision is made for proper drainage and approved by the Architectural Committee and the local governing jurisdiction.

Section 5.12 **Construction Activities.** This Declaration shall not be construed as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by any Owner in the Community (such as for new home construction or remodeling), provided that when completed, such Improvements shall in all ways conform to the Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including, but not limited to, any provision prohibiting temporary structures, may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of construction. Such waiver may, but need not, be recorded or in recordable form. No construction activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment of any Property in the community.

Section 5.13 **Vehicular Parking, Storage, and Repairs.**

(a) Vehicular parking upon the Common Area shall be regulated by the Board of Directors.

(b) The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, screened from view, or unless authorized in writing by the Board of Directors of the Association: oversized vehicles, trucks (as defined by board resolution), commercial vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to 72 hours) for loading, delivery of goods or services, or

emergency. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Area, Lots, or any Improvement located thereon.

(c) No unlicensed, abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Board of Directors of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof or shall be conspicuously placed upon the vehicle

(d) No major activity such as, but not limited to, maintenance or repair or rebuilding or dismantling or repainting, or servicing of any kind of vehicle, trailer or boat may be performed or conducted outside of the garages, except as permitted by the Association's Rules and Regulations or approval. Minor maintenance and repair are permitted so long as they do not disturb neighbors with noise or odors and are not performed after daylight hours.

Section 5.14 **Use of Common Area.** There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed on, or removed from the Common Area without the prior written approval of the Association.

Section 5.15 **No Annoying Lights, Sounds or Odors.** No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no unusually bright searchlight, horns, whistles, bells or other disturbing light or loud sound devices shall be located or used on any portion of the Community except with the prior written approval of the Board of Directors.

Section 5.16 **Compliance with Insurance Requirements.** Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on a Lot which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 5.17 **No Unsightliness.** All unsightly conditions, structures, facilities, equipment and objects shall be enclosed in an approved structure or screened from view. Trash may not be put out more than twenty-four hours prior to the scheduled pick-up day and trash receptacles must be properly stored within twenty-four hours after trash pick-up.

Section 5.18 **Restrictions on Clothesline and Storage.** No clotheslines, drying areas, service yards, shops, equipment, external storage or storage areas shall be installed or permitted in the Community unless the same, in each instance, is expressly permitted in writing by the Board of Directors of the Association or the Architectural Committee. All such approved structures and the use thereof shall conform at all times with the Declarations. Owners shall be deemed to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

18

Section 5.19 **Restriction on Signs and Advertising Devices.** No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except burglar alarm, or temporary real estate or political signage, which must all be under ten square feet in area unless otherwise approved, or signs as may be approved in writing by the Board of Directors.

Section 5.20 **Restrictions on Structural Alterations and Exterior Improvements.** No structural alterations to any Lot shall be done by any Owner, without the prior written approval of the Architectural Committee as outlined in Article 6 of this Declaration. No improvement to the exterior of a building which includes a Lot or to the Common Area or to any landscaping shall be constructed, erected, placed or installed within the Community unless complete Plans and Specifications thereto shall have been first submitted to and approved in writing by the Architectural Committee except as otherwise provided by the Architectural Committee in properly adopted guidelines or procedures.

Section 5.21 **Fencing.** No Owner shall erect, modify, repair other than to original condition, replace, paint or otherwise obstruct any entryways, fence, fence pillars or wall so constructed without the prior written approval of the Architectural Committee.

Section 5.22 **Solar Plane Restriction.** It is hereby prohibited to permit any part of any man made object to project up through a plane extending over each individual Lot at an angle of 26.5 degrees with respect to the horizontal (a pitch of one foot vertical for each two feet (2) horizontal) which plane starts as a horizontal line which is co-directional with the north property line of said Lot and passes through a point ten feet above the mid-point of such north property line. This restriction and prohibition shall not apply to chimneys or first-built structures, or the replacement of such structures should they be destroyed by fire, wind or otherwise.

Section 5.23 **Plat Restrictions.** The restrictions, if any, included on the plat for the Properties are incorporated herein by this reference.

Section 5.24 **Resolutions, Rules and Regulations.** In furtherance of the provisions of this Declaration, and the general plan, Resolutions, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors, or its successors and assigns. The Board of Directors

may establish and enforce penalties for the infraction thereof. New or modified Resolutions, Rules and Regulations must be communicated to all Members by mail.

Section 5.25 **Compliance with Governing Documents.** Each Member shall comply with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended. 19

ARTICLE 6 ARCHITECTURAL COMMITTEE

Section 6.1 **Required Approval.** No structures, including residences, accessory buildings, tennis courts, swimming pools, antennas, flag poles, fences, walls, extensive permanent exterior lighting, landscaping, or any other improvement may be constructed, erected or installed on a Lot, nor shall any alteration or change to the exterior of the improvements, the exterior of a residence, to a Lot or to any structure or attachment to the exterior of a residence (including but not limited to changing paint colors, awnings, patios, roofs, decks, or shutters) be commenced within the Community unless complete Plans and Specifications shall have been first submitted to and approved in writing by the Architectural Committee ("Committee"). Repainting with existing colors does not require approval of the Committee. The Committee may require that applications Plans and Specifications show exterior design, height, materials, color, location, and estimated completion date of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee. Ordinary repairs to maintain a property to an approved condition do not require Committee approval.

Section 6.2 **Approval Criteria.** The Committee shall exercise reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth herein. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious; decisions shall be conclusive and binding on all interested parties subject only to appeal as provided in Section 6.8 below. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of particularly extensive plans, specifications and submittals, the Architectural Review Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 6.3 **Establishment of the Architectural Committee.** The Architectural Committee shall consist of a minimum of three (3) members appointed by the Board of Directors, all of whom shall be Owners.

20

Section 6.4 **Appointment and Removal.** The Board shall have the right to appoint and remove all members of the Architectural Committee. Appointments shall be for a term of one year.

Section 6.5 **Architectural Guidelines.** The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association on file with the Association.

Section 6.6 **Reply and Communication.** The Committee shall reply to all submittals of plans made in accordance herewith in writing within forty-five (45) days after receipt. In the event the Committee fails to take any action on submitted Plans and Specifications within forty-five (45) days after the Committee has received the Plans and Specifications, approval shall be deemed to be granted. All communications and submittals shall be addressed to the Association's address of record.

Section 6.7 **Variances.** The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in a development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Area nor deviate substantially from the general intent and purpose of this Declaration.

Section 6.8 **Right to Appeal.** An Owner may appeal any decision of the Committee to the Board of Directors. The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in Section 6.2 above and any architectural guidelines. Any decision of the Committee may be overruled and reversed by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines. In the event that the request for a variance is disapproved by the Committee, the applicant shall have the right of appeal to the Board of Directors of the Association pursuant to the procedures set forth in this section.

Section 6.9 **Waivers.** The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 6.10 **Liability.** The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable for damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in

regard to any matter within its jurisdiction under these covenants.

Section 6.11 **Records.** The Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto and submit regular reports to the Board of Directors. 21

Section 6.12 **Enforcement.** Enforcement by the Association of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Architectural Committee may recommend enforcement actions, including warnings, fines, etc., to the board, but the Committee shall not perform enforcement without the written approval of the board. The Board may delegate to the Association Manager or the Committee to perform certain specific, routine enforcement actions without direct Board approval.

ARTICLE 7 INSURANCE/CONDEMNATION

Section 7.1 **Insurance on the Lots.** Members are responsible for hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to their Lots, other property of Members, and any injuries occurring to persons while on Lots.

Section 7.2 **Insurance Carried by the Association.** The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado:

(a) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, and the officers of the Association as insureds.

(b) Prior to the Association obtaining any blanket policy of casualty insurance on the Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Common Area and any Improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof.

Section 7.3 **Hazard Insurance on the Common Area.** The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to the Common Area and the other property of the Association. 22

Section 7.4 **Association Liability Insurance.** The Association shall obtain adequate comprehensive policies of public liability and property damage liability insurance covering the Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 7.5 **Association Fidelity Insurance.** The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 7.6 **Association Worker's Compensation and Employer's Liability Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 7.7 **Officers' and Directors' Personal Liability Insurance.** The Association shall obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 7.8 **Other Association Insurance.** The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 7.9 **Insurance Premium.** Except as assessed in proportion to risk, insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 7.10 **Managing Agent Insurance.** The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association.

Section 7.11 **Annual Insurance Review.** The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 7.12 **Condemnation and Hazard Insurance Allocations and Distributions.**

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

23

ARTICLE 8
GENERAL PROVISIONS

Section 8.1 **Enforcement.** The Association may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 8.2 **Severability.** Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 8.3 **Term of Declaration.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 8.4 **Amendment of Declaration by Members.** 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 at least two-thirds of the total votes of all Members. Proposals for amending the Declaration may be made either by the Board of Directors or by petition signed by a Quorum of Members. Members may cast votes either in written or electronic form if available, providing any written or electronic form ensures the authenticity of the Member voting while maximizing anonymity. The amendment or repeal shall be effective upon the recordation in the Office of the Clerk and Recorder of Jefferson County, Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above.

Section 8.5 **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 8.6 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

24

Section 8.7 **Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

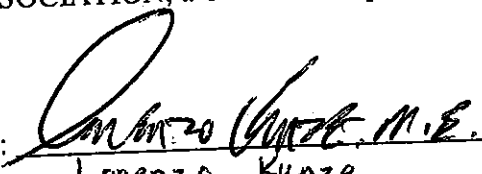
Section 8.8 **Conflict of Provisions.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 8.9 **Challenge to this Amendment.** All challenges to the validity of this amendment must be made within one (1) year after the date of recording of this document.


Section 8.10 **Notices.** Any notice required to be sent to any Member under the provisions of the Governing Documents shall be deemed to have been properly sent when sent in compliance with the provisions of the Association's Bylaws.

IN WITNESS WHEREOF, the undersigned, being the President and the Secretary of Sixth Avenue West Estates Master Association, hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from Members representing at least two-thirds (2/3) of the total votes of all Members within the Sixth Avenue West Estates Association as evidenced by written instruments filed with the records of the Association, or alternatively, has obtained court approval of this Declaration pursuant to the provisions of the Act, Section 217(7).

SIXTH AVENUE WEST ESTATES MASTER
ASSOCIATION, a Colorado nonprofit corporation

By: 
Lorenzo Kunze President

ATTEST:

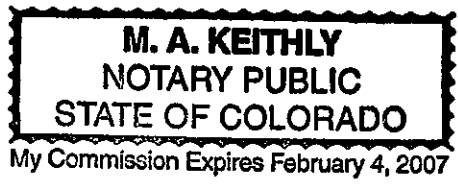
By: 
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing Declaration was acknowledged before me on this 15 day of September 2006, by Lorenzo Kunze as President of Sixth Avenue West Estates Master Association a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 2/4/07



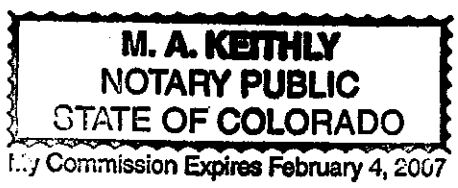
M. A. Keithly
Notary Public 13085 W Colfax Ave - Golden CO 80401

STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing Declaration was acknowledged before me on this 15 day of September 2006, by Susan Bogue as Secretary of Sixth Avenue West Estates Master Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 2/4/07



M. A. Keithly
Notary Public 13085 W Colfax Ave Golden, CO 80401

EXHIBIT A

DESCRIPTION OF REAL ESTATE

26

The W $\frac{3}{4}$ of the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12, T4S, R70W, of the 6th P.M., Jefferson County, Colorado, and the S $\frac{1}{2}$ of said Section 12, except the S $\frac{1}{2}$ of the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of said Section 12, except the following two tracts, which are portions of First Addition to Lafayette Heights, Jefferson County, Colorado:

1. Lots 25 through 48, Block 9, together with that portion of vacated Ash Street and that portion of the N $\frac{1}{2}$ of vacated Birch Street lying between the centerline of vacated alley in Block 9, as extended and the centerline of vacated 11th Street, and together with the E $\frac{1}{2}$ of vacated alley in Block 9 and the W $\frac{1}{2}$ of vacated 11th Street adjoining said Lots.
2. Lots 45 and 46, Block 10, together with that portion of the E $\frac{1}{2}$ of vacated alley in Block 10 and the W $\frac{1}{2}$ of vacated 11th Street adjoining said Lots.

The E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 11, T4S, R70W, of the 6th P.M., Jefferson County, Colorado, and the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 11, except any portion thereof situate within any public roads or highways, and except any portion lying northerly of Interstate Highway No. 70.

Return to:
Association and Community Management
13585 West Colfax Ave.
Golden. CO 80401

Attn: Qi Qi Kessler
