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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERITAGE HILLS HOMEOWNERS

DC9611194

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of this 4<sup>TH</sup> day of MARCH, 1996, by Celebrity Development Corporation, a Delaware corporation, Celebrity Custom Homes, Inc., a Colorado corporation and Celebrity Custom Builders, a Colorado general partnership, ("Declarant").

ARTICLE 1  
GENERAL

Section 1.1 Heritage Hills. Declarant is the owner of that certain parcel of land located in the County of Douglas, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by reference, which is defined in this Declaration as "Heritage Hills." Declarant intends to develop Heritage Hills as a high quality, Planned Community of single family residential homes in accordance with the terms and provisions of the Colorado Common Interest Ownership Act. The maximum number of Units to be created is expected to be 700 unless there are unanticipated changes, in which event the Declarant reserves the right to create up to a maximum number of 840 Units.

Section 1.2 Purposes of Declaration. Property which is made subject to this Declaration in the manner hereinafter provided is referred to as Heritage Hills. This Declaration is executed (a) in furtherance of a common and general plan for Heritage Hills; (b) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of Heritage Hills; (c) to provide for an Association as an entity to hold, maintain, care for and manage Association Properties; (d) to define the duties, powers and rights of the Association, including, without limitation, performance of certain maintenance obligations with respect to Common Area, Common Area Improvements, and Association Properties, and such other obligations, whether similar or dissimilar, that the Association elects to undertake in accordance with the provisions hereof; (e) to define certain duties, powers and rights of owners of Units within Heritage Hills; and (f) to comply with and effectuate the terms and provisions of the Act.

Section 1.3 Declaration. Declarant, for itself, its successors and assigns, hereby declares that all property that becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of Heritage Hills. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property that becomes part of Heritage Hills and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, and (d) all Persons having or acquiring any right, title or interest in any property that becomes part of Heritage Hills or any part or parcel thereof or any

Improvement thereon and their heirs, personal representatives, successors and assigns. This Declaration shall be Recorded in Douglas County, Colorado and shall be indexed in the grantee's index in the name of Heritage Hills and the Association and in the grantor's index in the name of each person or entity executing this Declaration.

## ARTICLE 2 DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings specified in this article.

Section 2.1 Act. "Act" shall mean the Colorado Common Interest Ownership Act as provided in Colorado Revised Statutes § 38-33.3-101, et seq., as the same may be amended from time to time.

Section 2.2 Administrative Functions. "Administrative Functions" shall mean all functions as are necessary and proper under this Declaration and shall include, without limitation, providing management and administration of the Association; providing architectural review services under article 4 hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors, and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Association Properties; paying federal and state income taxes; incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other reasonable and ordinary administration tasks associated with operation of the Association.

Section 2.3 Approved Builder. "Approved Builder" shall mean and refer to the Owner of a Unit located within Heritage Hills who (a) acquires such Unit from Declarant or a previous Approved Builder for the purpose of constructing one or more residential dwelling units for resale to the general public; (b) has submitted to, and obtained approval from the Declarant of general plans and specifications for such residential dwelling units; (c) has been designated in writing as an Approved Builder by Declarant; or (d) is the Declarant.

Section 2.4 Articles of Incorporation. "Articles of Incorporation" shall mean the Articles of Incorporation of Heritage Hills Homeowners Association, which have been or will be filed in the office of the Secretary of State of the state of Colorado, as the same may be amended from time to time.

Section 2.5 Assessment. "Assessment" shall mean a Common Assessment, Special Assessment, or a Reimbursement Assessment.

Section 2.6 Association. "Association" shall mean the Heritage Hills Homeowners Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2.7 Association Properties. "Association Properties" shall mean all real and personal property, including Improvements, and all Common Areas, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care, or maintenance thereof, or for which the Association has a right or duty to

maintain, held for the common use and enjoyment of certain of its Members as provided herein, and for other purposes as may be permitted by this Declaration.

Section 2.8 Budget. "Budget" shall mean a written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared pursuant to section 9.8 of this Declaration.

Section 2.9 Budget Year. "Budget Year" shall mean a year commencing June 1st and ending May 31st.

Section 2.10 Bylaws. "Bylaws" shall mean the Bylaws of the Association that have been or will be adopted by the Executive Board of the Association, as the same may be amended from time to time.

Section 2.11 County. "County" shall mean Douglas County, Colorado.

Section 2.12 Common Area. "Common Area" shall mean any portions of Heritage Hills designated as Common Area that are owned or maintained by the Association for the common use and enjoyment of the Owners.

Section 2.13 Common Assessment. "Common Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, that are to be paid by each Owner to the Association for purposes provided herein and charged to such Owner and to the Unit of such Owner.

Section 2.14 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 2.15 Declarant. "Declarant" shall mean Celebrity Development Corporation, a Delaware corporation, Celebrity Custom Homes, Inc., a Colorado corporation and Celebrity Custom Builders, a Colorado general partnership, their successors, assigns, and affiliates. A Person shall be deemed to be 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 that are specifically designated in the written instrument. In connection with Declarant's acquisition and development of Heritage Hills, Declarant has previously executed certain assignment instruments conditionally assigning its rights as Declarant hereunder and, pursuant to the terms of such assignments, upon both the occurrence of certain events as identified in said assignments and the election of the assignees thereunder, such assignees shall have the right to exercise any or all of Declarant's rights and reservations hereunder.

Section 2.16 Deed of Trust. "Deed of Trust" shall mean a Mortgage.

Section 2.17 Design Review Committee. "Design Review Committee" shall mean the Committee provided for in article 4 of this Declaration.

Section 2.18 Executive Board. "Executive Board" and "Board" shall both mean the board of directors of the Association established in accordance with the Colorado Nonprofit Corporations Act.

Section 2.19 Heritage Hills. "Heritage Hills" shall mean the real property that is subject to this Declaration, including any property that may be annexed to Heritage Hills as hereinafter provided.

Section 2.20 Improvement. "Improvement" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, painting of any exterior surfaces of any structure, relocation, installation or replacement of windows, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, dog runs and dog houses, recreational equipment, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, basketball courts or poles, light poles, flag poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures.

Section 2.21 Improvement to Property. "Improvement to Property" shall mean any change, alteration, or addition to any property within Heritage Hills. "Improvement to Property" shall include, but is not limited to those improvements more particularly described in section 4.2 of this Declaration.

Section 2.22 Leases. "Lease" shall mean and refer to any agreement for the leasing or rental of a Unit, and shall specifically include, without limitation, a month-to-month rental.

Section 2.23 Maintenance Funds. "Maintenance Funds" shall mean the accounts into which the Board shall deposit money paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to article 8 hereof.

Section 2.24 Member. "Member" shall mean the Person or, if more than one, all Persons collectively who constitute the owner of a Unit.

Section 2.25 Mortgage. "Mortgage" shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the owner of a Unit, encumbering the Unit to secure the performance of an obligation or the payment of a debt and that is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" when used in this Declaration is synonymous with the term "Mortgage."

Section 2.26 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

Section 2.27 Mortgagor. "Mortgagor" shall mean a Person who mortgages property owned by that Person (i.e., the maker or grantor of a Mortgage) to another. The term "Mortgagor" shall include a maker or grantor of a Deed of Trust.

Section 2.28 Notice and Hearing. "Notice and Hearing" shall mean a written notice and public hearing before the Executive Board, or a tribunal as may be defined in the Bylaws, appointed by the Board, in the manner provided in the Bylaws.

Section 2.29 Notice of Completion. "Notice of Completion" shall mean written notice to the Design Review Committee of the completion of any Improvement to Property pursuant to article 4 of this Declaration.

Section 2.30 Owner. "Owner" shall mean the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of Record to a Unit, including sellers under executory contracts of sale and excluding buyers thereunder.

Section 2.31 Person. "Person" shall mean a natural person, corporation, partnership, limited liability company, or any other entity.

Section 2.32 Planned Community. "Planned Community" shall have the same meaning as set forth in the Act.

Section 2.33 Record or Recorded. "Record" and "Recorded" shall mean the filing for record of any document in the office of the Clerk and Recorder of the County.

Section 2.34 Reimbursement Assessment. "Reimbursement Assessment" shall mean a charge against a particular Owner and the Unit owned by the Owner for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation, directly attributable to the Owner, of the Declaration or the Rules and Regulations, pursuant to section 9.20 hereof, together with late charges and interest as provided for in this Declaration.

Section 2.35 Rules and Regulations. "Rules and Regulations" shall mean rules and regulations adopted by the Executive Board, as provided in section 8.15 of this Declaration.

Section 2.36 Unit. "Unit" shall mean any lot within Heritage Hills that is shown upon any Recorded plat map and any other parcel of land that may be sold or conveyed without violation of the provisions of Colorado law pertaining to the subdivision of land. For purposes of conforming the terms and provisions of this Declaration to the terms and conditions of the Act, the term "Unit" shall be analogous to the term "Unit," as that term is defined in the Act. "Unit" shall not include: (a) any property owned by a public body (b) the Association Properties, or (c) any Common Area as defined herein.

Section 2.37 Special Assessment. "Special Assessment" shall mean a charge against each Owner and the Unit owned by that Person representing a portion of the costs of the Association for maintenance, replacements, major capital repairs, and Improvements and any other purpose authorized by the Executive Board as provided herein.

### ARTICLE 3 GENERAL RESTRICTIONS AND COVENANTS

Section 3.1 Limitations and Restrictions. All real property within Heritage Hills shall be held, used, and enjoyed subject to the following limitations and restrictions, and subject

to exemptions of Declarant, set forth in this Declaration. 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 Design Review Committee if such strict application would be unreasonably or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Design Review Committee.

Section 3.2 Maintenance of Heritage Hills. All property within Heritage Hills, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, attractive, and sightly condition and in good repair. Each Owner who purchases a Unit from the Declarant shall complete installation of landscaping throughout the grounds of the Unit within eight months after the date of purchase. No property within Heritage Hills shall be permitted to fall into disrepair. Maintenance, repair, and upkeep of each Unit, including trees planted thereon, shall be the responsibility of the Owner of the Unit. Maintenance, repair, and upkeep of Association Properties shall be the responsibility of the Association. Violation of this provision by an Owner shall permit the Association, after Notice and Hearing, to enter onto the Unit of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

Section 3.3 Uses of Units. All Units shall be used for private residential purposes. No dwelling erected or maintained within Heritage Hills shall be used or occupied for any purpose other than for a single-family dwelling. Notwithstanding the foregoing, business activities associated with the sale of Units or residences constructed thereon shall be allowed. In addition, in home businesses or occupations not involving the servicing of customers or employees shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any nuisance or any unreasonable, unwarranted, or unlawful use or interference with rights of Owners or of the public, including, but not limited to, unreasonable or unwarranted use or interference with public streets, , rights of way, or sidewalks, excessive traffic or parking requirements, or in any other offensive or noxious activities.

Section 3.4 Uses of Common Areas. All uses of the Association Properties, including Common Areas, shall be subject to and governed by this Declaration and Rules and Regulations of the Association. No damage or waste shall be committed to the Association Properties.

Section 3.5 Construction Type. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Unit, except as expressly hereinafter provided for temporary buildings, construction trailers and sales trailers.

Section 3.6 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within Heritage Hills, nor shall anything be done or placed thereon that is or may become a nuisance or that may cause an unreasonable embarrassment, disturbance, or annoyance to others.

Section 3.7 Annoying Sounds, Odors and Lights. No sound or odor shall be emitted from any property within Heritage Hills that is noxious or unreasonably offensive to others. No lights shall be emitted from any Unit that are unreasonably bright or cause unreasonable glare. Exterior lighting shall either be indirect or of such controlled focus as not to unreasonably disturb Owners within Heritage Hills. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Design Review Committee.

Section 3.8 No Hazardous Activities. No activity shall be conducted on and no improvement shall be constructed on any property within Heritage Hills that is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms or archery weapons shall be discharged upon any property within Heritage Hills, and no open fires shall be lighted or permitted on any property within Heritage Hills except in a contained barbecue canister while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning sparks and embers.

Section 3.9 Compliance with Insurance Requirements. Except as may be approved in writing by the Executive Board, nothing shall be done or kept on property within Heritage Hills that might result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 3.10 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects, boxes, implements, machinery, furniture, appliances and other unsightly conditions shall be enclosed within a structure, including snow removal equipment and garden and other maintenance equipment, except when in actual use.

Section 3.11 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Unit, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up.

Section 3.12 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Unit, except that domesticated birds or fish and other small domestic animals permanently confined indoors will be allowed. No other animals, except a total of not more than three domesticated animals (e.g., two cats and one dog) and which must be fenced or restrained at all times within a Unit, will be permitted within Heritage Hills; provided that they are not kept, bred, or maintained for any commercial purpose. No animal of any kind shall be permitted which in the opinion of the Design Review Committee makes an unreasonable amount of noise or odor or is a nuisance. All household pets shall be controlled by their owner and shall not be allowed off the Owner's Unit except when properly leashed and accompanied by the pet owner or Owner's representative. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet.

Section 3.13 No Temporary Structures. No tent, shack, temporary structure, or temporary building shall be placed upon any property within Heritage Hills except with the prior written consent of the Design Review Committee obtained in each instance.

Section 3.14 Storage of Gasoline and Explosives, Etc. No Unit shall be used for storage of explosives, gasoline, or other volatile or incendiary materials or devices. Gasoline or fuel for an Owner's lawn mower, snow blower, and the like may be maintained on an incidental basis on the Unit in an amount not to exceed five gallons.

Section 3.15 Storage. No building materials shall be stored on any Unit except temporarily during continuous construction of an Improvement.

Section 3.16 Vehicle Repairs. No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, machine, or device may be carried on within Heritage Hills, except within a completely enclosed structure that screens the sight and sound of the activity from the street and from other Units.

Section 3.17 Trailers, Campers and Junk Vehicles. No boat, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs or trailers), towed trailer unit, motorcycle, motor vehicles, motor home, mobile home, recreational vehicle, or any other vehicle the primary purpose of which is recreational, sporting, or commercial use, shall be parked or stored in, on, or about any Unit or street within Heritage Hills, except within an attached and enclosed garage. No maintenance, repair, rebuilding, dismantling, repainting or services of any kind of such equipment or vehicles may be performed on any Unit unless done within an attached and enclosed garage which screens the sight and sound of the activity from the streets and neighboring Units. The foregoing restriction shall not be deemed to prevent washing and polishing such equipment or vehicles. For the purposes of this covenant, any 3/4-ton or smaller vehicle commonly known as a pickup truck, shall not be deemed a commercial vehicle or truck. The Association shall have the right to enter such Owner's Unit to remove and store, at Owner's expense, vehicles in violation of this section. An Owner shall be entitled to 20 days' written notice prior to such action by the Association. Notwithstanding anything set forth herein to the contrary, temporary parking of recreational vehicles for the purposes of loading and unloading and temporary parking of vehicles that belong to visiting guests shall not be deemed to violate the foregoing prohibitions. For the purposes of this section, temporary parking means a period not to exceed 72 hours, and an inoperable vehicle means one that has not been driven under its own propulsion for 72 hours or longer.

Section 3.18 Restrictions on Antennae, Pipes, Utility Lines and Transmitters. Pipes for water, gas, sewer, drainage, or other purposes, and wires, poles, aerials, antennae, satellite dishes and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antenna of any type shall be erected or maintained within Heritage Hills. With the approval of the Design Review Committee, a master antenna or cable television antenna may be, but need not be, maintained for use by all Owners or a group of Owners, and Declarant may grant easements for such purposes. No electronic or radio transmitters other than garage door openers or cordless telephones shall be operated in or on any structure or within any Unit, but, notwithstanding

such restriction, remote controlled electronic and radio transmitting devices for operation of television sets, stereos, videocassette recorders, toy walkie-talkie sets, baby monitors, hand-held and mobile transceivers, hand-held and mobile radios, cellular telephones and similar devices approved by the Design Review Committee may be allowed as long as (a) no wires or antennas are visible on the exterior of any structure within Heritage Hills, (b) their use complies with regulations of the Federal Communications Commission, and (c) any interference with similar permitted uses of other Owners is corrected within 24 hours after notice given by the Design Review Committee.

Section 3.19 Air Conditioning and Heating Equipment. No heating, air conditioning, air movement (e.g., swamp coolers) or refrigeration equipment shall be placed, allowed, or maintained anywhere on a Unit other than on the ground in the rear or side yard of any Unit; provided, however, that solar units meeting all governmental guidelines for residential uses may be located on the roof if (a) the solar unit is built into and made an integral part of the roof flashing or the structure of any dwelling constructed on such Unit, and (b) if specifically approved by the Design Review Committee in accordance with article 4.

Section 3.20 Restrictions on Signs and Advertising. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within Heritage Hills so as to be evident to public view, except: (a) signs as may be approved in writing by the Design Review Committee; and (b) signs, posters, billboards or any other type of advertising device or display erected by Declarant incidental to the development, construction, promotion, marketing, or sales of Units within Heritage Hills. A sign advertising a Unit for sale or for lease may be placed on such Unit; provided, however, such sign shall be no larger than eighteen (18) inches high and thirty (30) inches wide and shall not exceed a height of forty (40) inches measured from the top of the sign to the ground level that the sign is posted on.

Section 3.21 Restrictions on Mining and Drilling. No property within Heritage Hills shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, or removing underground water by Declarant or any Person designated by Declarant. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, excepts and reserves and shall retain the right to develop and remove any such oil, gas, hydrocarbons or minerals by slant drilling or other suitable means of subterranean entry; provided, however, that any such method of slant drilling or other means of subterranean entry must be employed without impairing structures, improvements or appurtenances, or the use thereof, located or to be located on any Unit.

Section 3.22 Maintenance of Drainage. There shall be no interference with the established drainage pattern over any Unit or other property within Heritage Hills, except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern that exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the Design Review Committee. The established drainage pattern may include the drainage pattern: (a) from Association Properties over any Unit; (b) from any Unit over the Association Properties (c) from any property owned by the County or other

Persons over any Unit; (d) from any Unit over property owned by the County or other Persons; or, (e) from any Unit over another Unit.

Section 3.23 Compliance with Laws. Nothing shall be done or kept on any property within Heritage Hills in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction.

Section 3.24 Further Subdivision of Units. The Owner of a Unit shall not further subdivide the Unit.

Section 3.25 Restrictions on Sewage Disposal Systems. No cesspool, septic tank, or other sewage disposal system shall be installed within Heritage Hills.

Section 3.26 Restrictions on Water Systems. No individual water supply system shall be installed or maintained for any property within Heritage Hills unless such system is approved in writing by the Design Review Committee and is designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations of any applicable water and sanitation district or other governmental authority having jurisdiction.

Section 3.27 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Unit, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Unit to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

Section 3.28 Fences. No fences shall be constructed without the prior approval of the Design Review Committee unless in conformance with standard design specifications previously approved by the Design Review Committee. Privacy fences, security fences, and fences for screening purposes must also have the prior approval of the Design Review Committee unless they are constructed in conformance with standard design specifications previously approved by the Design Review Committee.

#### ARTICLE 4 ARCHITECTURAL APPROVAL

Section 4.1 Approval of Improvements Required. The approval of the Design Review Committee shall be required for any Improvement to Property on any Unit, except (a) any Improvement to Property made by Declarant; (b) any Improvements to Property made by an Approved Builder if the plans for such Improvements have previously been approved by the Declarant; (c) where approval is not reasonably required to carry out the purposes of this Declaration; and (d) where prior approval of Improvements to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Review Committee.

Section 4.2 Improvement to Property Defined. "Improvement to Property" requiring approval of the Design Review Committee as described in section 4.1 of this Declaration

shall mean and include, without limitation: (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities, landscaping and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, or minor change of drainage pattern (none of which shall be undertaken contrary to the provisions of section 3.22 of this Declaration); and (d) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

**Section 4.3 Membership of Committee.** The Design Review Committee shall consist of three members, all of whom shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint all three members during the Appointment Period (as hereinafter defined). The Association shall have the right to appoint such members after the expiration of the Appointment Period. During the period of development of Heritage Hills while Declarant has rights to appoint members of the Design Review Committee, Declarant shall give the Association written notice of the appointment or removal of any member of the Design Review Committee. The "Appointment Period" shall mean the period of time commencing as of the date of Recordation of this Declaration and continuing until the earliest to occur of the following events: (a) when all Units within Heritage Hills have been conveyed to Persons other than Declarant and certificates of occupancy have been issued for the residences constructed thereon; or (b) when, in its discretion, Declarant voluntarily relinquishes such right. Members of the Design Review Committee may be but need not be Members of the Association. After expiration of the Appointment Period, members of the Design Review Committee to be appointed by the Association shall be appointed by the Executive Board. Members of the Design Review Committee appointed by the Executive Board may be removed at any time by the Board, and shall serve for such terms as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Appointment Period, the Association may at any time and from time to time change the authorized number of members of the Design Review Committee, but the number of members of the Design Review Committee shall not be less than three.

**Section 4.4 Address of Design Review Committee.** The address of the Design Review Committee shall be care of Celebrity Development Corporation, 2525 Sixteenth St., #225, Denver, CO 80211. After the Appointment Period ends, the address of the Committee shall be changed to another address designated by the Committee.

**Section 4.5 Submission of Plans.** Except as provided in Section 4.1, prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Design Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, landscaping plans, fencing plans, construction plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request (including such numbers thereof as are reasonably requested) showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Applicant shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or

disapproving the proposed Improvement to Property. Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval.

Section 4.6 Criteria for Approval. The Design Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of Heritage Hills as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of Heritage Hills; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of Heritage Hills or the enjoyment thereof by Owners; that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association; and that the proposed Improvement to Property does not affect the drainage plan for Heritage Hills or any portion thereof. The Design Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Review Committee may deem appropriate.

Section 4.7 Design Standards. The Design Review Committee may issue standards or rules ("Design Standards") relating to the procedures, materials to be submitted, fees for review, and additional factors that will be taken into consideration in connection with the review of any proposed Improvement to Property including, but not limited to, landscaping and fencing design standards. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. The Design Standards may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

Section 4.8 Design Review Fee. The Design Review Committee may, in the Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Design Review Committee may provide that the amount of the fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property. The Design Committee may further provide that the amount of any design review fee include engineering or architectural consultant, photocopying, and other fees reasonably incurred by the Association in reviewing any proposed Improvement to Property.

Section 4.9 Decision of Committee. Any decision of the Design Review Committee shall be made within thirty days after receipt by the Design Review Committee of all materials required by the Design Review Committee, unless such time period is extended by mutual agreement. The decision shall be in writing. If the decision is not to approve a proposed Improvement to Property, the reasons for disapproval shall be stated. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee.

Section 4.10 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the Design Review Committee in connection with the proposed Improvement to Property, and any conditions imposed by the Design Review Committee; provided that within ninety days after approval of any proposed Improvement, or within such longer period as may be approved in writing by the Design Review Committee, the Owner shall complete the installation of any landscaping and gardening approved in conjunction with the approval of the proposed Improvements. Failure to complete the proposed Improvement to Property within eighteen months after the date of approval or such shorter period as specified in writing by the Design Review Committee, or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Design Review Committee, shall constitute noncompliance with the requirements for approval of Improvements to Property.

Section 4.11 Notice of Completion. Upon completion of the Improvement to Property, the Applicant may give written Notice of Completion to the Design Review Committee. Until the date of receipt of such Notice of Completion, the Design Review Committee shall not be deemed to have knowledge of completion of such Improvement to Property.

Section 4.12 Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty days after the Design Review Committee shall have received a Notice of Completion from Applicant.

Section 4.13 Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Review Committee finds that any Improvement to Property has been made without obtaining the approval of the Design Review Committee or was not made in complete conformity with the description and materials furnished to, and any conditions imposed by, the Design Review Committee or was not completed within eighteen months after the date of approval by the Design Review Committee or such shorter period as specified in writing by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance. If any such notice is given, it shall be given within thirty days after the Design Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

Section 4.14 Appeal to Executive Board of Finding of Noncompliance. If the Design Review Committee gives any notice of noncompliance, the Applicant may appeal to the Executive Board by giving written notice of such appeal to the Board and the Design Review Committee within twenty days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Design Review Committee shall request a finding of noncompliance by the Executive Board by giving written notice of such request to the Association and the Applicant within sixty days after delivery to the Applicant of a notice of noncompliance from the Design Review Committee. In either event, the Executive Board

shall hear the Owner in accordance with the provisions of the Bylaws for Notice and Hearing, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

**Section 4.15 Correction of Noncompliance.** If the Executive Board determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than twenty days from the date of receipt by the Applicant of the ruling of the Executive Board. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the Unit on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement to Property, or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Reimbursement Assessment against the Owner of the Unit for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies that the Association may have at law, in equity, or under this Declaration. The Applicant and Owner of the Unit shall have no claim for damages or otherwise on account of the entry upon the property and removal of the noncomplying Improvement to Property.

**Section 4.16 No Implied Waiver or Estoppel.** No action or failure to act by the Design Review Committee or by the Executive Board shall constitute a waiver or estoppel with respect to future action by the Design Review Committee or the Executive Board with respect to any Improvement to Property. Specifically, the approval of the Design Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property.

**Section 4.17 Committee Power to Grant Variances.** The Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area, or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Design Review Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances, height limitations, and setback lines or requirements imposed by any governmental authority having jurisdiction.

**Section 4.18 Meetings of Committee.** The Design Review Committee shall meet from time to time as necessary to perform its duties. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of its members, designate a Committee Representative (who may be but need not be one of its members) to take any

action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval to any Improvement to Property and granting of variances. Decisions of the Committee Representative within the authority of such Committee Representative or the written consent or vote of a majority of the members of the Design Review Committee shall constitute the action of the Design Review Committee.

Section 4.19 Records of Actions. The Design Review Committee shall report in writing to the Executive Board all final actions of the committee, and the Board shall keep a permanent record of such reported actions.

Section 4.20 Estoppel Certificates. The Executive Board shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on the contents of the certificate with respect to all signatories of the certificate.

Section 4.21 Nonliability of Committee. No liability shall be imposed upon the Design Review Committee, any member of the Committee, any Committee Representative, the Association, any member of the Executive Board, or Declarant for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

Section 4.22 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Design Review Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction, provided that, during the course of any such construction, nothing is done that will result in a violation of any of the provisions of this Declaration upon completion of construction, or which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

## ARTICLE 5 ASSOCIATION PROPERTIES

Section 5.1 Member's Rights of Use and Enjoyment Generally. Unless otherwise provided in this Declaration, all Members may use or enjoy the benefits of, the Association Properties, as appropriate.

Section 5.2 Right of Association to Regulate Use. The Association, acting through the Executive Board, shall have the power to regulate use of Association Properties by Members and the public to further enhance the overall rights of use and enjoyment of all Members.

Section 5.3 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 5.4 Liability of Owners for Damage by Member. Each Member 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, caused by the negligence or willful misconduct of such Member or any Person using the Association Properties through such Member and for any violation by such Member or any such Person of this Declaration or any Rule and Regulation adopted by the Association. The Association shall have the power, as provided elsewhere in this Declaration, to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Association on account of any such damage or violation of this Declaration or Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 5.5 Association Duties upon Damage or Destruction. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with section 9.19, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the responsible Member or group of Members to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the excess for future maintenance, repair, Improvement, and operation of other Association Properties.

Section 5.6 Association Powers in the Event of Condemnation. If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in Maintenance Funds, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for Improvements or additions to or operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

Section 5.7 Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agencies or organizations or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members in proportion to the number of Units owned by such Member in Heritage Hills.

## ARTICLE 6 DECLARANT'S RIGHTS AND RESERVATIONS

Section 6.1 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 from the date hereof until: (a) the time that the last Unit within Heritage Hills has been sold and conveyed by Declarant to persons other than Declarant and a certificate of occupancy has been issued for the residence constructed thereon; (b) the date which is twenty years from Recordation of this Declaration, whichever event occurs first. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any property within Heritage Hills is conveyed by Declarant. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other amendment.

Section 6.2 Right to Construct Additional Improvements. Declarant shall have and hereby reserves the right, but shall not be obligated to, construct additional Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in an increase in the then current Common Assessments applicable to a Unit by more than twenty percent. If any construction of additional Improvements would have such effect, Declarant may nevertheless construct such additional Improvements so long as Declarant agrees to directly subsidize the Association for the excess expenses. Declarant shall convey or transfer such improvements to the Association, and the Association shall be obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration.

Section 6.3 Declarant's Rights of Use for Promotion and Marketing. Declarant shall have and hereby reserves rights (which rights may be assigned to Approved Builders, in whole or in part, one or more times, as hereafter provided) to reasonable use of Units owned by Declarant (or Units owned by Approved Builders, if such right has been assigned to them) and to reasonable use of the Association Properties and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of Heritage Hills. Without limiting the generality of the foregoing, Declarant

may erect and maintain on any part of such Units and the Association Properties such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, construction of Improvements and marketing of real property within Heritage Hills. Declarant may maintain sales offices and management offices, and model dwellings, none of which individually shall exceed the size of the largest residential dwelling unit to be constructed for sale to the general public, and all of which may be located on any Unit and relocated to any other Unit within Heritage Hills. Declarant may also use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of property within the boundaries of Heritage Hills who are not Owners or Members of the Association to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of property within the boundaries of Heritage Hills.

Section 6.4 Declarant's Rights to Complete Development Heritage Hills. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of Heritage Hills; to construct or alter Improvements on any property owned by Declarant within Heritage Hills, including temporary buildings; to maintain model homes, temporary buildings, construction trailers, sales trailers or offices for construction or sales purposes, or similar facilities, on any property owned by Declarant or owned by the Association within Heritage Hills; or to post signs incidental to development, promotion, development, construction of Improvements, marketing, or sales of property within the boundaries of Heritage Hills. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant; (b) to use any structure on any property owned by Declarant as a construction site, model home, or real estate sales office in connection with the sale of any property within the boundaries of Heritage Hills; or (c) to require Declarant to seek or obtain the approval of the Design Review Committee or of the Association for any such activity or Improvement to Property on any property owned by Declarant. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

Section 6.5 Declarant's Approval of Conveyances or Changes in Use. Until Declarant has lost the right to appoint the members of the Design Review Committee, the Association shall not, without first obtaining the written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, Mortgage the Association Properties, or use Association Properties other than solely for the benefit of Members or as specifically allowed hereunder.

Section 6.6 Declarant's Rights to Grant and Create Easements. Declarant and the Association, by and through the Executive Board, shall have and hereby reserves the right to grant or create or be the beneficiary of temporary or permanent easements located in, on, under, over, and across (a) Units owned by Declarant, and (b) Association Properties, for access, utilities, drainage, water, and other purposes incident to development and sale of portions of Heritage Hills.

Section 6.7 Declarant's Rights to Convey Additional Property to Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Association at any time and from time to time in accordance within this Declaration, so long as any conveyance does not directly result in an increase in the then current Common Assessments applicable to a Unit by more than twenty percent, unless Declarant agrees to directly subsidize the Association for the excess expenses.

Section 6.8 Development Rights.

(a) Right to Expand by Annexing Additional Property. Declarant shall have and hereby reserves the right, for a period of twenty years from the date of the Recording of this Declaration, to expand Heritage Hills by subjecting all or any part of the real property described on Exhibit B attached hereto and incorporated herein by reference (the "Development Property") to the provisions of this Declaration, thereby annexing the Development Property to Heritage Hills. The consent of Owners and Mortgagees shall not be required for any such annexation, and Declarant may proceed with such annexation in its discretion and at its sole option. In accordance with the development rights of Declarant, each owner of a Unit hereby grants to Declarant the right to annex the Development Property to Heritage Hills and to modify such Owner's right to the Common Area accordingly, as more particularly set forth in this section 6.8. No such annexation shall make or constitute any amendment or modification to this Declaration except as may otherwise be provided herein. The annexation of additional real property to Heritage Hills shall be accomplished by the filing for record by Declarant with the Clerk and Recorder of the County and the county in which the Development Property is located if different than the County, a supplement or supplements to this Declaration containing a legal description of the land area to be added to Heritage Hills (the "Annexation Supplement"), together with any supplemental plats applicable thereto. The annexation of Development Property may be accomplished by successive supplements.

(b) Effect of Expansion. In the event any real property is annexed to Heritage Hills as provided herein, the definitions used in this Declaration shall be automatically expanded to encompass and refer to Heritage Hills as expanded; after which "Heritage Hills" shall mean the real property described herein plus any additional real property annexed to Heritage Hills; similarly, "Common Area" and "Units" shall include those areas as described herein as well as those so designated on any Annexation Supplement or supplemental plat relating to any real property which is annexed pursuant to this section 6.8. References to this Declaration shall mean this Declaration as supplemented by any Annexation Supplement. Every Owner of a Unit in the area annexed to Heritage Hills shall, by virtue of ownership of such annexed property and upon recordation of the Annexation Supplement annexing such property to Heritage Hills, be a Member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association Member. The recording of the Annexation Supplement with the Clerk and Recorder of the County, shall operate automatically to grant, transfer, and convey to all Owners of Units located within Heritage Hills, and Owners of Units within the property annexed thereto, their respective, appurtenant, undivided rights, titles, interests, privileges, duties and obligations in and to both the existing Common Area and any additional common area added to the existing Common Area by virtue of such annexation, if any. Annual assessments for Units within

the area annexed to Heritage Hills shall commence as of the date of the Recording of the Annexation Supplement and shall be prorated as of such date. Upon recording of an Annexation Supplement and any other supplemental plat with the Clerk and Recorder of the County, the additional Units and Common Area shall be subject to the terms and provisions of this Declaration.

(c) Reservation of Annexation Rights. Declarant shall have the right to annex different portions of the Development Property to Heritage Hills at different intervals and the right to annex only a portion or none of the Development Property as it deems appropriate in its sole discretion. In accordance therewith, Declarant makes no assurances as to the boundaries or extent of Heritage Hills in the event any of the Development Property is annexed to Heritage Hills as provided herein.

Section 6.9 Approved Builders. Subject to approval by Declarant, and to the extent of specific assignments from Declarant to an Approved Builder and any limitations contained therein, Approved Builders shall have the right to construct or alter Improvements and complete development and construction on any property owned by the Approved Builder within Heritage Hills, including temporary buildings and the right to maintain model homes, temporary buildings, construction trailers, sales trailers or offices for construction or sales purposes, or similar facilities on any property owned by any Approved Builder within Heritage Hills; and to post signs subject to approval of the Declarant incidental to promotion, development, construction of Improvements, marketing, or sales of property within the boundaries of Heritage Hills.

## ARTICLE 7 ASSOCIATION OPERATION

Section 7.1 Association. The Association has been formed as a Colorado nonprofit corporation under the Colorado Nonprofit Corporations Act. The Association has been organized prior to the date the first Unit located in Heritage Hills is conveyed to a Purchaser, as that term is defined in the Act. The Association shall have the duties, powers, and rights set forth in the Act, the Colorado Nonprofit Corporations Act, this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Executive Board to manage its affairs. Except as may be provided herein, the Articles of Incorporation or the Bylaws, the Executive Board shall be elected by Owners acting in their capacity as Members of the Association.

Section 7.2 Association Executive Board. The affairs of the Association shall be managed by an Executive Board. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation and Bylaws. The Executive Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Executive Board or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

Section 7.3 Membership in Association. Each Owner of a Unit within Heritage Hills shall be a Member of the Association. There shall be one Membership in the Association

for each Unit within Heritage Hills. The Person or Persons who constitute the Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Unit. Declarant and Approved Builders shall hold a Membership in the Association for each Unit owned by them. Membership in the Association shall not be assignable separate and apart from fee simple title to a Unit except that an Owner may assign some or all rights as an Owner and as a Member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to be relieved of responsibility for fulfillment of the obligations of an Owner under this Declaration.

Section 7.4 Voting Rights of Members. Each Member shall have the right to cast one vote for each Unit owned by such Member in accordance with the Bylaws. Notwithstanding the foregoing, Declarant, in its sole discretion, shall be entitled to select and appoint members of the Executive Board in accordance with the Bylaws until the expiration of the Declarant's Control Period as hereinafter defined; provided, however, that not later than sixty days after conveyance of twenty-five percent of the Units that may be created within Heritage Hills by Declarant to Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Executive Board must be elected by Owners other than Declarant; and that no later than sixty days after the conveyance of fifty percent of the Units that may be created within Heritage Hills to Owners other than Declarant, not less than thirty-three and one-third percent of the members of the Executive Board must be elected by Owners other than Declarant; and that not later than sixty days after conveyance of seventy-five percent of the Units that may be created within Heritage Hills by Declarant to Owners other than Declarant, at least three members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant, must be elected by Owners other than Declarant. The Declarant's Control Period shall cease on the happening of any of the following events, whichever occurs earlier: (a) when seventy-five percent of the Units that may be created within Heritage Hills have been conveyed to Persons other than Declarant; (b) two years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (c) two years after any right to add new Units to Heritage Hills was last exercised; (d) when, in its discretion, Declarant so determines (collectively, the "Declarant's Control Period").

Section 7.5 Determination of Member Voting Percentages. Notwithstanding anything to the contrary contained in this Declaration, only Members whose voting rights are in good standing under the Association's Bylaws (e.g., voting rights that have not been suspended as provided therein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a certain percentage of Members of the Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has voted affirmatively for approval.

## 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. The Association, acting through the Executive Board or Persons to whom the Board has delegated such powers, shall have

the duties and powers 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 the common interests of the Members, to maintain, improve, and enhance Association Properties, and to improve and enhance the attractiveness, aesthetics, and desirability of Heritage Hills.

Section 8.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any real property, including any Improvements thereon and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all Administrative 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 licenses to use. Any real property or interest in real property transferred to the Association by Declarant shall be within the boundaries of Heritage Hills. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances. Except as otherwise specifically approved by resolution of the Executive Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

Section 8.3 Duty to Manage and Care for Association Properties. The Association shall manage, operate, care for, maintain, and repair all Association Properties, or cause the care, maintenance, and repair of Association Properties to be accomplished by a government or quasi-governmental entity, and shall keep or cause to keep the same in an attractive and desirable condition for the use and enjoyment of the Members.

Section 8.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties and all 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 that may accrue if the contest of such taxes is unsuccessful.

Section 8.5 Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, property insurance on all insurable Improvements and personal property owned by the Association or that must be owned by the Association in the future, in broad form for causes of loss, including casualty, fire, and extended coverage insurance and, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured

property, less modest deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property insurance policies.

**Section 8.6 Duty to Maintain Liability Insurance.** The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of Association Properties, including officers and directors' liability insurance covering the individual members of the Executive Board and covering public liability for bodily injury and property damage and, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable: (a) have limits of not less than five hundred thousand dollars (\$500,000) per person and one million dollars (\$1,000,000) per occurrence ; (b) insure the Board and individual members of the Board, the Association, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured in such Declarant's capacity as a Member or Board member; (d) include the Members as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Association Properties; and (e) cover claims of one or more insured parties against other insured properties.

**Section 8.7 General Provisions Respecting Insurance.** Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled or renewed without a replacement policy having been obtained, the Association shall promptly cause notice of that fact to be delivered to all Members. The Association may carry any other type of insurance it considers appropriate, in amounts it deems appropriate, to insure the interests of the Association. Insurance policies carried pursuant to sections 8.5 and 8.6 shall provide that: (a) each Member is an insured Person under the policy with respect to liability arising out of such Member's interest in the Association Properties or membership in the Association; (b) the insurer waives its right of subrogation under the policy against the Association, each Member, and any Person claiming by, through, or under such Member or any other director, agent, or employee of the foregoing; (c) no act or omission by any Member, unless acting within the scope of such Member's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of a Member covering the same risk covered by the policy, the Association's policy shall be the primary insurance. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient considering the current values of the

Association Properties and in light of the possible or potential liabilities of the Association. The insurance may be provided under blanket policies covering the Association Properties and property of Declarant. In no event shall insurance coverage obtained or maintained by the Association be bought into contribution with insurance purchased by Owners, occupants or their Mortgagees.

Section 8.8 Fidelity Bonds Required. The Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Association. Each such bond shall name the Association as obligee and shall be not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate Common Assessments on all Units plus reserve funds.

Section 8.9 Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

Section 8.10 Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as elsewhere provided in this Declaration.

Section 8.11 Duty to Levy and Collect Assessments. The Association may levy and collect Assessments as provided in this Declaration.

Section 8.12 Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act, including, but not limited to, financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an Owner.

Section 8.13 Duties with Respect to Design Review Committee Approvals. The Association shall perform functions to assist the Design Review Committee as elsewhere provided in this Declaration.

Section 8.14 Power to Acquire 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 and maintain Improvements on property, including fences, and may demolish existing Improvements.

Section 8.15 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within Heritage Hills, including Units, and the general restrictions and covenants described in article 3. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to Members as elsewhere provided in this Declaration or the Bylaws, and copies

of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with the Rules and Regulations, and shall cause Persons claiming through such Member to comply with the Rules and Regulations. The 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 8.16 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and each Person claiming by, through, or under such Member ("Related Users"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within Heritage Hills after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner thereof or the Association, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations ; (d) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to ten days following any breach by such Member or a Related User of such Member of this Declaration or the Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting, after Notice and Hearing, a Reimbursement Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member; and (f) by levying and collecting uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member. In the event that the Association fails to enforce the provisions of this Declaration as provided for herein, each Member shall, upon thirty days' written notice to the Association, have the power: (a) to enforce the provisions hereof by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, by mandatory injunction or otherwise; or (b) to commence or maintain actions and suits to recover damages for breach of any of the provisions of this Declaration.

Section 8.17 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties, as well as the power to designate portions of the Association Properties as limited common elements for the benefit of Owners of specific Units.

Section 8.18 Power to Convey Property to Governmental Agencies. The Association, with the approval of Members representing at least eighty percent of the votes entitled to vote, shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association

shall deem appropriate, subject to the provisions contained elsewhere in this Declaration for approval of the same by Declarant with respect to property transferred to the Association by Declarant. Further, to the extent that any easement or right-of-way is required under or across any Association Properties that would not impair or hinder the use of them, the Association shall have the right to grant or convey the same without the consent of the Members.

Section 8.19 Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and, with approval of Members representing at least eighty percent of the votes of the Association entitled to vote, to encumber Association Properties as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action. An Agreement to convey or subject the Association Properties to a security interest in accordance with this section and section 8.18 shall be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The agreement shall specify a date after which the agreement will be void unless Recorded before that date and shall be effective upon Recordation.

Section 8.20 Power to Engage Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents, to retain and pay for a manager, (e.g., management company), and 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 this Declaration.

Section 8.21 Power to Enter into Trash Removal Contract. The Association shall have the power and authority to enter into a trash removal contract that provides for exclusive trash removal services for all Units located within Heritage Hills. In the event the Association elects to enter into such trash removal contract, all Owners of Units in Heritage Hills who are currently occupying residences on their Units must use the services of and shall be entitled to the benefits of such trash removal services. The Association shall have the power and authority to pass through and allocate to the Owners of all Units who are currently occupying completed residences on their Units a proportionate share of all costs and expenses charged to the Association under the trash removal contract (the "Trash Removal Allocations") and to levy a special assessment for such services in an amount to be determined by the Board. The Association shall have the right to terminate the trash removal services of any Owner of a Unit who fails to pay their proportionate share of the Trash Removal Allocation. No Owner shall have the right to separately contract for any trash removal services unless the Association elects not to enter into a contract for such services as contemplated herein.

Section 8.22 Power to Clear Streets and Perimeter Sidewalk. The Association shall have the power, but not the obligation, to contract for the removal of snow from the perimeter public sidewalks.

Section 8.23 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporations Act, including, without limitation, entering into partnership and other agreements, subject only to limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have

the power to do any and all lawful things that may be authorized, required, or permitted to be done under this Declaration, the Articles of Incorporation or Bylaws and to do and perform any and all acts that may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration, the Articles of Incorporation or Bylaws.

Section 8.24 Powers Provided by Law. In addition to the powers provided in this Declaration, the Articles of Incorporation, or Bylaws, the Association shall have full power to take and perform any and all actions that may be lawfully taken by the Association under the Colorado Nonprofit Corporations Act or the Colorado Common Interest Ownership Act.

## ARTICLE 9 BUDGETS AND FUNDS

Section 9.1 Maintenance Funds To Be Established. The Association may establish and maintain the following separate Maintenance Funds: (a) an Administrative Functions Operating Fund; and (b) an Administrative Functions Reserve Fund. The Maintenance Funds shall be established as one or more savings or checking accounts at any financial institution in which deposits are insured by an agency of the federal government, each of which accounts shall be held in trust for the Members. Notwithstanding anything else to the contrary contained herein, in no event shall the Association be required to apply any surplus funds of the Association remaining after payment of or provision for common expenses, or any prepayment of or provision for reserves, against any Members' future Common Assessment.

Section 9.2 Establishment of Other Funds. The Association may establish other funds as and when needed. Nothing herein shall limit, preclude, or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Executive Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

Section 9.3 Deposit of Common Assessments to Maintenance Funds. Money collected by the Association as Common Assessments shall be deposited in the Maintenance Funds in accordance with the following provisions: (a) there shall be deposited to the Administrative Functions Operating Fund that portion of the Common Assessments that, according to the Association Budget for the Budget Year, was budgeted for operating costs and expenses of the Administrative Functions; and (b) there shall be deposited to the Administrative Functions Reserve Fund that portion of the Common Assessments that was budgeted for the Reserve Fund for Administrative Functions.

Section 9.4 Other Deposits to Maintenance Funds. The Association shall deposit money received by the Association from sources other than Common Assessments in the Maintenance Fund determined by the Executive Board to be most appropriate. For example, the Reimbursement Assessments shall be deposited to the Maintenance Fund from which the costs and expenses were or will be paid that form the basis for the Reimbursement Assessments; and Special Assessments for capital repairs, maintenance, replacements, and Improvements shall be deposited to the Reserve Fund from which such capital costs have been or will be paid. Interest and late charges received on account of

delinquent assessments may be allocated among the Maintenance Funds in the same proportions as the delinquent assessments were allocated or, at the discretion of the Executive Board, may be allocated to any one or more of the Maintenance Funds or other funds.

Section 9.5 Disbursements from Maintenance Funds. All amounts deposited in the Maintenance Funds shall be used solely for the common benefit of all the Members for purposes authorized by this Declaration. Disbursements from particular Maintenance Funds shall be limited to specified purposes as follows : (a) disbursements from the Administrative Functions Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes for which disbursements are to be made from other Maintenance Funds; and (b) disbursements from the Administrative Functions Reserve Fund shall be made solely for purposes of funding those Administrative Functions that are not expected to recur on an annual or more frequent basis.

Section 9.6 Authority for Disbursements. The Executive Board shall have the authority to make, or to authorize an agent to make, disbursements of any money in a Maintenance Fund.

Section 9.7 Funding of Reserve Funds. The Executive Board, in budgeting and levying Assessments, shall endeavor, whenever possible, to fund the Administrative Functions Reserve Fund by regularly scheduled payments, included as part of the Common Assessments, rather than by Special Assessments. Money in the Administrative Functions Reserve Fund may be used in the discretion of the Board, from time to time, for any purpose for which a Common or Special Assessment may be used.

Section 9.8 Annual Budgets. The Executive Board shall cause to be prepared, at least sixty days prior to the commencement of each Budget Year, a Budget for such Budget Year, including a reasonable provision for contingencies and deposits into the Administrative Functions and Reserve Funds. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Maintenance Fund, and shall reflect any expected income of the Association for the coming Budget Year, any expected surplus from the Budget Year, and any existing surplus in any Reserve Fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper Reserve Fund for major capital repairs, replacements, and improvements for Association Properties. Within thirty days after the adoption of any Budget, the Board shall cause a copy of the Budget or a summary of it to be distributed to each Member, shall cause a copy of the Budget to be posted at the principal office of the Association, and shall set a date for a meeting of the Owners to consider ratification of the Budget to be held not less than 14 nor more than 60 days after mailing or other delivery of the Budget or a summary of it. Such meeting may be concurrent with the annual meeting of Members as provided in the Bylaws. Unless at that meeting a majority of the Owners entitled to vote reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event the Budget is rejected, the periodic Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. In the event the Association does not have an address for any Member, such posting shall be deemed delivery to such Member. If the Association publishes a newsletter for Members, the Budget or a summary shall be published in the newsletter. Copies of the Budget shall be made available by the

Association to any Members requesting a copy of the same upon payment of the reasonable copying expense.

**Section 9.9 Common Assessments.** For each Budget Year, the Association may levy Common Assessments against Owners of the Units. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner and the Unit of such Owner, as hereinafter provided.

**Section 9.10 Apportionment of Common Assessments.** For purposes of assessing the Common Assessments, each Unit shall constitute one Unit regardless of the size, value, location, or use of such Unit. The amount of the Common Assessment for any Budget Year, payable by the Owner of such Unit, shall be computed by multiplying the total amount to be raised by the Common Assessments for that Budget Year, as shown in the Association Budget for that Budget Year, by a percentage (rounded to the nearest one-tenth of one percent), derived from a fraction, the numerator of which is one and the denominator of which is the total number of Units in Heritage Hills as of the first day of that Budget Year.

**Section 9.11 Supplemental Common Assessments for Deficiencies.** Subject to the provision of section 9.12, if the Common Assessments prove inadequate for any reason, including nonpayment of any Owner's Assessments, the Executive Board may, from time to time, levy a Supplemental Common Assessment for any of the Maintenance Funds. Such Supplemental Common Assessment shall be assessed against the Owner of each Unit in the same manner as Common Assessments are originally assessed each Budget Year by the Board with respect to the particular Maintenance Fund. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner, not less than thirty days prior to the effective date of such change.

**Section 9.12 Maximum Common Assessment.** Except as otherwise provided herein, the Executive Board shall not levy a Common Assessment against a Unit in any Budget Year that is greater than 120 percent of the respective Common Assessment assessed against such Unit in the preceding Budget Year ("Maximum Common Assessment"), except with the approval of Members representing at least two-thirds of the votes of the Association entitled to vote, excluding votes exercisable by Declarant.

**Section 9.13 Supplemental Common Assessments for Other Needs.** If the Executive Board levies a Common Assessment in an amount less than the Maximum Common Assessment for any Budget Year, the Board by majority vote may thereafter levy one or more Supplemental Common Assessments during the Budget Year, if it determines that the important and essential functions of the Association cannot be funded by the original Common Assessments. In no event shall the sum of the initial and Supplemental Common Assessments, as the case may be, for a Budget Year exceed the Maximum Common Assessment permitted for that Budget Year except as provided in section 9.12.

**Section 9.14 Approval of Increase in Maximum Common Assessment.** If the Executive Board, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any one Budget Year or in any one Budget Year and subsequent Budget Years by the amount of the Maximum Common Assessment, it may call a meeting of Members entitled to vote requesting approval of a specified

increase in the Maximum Common Assessment for either one Budget Year or that Budget Year and one or more subsequent Budget Years. An increase in the Maximum Common Assessment for any Budget Year or for any Budget Year and all subsequent Budget Years shall require the approval of Members representing two-thirds of the entire votes of the Association entitled to vote, excluding votes exercisable by Declarant.

Section 9.15 Commencement of Common Assessments. Common Assessments shall commence and be due and payable as to each Unit within Heritage Hills after the adoption of a budget pursuant to 9.8. The obligation to pay Common Assessments shall apply to all Units included within Heritage Hills, including those owned by Declarant and any Approved Builder. The Common Assessment for the then current Budget Year shall be prorated on the basis of the number of days in such Budget Year remaining from the date of commencement of such Common Assessments to the end of such Budget Year. In addition to the foregoing, at the time of each sale of a Unit by an Approved Builder or Declarant to an Owner, the purchaser shall pay a one-time charge to the Association of \$100.00, which sum shall be deposited in the Administrative Functions Reserve Fund and used for purposes authorized by the Declaration. Said charge shall be collected and transferred to the Association at the time of closing of the sale of each Unit, as aforesaid, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due.

Section 9.16 No Disbursements to Abate Nuisances or Zoning Amendments. Nothing in this Declaration shall be construed to permit the Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of Heritage Hills or to dispute any change to the zoning or assessment of any property adjacent to or outside the boundaries of Heritage Hills.

Section 9.17 Payment of Assessments. Except for the Initial Assessments, Common Assessments shall be due and payable in advance to the Association by the assessed Member for the Budget Year in annual installments, on or before the first day of each June for each Budget Year, or in such other manner and on such other dates as the Executive Board may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Member prior to May 1 of each Budget Year after the Initial Assessment.

Section 9.18 Failure to Levy Assessment. Failure by the Executive Board to levy an Assessment for any Budget Year 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 Member to pay Assessments, or any installment thereof, for that or any subsequent Budget Year. No abatement of the Common Assessments or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Association Properties or from any action taken to comply with any law or any determination of the Executive Board or for any other reason.

Section 9.19 Special Assessments for Capital Expenditures. In addition to Common Assessments, the Executive Board may, subject to the provisions of this section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to construct or reconstruct, repair, or replace capital Improvements upon Association Properties, including necessary personal property related

thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board shall not levy Special Assessments without the approval of the Members representing at least two-thirds of the Owners of Units subject to the Special Assessment who are entitled to vote. The Association shall notify Members 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. The Members shall pay any such Special Assessment in the manner so specified.

**Section 9.20 Reimbursement Assessments.** The Executive Board may, subject to the provisions hereof, levy an Assessment against any Member if the willful or negligent failure of the Member or a Related User claiming through the Member to comply with this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations shall have resulted in the expenditure of funds by the Association to cause such compliance including, but not limited to, court costs and attorneys' fees. Such Assessment shall be known as a Reimbursement Assessment and shall be levied only after Notice and Hearing. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty days after notice to the Member of the decision of the Board that the Reimbursement Assessment is owing.

**Section 9.21 Late Charges and Interest.** If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Executive Board. Any Assessment or installment of an Assessment that is not paid within thirty days after the date of any Notice of Default given under Section 9.23 and prior to the Recordation of a Notice of Lien under section 9.26 hereof shall bear interest from the date of Recordation of the Notice of Lien at the highest rate then established by statute in Colorado for interest on damages for personal injury or on judgments in other actions, whichever is higher, but not less than eight percent per annum simple interest.

**Section 9.22 Attribution of Payments.** If any installment payment of a Common Assessment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority: (a) to the Administrative Functions Reserve Fund until that portion of the Common Assessment has been satisfied; and (b) to the Administrative Functions Operating Fund. In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

**Section 9.23 Notice of Default.** If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty days after its due date, the Executive Board may mail a notice of default ("Notice of Default") to the Owner and to each first Mortgagee of the Unit who has requested a copy of the notice. The notice shall specify: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty days from the date the notice is mailed to the Member, 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 acceleration of the balance of the Assessment or the installments of the Assessment for the then current Budget Year, if applicable, and the filing and foreclosure of the lien for the Assessment against the Unit of the Member. The notice shall further inform the Member of any right to cure the default and of any right to bring a court action to assert the non-existence of a default or any other defense of the Member. If the delinquent Assessment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand, if applicable, and may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law in this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

Section 9.24 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, or Reimbursement, the Executive Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

Section 9.25 Lawsuit to Enforce Assessments. The Executive Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount the court may adjudge, against the defaulting Owner or Member.

Section 9.26 Lien to Enforce Assessments. Pursuant to and in accordance with the Act, the Association shall have a statutory lien on a Unit for any Assessment levied against that Unit, or fines imposed against its Owner, from the time the Assessment or fine becomes due. All fees, charges, late charges, attorneys' fees, fines and interest outstanding from such Owner shall be included in such lien. The lien created hereby and under the Act shall be prior to any declaration of homestead rights Recorded after the time that the Unit becomes a part of Heritage Hills and shall have the priority attached to such lien under the Act and under Colorado law. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner for foreclosure of mortgages in the state of Colorado or in any other manner provided under Colorado law.

Section 9.27 Estoppel Certificates. Upon the written request of any Member and any Person with, or intending to acquire, any right, title, or interest in the Unit of such Member, 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 Unit and the Owner thereof, and setting forth the amount of any Assessment levied against such Unit that is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all Persons for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

Section 9.28 No Offsets. 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 Executive Board is not properly exercising its duties and powers under this Declaration.

Section 9.29 Real Estate Transfer Fee. There may be a transfer fee imposed by the Association's manager, from time to time, in connection with the sale, long-term lease or other conveyance of any Unit other than the first-time transfer of a Unit from Declarant or from an Approved Builder.

Section 9.30 Street Lighting Tariff. All Units are subject to and bound by Public Service Company tariffs that are now and may in the future be filed with the Public Utilities Commission of the state of Colorado relating to street lighting in Heritage Hills, together with rates, rules, and regulations provided in such tariffs, and subject to all future amendments and changes. The Owner shall pay as billed a portion of the cost of public street lighting in Heritage Hills according to Public Service Company rates, rules, and regulations, including future amendments and changes filed with the Public Utilities Commission of the state of Colorado.

## ARTICLE 10 MISCELLANEOUS

Section 10.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2050, and thereafter shall be automatically extended for successive periods of ten years each unless terminated by the vote, taken by written ballot, of Members holding at least seventy-five percent of the votes of Members of the Association entitled to vote at a duly constituted meeting of the Members. In the event this Declaration is terminated, the termination of this Declaration shall be evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless Recorded before such date. The Termination Agreement shall be Recorded, and the termination of this Declaration shall be effective upon such Recording.

Section 10.2 Amendment of Declaration by Declarant. Until the first Unit subject to this Declaration has been conveyed by Declarant by a 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 the amendment or termination or a restatement of this Declaration.

Section 10.3 Amendment of Declaration by Members. Except as otherwise provided in this Declaration or the Act, including this section and sections 6.1 and 10.4, and subject to provisions contained elsewhere in this Declaration requiring the consent of 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 of the Association holding at least seventy-five percent of the votes of the Association entitled to vote present in person or by

proxy at duly constituted meetings of the Members; except that until Declarant has sold and conveyed all Units within Heritage Hills, any such amendment or repeal shall not be made except upon approval of the amendment or repeal by Members of the Association holding at least ninety percent of the votes of the Association entitled to vote present in person or by proxy at duly constituted meetings of the Members. The approval of any duly adopted amendment or repeal shall be evidenced by certification by the Members of their own votes to the Executive Board. The amendment or repeal shall be effective upon the Recordation of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been duly adopted by the Members. Any Amendment to the Declaration made hereunder shall be effective only when Recorded. All amendments hereto shall be indexed in the grantee's index in the name of Declarant and the Association and in the grantor's index in the name of each Person executing the amendment.

Section 10.4 Required Consent of Declarant to Amendment. During the Declarant Control Period and 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 of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at the end of the Declarant Control Period.

Section 10.5 Amendment of Articles and Bylaws. The Articles of Incorporation and Bylaws may be amended in accordance with the provisions set forth in such instruments or, in the absence of such provisions, in accordance with applicable provisions of the Colorado Nonprofit Corporations Act.

Section 10.6 Special Rights of First Mortgagees. Any First Mortgagee (meaning a Mortgage with first priority over other Mortgages) of a Mortgage encumbering any Unit in Heritage Hills, upon filing a written request therefor with the Association, shall be entitled to: (a) written notice from the Association of any default by the Mortgagor of such Unit in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, Bylaws, or Rules and Regulations, which default is not cured within sixty days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association including any annual financial statement within ninety days following the end of any fiscal year of the Association; (d) receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members; (f) receive thirty days' written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles of Incorporation, or Bylaws; and (g) receive written notice if the Association receives notice or otherwise learns of any damage to the Association Properties if the cost of reconstruction exceeds \$100,000 and (h) receive written notice if the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 10.7 Priority of First Mortgage. Each First Mortgagee of a Mortgage encumbering a Unit who obtains title to such Unit pursuant to the remedies provided in the

Mortgage, by judicial foreclosure or by deed or assignment in lieu of foreclosure, shall take title subject to claims of the Association for unpaid Assessments or charges against such Unit to the extent provided by the Act.

Section 10.8 First Mortgagee Right To Pay Taxes and Insurance Premiums. Any such First Mortgagee or First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges that are in default and that may 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. The First Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

Section 10.9 Association Right to Mortgage Information. Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Unit to furnish information to the Association concerning the status of such First Mortgage and the loan which it secures.

Section 10.10 Amendment Required by Government Mortgage Agencies. Notwithstanding the provisions of article 10 hereof, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration that any Government Mortgage Agency requires to be amended or repealed may be amended or repealed solely by Declarant, and no approval, consent or vote of any other person or entity shall be required. Any such amendment or repeal shall be effective upon the Recordation of a certificate, executed by Declarant, setting forth the amendment or repeal in full. "Government Mortgage Agencies" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase Mortgage loans. "FHA" means the Federal Housing Administration of the United States Department of Housing and Urban Development, including any department or agency of the United States Government that succeeds to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate. "VA" means the Veterans Administration of the United States of America, including any department or agency of the United States Government that succeeds to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on residential units. "FHLMC" means the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title m of the Emergency Home Finance Act of 1970, including any successors thereto. "GNMA" means the Government National Mortgage Association administered by the United States Department of Urban Development, including any successor thereto. "FNMA" means the Federal National Mortgage Association, a government sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto.

Section 10.11 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 or telephone. 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 Unit of such Person if no address has been given to the Association. Each notice shall be deemed given, if not actually received earlier, at 5:00 p.m. on the third 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 10.12 Persons Entitled To Enforce Declaration. The Association, acting by authority of the Executive Board, and any Member of the Association entitled to vote shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any property within Heritage Hills and the Owner thereof. 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 this Declaration.

Section 10.13 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction, and 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 10.14 Enforcement of Self-Help. Declarant or the Association, or any authorized agent of either of them, may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration, provided such self-help is preceded by Notice and Hearing as set forth in the Bylaws.

Section 10.15 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 Heritage Hills is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

Section 10.16 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 10.17 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

Section 10.18 Limitation on Liability. The Association, Executive Board, Design Review 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.

Section 10.19 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 Heritage Hills, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, 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 writing.

Section 10.20 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 10.21 Governing Law. This Declaration shall be construed and governed under the laws of the state of Colorado.

Section 10.22 Colorado Common Interest Ownership Act. In the event that any of the terms and conditions of this Declaration are in conflict or inconsistent with the terms and conditions of the Colorado Common Interest Ownership Act, the terms and conditions of the Act shall control. All terms and provisions contained herein, to the extent possible, shall be construed in accordance with the terms and provisions of the Act.

Section 10.23 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

Section 10.24 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

Section 10.25 Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

Section 10.26 Mergers or Consolidations. Upon a merger or consolidation of the Association with any other association authorized by the Act, the Association's properties, rights, and obligations may, by operation of law, be transferred to the other 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 the surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.

Section 10.27 Disclaimer Regarding Safety. Declarant and the Association hereby disclaim any obligation regarding the security of any persons or property within Heritage Hills. Any Owner acknowledges that Declarant and the Association are only obligated to do those acts specifically enumerated herein, or in the Articles of Incorporation and Bylaws, and are not obligated to do any other acts with respect to the safety or protection of persons or property within Heritage Hills.

Section 10.28. Conflicts. In the event of a conflict between the provisions of this Declaration and the Association's Articles of Incorporation or Bylaws, the provisions of this Declaration shall supersede and control.



STATE OF COLORADO )  
 )  
 ) ss.  
 )  
 \_\_\_\_\_ COUNTY OF Denson )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of MARCH, 1996 by Daniel C. Verdoorn, as President and Sandra A. Hammack as Secretary of Celebrity Custom Homes, Inc., a Colorado corporation, on behalf of the corporation.

WITNESS my hand and official seal.

My commission expires:

2/31/98

Cindy J. Holmes  
Notary Public

STATE OF COLORADO )  
 )  
 ) ss.  
 )  
 \_\_\_\_\_ COUNTY OF Denson )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of MARCH, 1996 by Everett D. Verdoorn, as President of EDV, Inc., a Colorado corporation, managing partner of Celebrity Custom Builders, on behalf of the corporation.

WITNESS my hand and official seal.

My commission expires:

2/31/98

Cindy J. Holmes  
Notary Public

EXHIBIT A  
TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR HERITAGE HILLS

Description of Heritage Hills Property

Lots 1 through 86, inclusive, and Lots 88 through 91, inclusive, and Tracts A through H, inclusive, and Tracts J and K, Heritage Hills Filing No. 1, County of Douglas, State of Colorado

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EXHIBIT B  
TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR HERITAGE HILLS COMMUNITY

Description of Development Property

Legal Description: A Tract of Land Located in Sections 9 and 10, Township 6 South, Range 67 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, Being More Particularly Described as follows:

Basis of Bearings: The west line of the northwest one-quarter of Section 10 being monumented at the west one-quarter corner by a 3 1/4" aluminum cap in range box P.L.S. No. 13155 Merrick & Co., and the northwest corner by a 3 1/4" aluminum cap in range box P.L.S. No. 12405 with a line between considered to bear N00°11'17"E.

Commencing at the northwest corner of said Section 10, thence N88°57'14"E along the north line of the northwest one-quarter of said Section 10, a distance of 50.01 feet to a point on the easterly line of South Yosemite Street, said point being the point of beginning;

Thence N88°57'14"E along said north line of the northwest one-quarter, a distance of 2489.57 feet to the north one-quarter corner of said Section 10; thence S00°06'23"E along the east line of said northwest one-quarter, a distance of 1328.25 feet to the southwest corner of the northwest one-quarter of the northeast one-quarter of said section 10; thence N89°10'39"E along the south line of said northwest one-quarter of the northeast one-quarter, a distance of 821.02 feet;

Thence the following six (6) courses:

- 1 S06°43'36"E a distance of 584.58 feet;
- 2 S13°35'50"E a distance of 607.83 feet;
- 3 S01°18'46"E a distance of 366.68 feet;
- 4 S00°36'00"E a distance of 60.00 feet;
- 5 S89°24'00"W a distance of 478.27 feet;
- 6 S00°46'23"W a distance of 2318.42 feet to a point on the northerly line of East Lincoln Avenue as described under Reception No. 8716748 in the Douglas County Records.

Thence along said northerly line of East Lincoln Avenue, the following five (5) courses:

- 1 S89°49'36"W a distance of 451.11 feet;
- 2 N00°10'24"W a distance of 10.00 feet;
- 3 S89°49'36"W a distance of 80.00 feet;
- 4 S00°10'24"E a distance of 10.00 feet;
- 5 S89°49'03"W a distance of 265.77 feet;

Thence the following twenty-nine (29) courses:

- 1 Along the arc of a curve to the left whose center bears N00°10'57"W, having a delta of 90°00'00", a radius of 30.00 feet and an arc length of 47.12 feet;

- 2 N00°10'57"W a distance of 156.25 feet;
- 3 Along the arc of a curve to the left having a delta of 35°18'53", a radius of 465.00 feet and an arc length of 286.61 feet;
- 4 N35°29'50"W a distance of 271.96 feet;
- 5 Along the arc of a curve to the left whose center bears N32°53'31"W, having a delta of 05°57'59", a radius of 770.00 feet and an arc length of 80.18 feet;
- 6 N56°47'23"W a distance of 50.53 feet;
- 7 N63°25'11"W a distance of 116.98 feet;
- 8 N50°07'48"W a distance of 134.84 feet;
- 9 N28°20'07"W a distance of 108.22 feet;
- 10 N38°22'32"W a distance of 226.60 feet;
- 11 N43°21'53"W a distance of 177.59 feet;
- 12 N22°40'29"W a distance of 76.51 feet;
- 13 N44°57'13"W a distance of 329.67 feet;
- 14 N54°37'57"W a distance of 268.38 feet;
- 15 N02°52'38"W a distance of 325.27 feet;
- 16 N69°08'27"W a distance of 210.00 feet;
- 17 N60°34'04"W a distance of 190.87 feet;
- 18 N34°25'32"W a distance of 259.53 feet;
- 19 N08°03'14"E a distance of 128.10 feet;
- 20 N14°58'10"W a distance of 103.72 feet;
- 21 N50°15'24"E a distance of 103.40 feet;
- 22 S89°46'27"E a distance of 49.02 feet;
- 23 Along the arc of a curve to the right whose center bears N87°21'35"E, having a delta of 07°13'01", a radius of 600.00 feet and an arc length of 75.58 feet;
- 24 N04°34'36"E a distance of 81.97 feet;
- 25 N62°27'52"W a distance of 176.39 feet;
- 26 N24°30'01"W a distance of 35.43 feet;
- 27 N60°42'28"W a distance of 44.28 feet;
- 28 S29°17'19"W a distance of 267.88 feet to the northeast corner of parcel of land as described in Book 151 at Page 24 in the Douglas County Records;
- 29 S89°24'00"W along northerly line of said parcel, a distance of 300.00 feet to a point on the easterly line of South Yosemite Street as described in Book 395 at Page 708 in the Douglas County Records;

Thence along said easterly line of South Yosemite Street, the following seven (7) courses:

- 1 N00°11'17"E a distance of 360.52 feet;
- 2 Along the arc of a curve to the left whose center bears N89°48'43"W, having a delta of 09°15'46", a radius of 2074.70 feet and an arc length of 335.41 feet;
- 3 N09°04'29"W a distance of 100.00 feet;
- 4 Along the arc of a curve to the right whose center bears N80°55'31"E, having a delta of 18°31'32", a radius of 1950.00 feet and an arc length of 630.50 feet;
- 5 N09°27'03"E a distance of 100.00 feet;
- 6 Along the arc of a curve to the left having a delta of 09°15'46", a radius of 2074.70 feet and an arc length of 335.41 feet;
- 7 N00°11'17"E a distance of 533.75 feet to the point of beginning.

Containing 271.420 acres.

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