

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
CRANBERRY PARK**

THIS DECLARATION is made and entered into by DCS Development & Construction, LLC, hereinafter referred to as the "Declarant";

WITNESSETH :

WHEREAS, Declarant is the owner of the real property situate in the County of Fremont, State of Colorado which is described on Exhibit 1 attached hereto and incorporated herein by reference, hereinafter referred to as the "Property"; and,

WHEREAS, Declarant desires to establish a Planned Community (Townhouse) project under the Colorado Common Interest Ownership Act, to-wit: Colo. Rev. Stat. ' 38-33.3-101, et. seq., hereinafter referred to as the AAct@; and

WHEREAS, Declarant does hereby establish a plan for the separate fee simple ownership of real property estates consisting of the Units, as hereinafter defined, in the improvements on the Property and the co-ownership by the individual and the separate owners thereof, as tenants in common, of all of the remaining portions of the Property, which is hereinafter defined and referred to as the General Common Elements.

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land encompassing the Property and shall be a burden and a benefit to Declarant, its grantees, successors and assigns, and any person acquiring or owning an interest in the real property and improvements thereon which is subject to this Declaration, their grantees, successors, heirs, personal representatives, devisees and assigns.

1. Definitions. As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

(a) AArticles@ means the articles of incorporation of the Association.

(b) AAssociation@ means the Cranberry Park Homeowners Association, Inc. its successors and assigns, or an entity formed under any other name, the Articles and Bylaws of which, as hereinafter defined, along with this Declaration, shall govern the administration of the Project, the Members of which shall be all of the Owners.

(c) ABoard of Directors@ or ABoard@ means the Board of Directors of the Association, defined as the Executive Board in the Act.

(d) ABylaws@ means the bylaws of the Association.

(e) ACommon Elements@ are all the real estate of the Common Interest Community other than a Unit, including, but not limited to, private streets, traffic control facilities, perimeter fences, recreation area, drainage facilities, and appurtenant easements, and limited common elements as hereafter defined, all of which shall be owned by the Association.

(f) ACommon Expense Assessments@ are the funds required to be paid by each Unit Owner in payment of such Owner=s Common Expense liability. These expenses include:

(i) expenses of administration, maintenance, construction, improvement, repair, or replacement of the Common Elements;

(ii) expenses of utilities not separately metered and billed directly to the Unit Owners;

(iii) expenses declared to be Common Expenses by the Documents or by the Act;

(iv) expenses agreed upon as Common Expenses by the Association; and

(v) reasonable reserves established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

(vi) In addition, the costs and expenses imposed on the association, benefitting fewer than all the Units, shall be a Common Expense but, except as otherwise stated herein, assessed exclusively against those Units benefitted.

(g) ACommon Expenses@ are the expenses or financial liabilities for the operation of the Common Interest Community.

(h) ACommon Interest Community@ is the real property described in Exhibit 1 and subject to this Declaration.

(i) ADeclaration@ means this Declaration together with any supplement or amendment hereto recorded in the office of the Clerk and Recorder of Fremont County, Colorado.

(j) ADeclarant@ means the Declarant named herein and such successor or successors as may be designated hereafter by Declarant by written notice duly recorded.

(k) AGuest@ means any agent, employee, tenant, guest, licensee or invitee of an Owner.

(l) ALimited Common Elements@ means those Common Elements which are

reserved for the use of certain Owners to the exclusion of the others, including but not limited to, certain porches, patios, deck or yard areas, parking spaces or areas, and driveways.

(m) AManaging Agent@ means any Person employed by the Board to perform the management and operational functions of the Project.

(n) AMortgage@ means and includes any mortgage, deed of trust or other assignment or security instrument creating a lien on any Unit, and "Mortgagee" shall include any grantee, beneficiary or assignee of a Mortgage.

(o) AOwner@ means the Person or Persons, as hereinafter defined, owning a Unit in fee simple together with an undivided interest in fee simple in the General Common Elements in the percentage specified and established in this Declaration, including the Declarant so long as any Condominium Unit, as hereinafter defined, is owned by Declarant.

(p) APerson@ means an individual, corporation, partnership, combination, association, trustee or any other legal entity.

(q) AProject@ means all of the Property, Units and improvements submitted to this Declaration.

(r) AResidence@ shall be the building for single-family living, constructed on a Unit, including a Party Wall, which is the wall along the dividing line between two Units that lies within the building.

(s) ATownhouse or Townhouses@ means the building contained within each Unit.

(t) AUnit@ means a physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are defined on the Plat and described in paragraph 6 of this Declaration.

2. Map. There shall be filed for record in the County of Fremont, Colorado, a map or plat, hereinafter referred to as the "Map," which Map may be filed in whole or in part, depicting thereon:

(a) The legal description of the Property and a survey thereof;

(b) The name and general location of the Project;

(c) The linear measurements and location, with reference to the exterior boundaries of said land, and all improvements built on said land;

The Map, and any supplement(s) thereto, shall contain the statements of (I) the Declarant, submitting the Property to the provisions of this Declaration; and (ii) a registered land surveyor certifying that the Map fully and accurately depicts the layout, measurements and location of all of the improvements, the Unit designations, the dimensions of such Units and the elevations of the floors and ceilings and all other matters required by the Act. Declarant hereby reserves unto itself and the Board, the right, from time to time, without the consent of any Owner being required, to

amend the Map and supplement(s) thereto, to conform the Map to the actual location of any of the constructed improvements, to establish, vacate and relocate utility easements, access road easements and parking spaces, and to establish certain Common Elements as Limited Common Elements.

In interpreting any and all provisions of this Declaration or the Bylaws, subsequent to deeds to and/or Mortgages of Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations from the location of such Unit indicated on the Map.

3. Development Rights. The Declarant reserves those development rights defined in this Declaration at paragraph \_\_\_\_\_.

4. Limited Common Elements. Subject to the definition thereof, the Limited Common Elements shall be identified herein or on the Map and designated as appurtenant to a particular Unit herein or on the Map or in a deed from the Declarant. Any door, window, balcony, porch, patio which is accessible from, associated with and/or which adjoin(s) a Unit and deck or yard areas, parking spaces or areas identified as Limited Common Elements on the Map and designated as appurtenant to a particular Unit, shall, without further reference thereto, be used in connection with the Unit to which it is appurtenant to the exclusion of the use thereof by the other Owners, except by invitation.

5. Inseparability of a Unit. An Owner's undivided interest in the Common Elements and in any appurtenant Limited Common Elements shall not be separated from the Unit to which they are appurtenant and shall be deemed to be conveyed or encumbered with the Unit even though the interest is not expressly mentioned or described in a deed or other instrument.

6. Description of Unit.

(a) Maximum Number of Units. The Common Interest Community contains forty-nine (49) Units.

(b) Boundaries. Vertical boundaries of each Unit created by the Declaration, if any, are shown on the Plat, and each Unit is identified with its identifying number. The Unit horizontal boundaries are as designated on the plat or Map.

(c) Description of a Unit. Every deed, lease, mortgage, will, or other instrument shall legally describe a Unit by its identifying Unit number together with a reference to the Plat and this Declaration, in the following form:

Unit \_\_\_\_\_, Cranberry Park, as shown and described on the Common Interest Community Plat of the Cranberry Park Planned Community, filed on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, in accordance with and subject to the Declaration of Covenants, Conditions and Restrictions of Cranberry Park, recorded on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at Reception No. \_\_\_\_\_, of the records in the Office of the Clerk and Recorder of the County of

Fremont, State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit but also any easements appurtenant to such Unit. The reference to the Plat and Declaration in any instrument shall be deemed to include any and all supplements or amendments to the Plat and/or Declaration, without specific reference thereto.

(d) The reference to the Map and Declaration in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Map or Declaration, without specific reference(s) thereto.

7. No Partition. The Common Elements shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for partition of a Unit between or among the Owners thereof. Each owner hereby expressly waives any and all such rights of partition he may have by virtue of his or her ownership of a Unit.

8. Separate Taxation. Each Unit created hereunder, together with its interest in the Common Elements, constitute for all purposes a separate parcel of real estate and must be separately assessed and taxed. The valuation of the Common Elements shall be assessed proportionately to each Unit in accordance with such Unit=s allocated interests in the Common Elements. Neither the Property nor any use of the Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit. In the event that such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his ownership interest in the Common Elements, and, in said event, such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.

9. Title. A Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

10. Certain Work Prohibited. No Owner shall undertake any work in his Unit which would jeopardize the soundness or safety of the Project, reduce the value thereof or impair an easement or hereditament thereon or thereto, nor shall any Owner enclose, by means of screening or otherwise, any balcony, yard, deck, patio or porch which is accessible from, associated with and which adjoins a Unit, without having first obtained the prior written approval of the Board (which approval may be withheld for any reason) for such enclosure and with respect to the materials, plans and specifications for such enclosure. Structural alterations shall not be made by an Owner to the exterior portions of his Unit or in the water, gas, electric conduits, plumbing or other fixtures

connected therewith, nor shall an Owner remove any additions, improvements or fixtures without the prior written approval of the Board (which approval may be withheld for any reason) first having been obtained.

11. Assessment and Collection of Common Expenses.

(a) Apportionment of Common Expenses. Except as provided in paragraph 12, all Common Expenses shall be assessed against all Units in accordance with their percentage interests in the Common Expenses, *i.e.*, initially 1/\_\_\_th per Unit, subject to the Declarant=s right to combine Units, thereby reducing the total number of Units and reallocating the percentage interests in the Common Expenses. This shall include, but not be limited to, Common Expenses for reasonable maintenance and replacement of the Common Elements, the Party Walls, and the landscaped exterior portions of Units, notwithstanding the fact that such maintenance and replacement could be viewed as benefitting one particular Unit over another.

(b) Common Expenses Attributable to Fewer than all Units.

(i) Any Common Expense for services approved by the Board and provided by the Association to an individual Unit, or some Units but fewer than all the Units, at the request of the particular Unit Owner or Owners shall be assessed against the requesting Unit(s).

(ii) An assessment to pay a judgment against the association may be made only against the Units in the Common Interest Community at the time the judgment was entered in proportion to their Common Expense liabilities.

(iii) If a Common Expense is incurred by the action or inaction of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner=s Unit.

(iv) Fees, charges, taxes, imposition, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to this Declaration and the Act are enforceable as Common Expense Assessments.

(c) Lien.

(i) The Association is hereby granted, and shall have, a lien on a Unit for a Common Expense Assessment levied against the Unit or fines imposed against its Unit Owner. Fees, charges, late charges, attorneys= fees, fines, and interest charged pursuant to the Act and this Declaration are enforceable as assessments under this Section. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If a Common Expense Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(ii) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first Security Interest on the Unit recorded before the date on which the Common Expense

Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This subsection does not affect the priority of mechanic=s or materialmen=s liens or the priority of a lien for other assessments made by the Association. By purchasing a Unit, an Owner waives all federal and state homestead and other exemptions with respect to the lien for Common Expense Assessments.

(iii) Recording of the Declaration in the Records constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment under this Section is not required.

(iv) A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the Common Expense Assessment becomes due, except that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association=s lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(v) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(vi) A judgment or decree in any action brought under this Section shall include costs and reasonable attorneys= fees for the prevailing party, which shall be additional Common Expense Assessments.

(vii) A judgment or decree in an action brought under this Section is enforceable by execution under Colorado law.

(viii) The Association=s lien must be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

(ix) In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Unit who shall collect all sums due from that Unit Owner or a tenant of the Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association=s Common Expense Assessments based on a periodic budget adopted by the Association as hereinafter described.

(x) If a holder of a first Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense assessments against that Unit which became due before the sale, other than the assessments that are prior to that Security Interest under Subsection (b) of this Section of the Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

(xi) Any payments received by the Association in the discharge of a Unit Owner=s obligation may be applied to the oldest balance due.

(d) Budget Adoption and Ratification. Within 90 days after adoption of a proposed budget for the Common Interest Community, the Board shall provide a summary of the budget to each Unit Owner and shall set a date for a meeting of the Unit Owners to consider ratification of the budget. The meeting shall be not less than 10 nor more than 50 days after mailing of the summary. Unless at that meeting a majority of all Unit Owners rejects the budget, the budget is ratified whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a new budget proposed by the Board.

(e) Ratification of Nonbudgeted Common Expense Assessment. If the Board votes to levy Common Expense Assessments not included in the current budget in an amount greater than 15 percent of the current annual operating budget, other than a Common Expense Assessment enumerated in paragraph 11(b) of this Declaration, or a Common Expense Assessment for the working capital fund described in paragraph 11(l) below, or a Common Expense Assessment for the Reserve Fund described in paragraph 11(m) below, the Board shall submit this Common Expense to the Unit Owners for ratification in the same manner as a budget under paragraph 11(d).

(f) Certificate of Payment of Common Expense Assessments. The Association, upon written request, shall furnish a Unit Owner with a written statement setting out the amount of unpaid Common Expense Assessments against the Unit. The statement must be furnished within 14 calendar days after receipt of the request and is binding on the Association, the Board, and each unit Owner. A reasonable fee, established by the Board, may be charged for such statement.

(g) Monthly Payment of Common Expenses. All Common Expenses assessed under this Declaration shall be due and payable monthly unless otherwise determined by the Board.

(h) Acceleration of Common Expense Assessments. In the event of default in which any unit Owner does not make the payment of any Common Expense Assessment levied against his Unit within 10 days of the date due, the Board shall have the right, after Notice and Hearing, to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable.

(i) Commencement of Common Expense Assessments. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. Common Expense Assessments shall be levied against and payable by the Owners of all Units, including Units still owned by Declarant.

(j) No Waiver of Liability for Common Expenses. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made.

(k) Personal Liability of Unit Owners. The Unit Owner of a Unit, at the time a Common Expense Assessment or portion of the assessment is due and payable, is personally liable for the Common Expense Assessment. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Unit unless the successor agrees to assume the obligation.

(l) Reserve for Working Capital Fund. The Association shall maintain a reserve fund



to meet unforeseen expenditures and/or to purchase any additional equipment or services (the Working Capital Fund). The Working Capital Fund shall be held by the Association in a segregated fund, without interest. The Working Capital Fund shall be established and initially funded by the Declarant depositing in cash with the Association a sum equal to two months' estimated regular Common Expense Assessment per Unit upon the earlier of: (a) the time of sale of each Unit by the Declarant; (b) the date a Unit is first occupied by a tenant of Declarant; or (c) the date of termination of Declarant control of the Association. Any amounts paid into the Working Capital Fund shall not be considered as advance payments of regular Common Expense Assessments. To the extent the Working Capital Fund has been established prior to the date of termination of Declarant control of the Association, the Working Capital Fund shall be transferred to the Association when Declarant control of the Association is terminated. The Declarant is prohibited from using the Working Capital Fund to defray any of the Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits while Declarant is in control of the Association. The Association shall adopt reasonable procedures for replenishing the Working Capital Fund.

(m) Reserve Fund for Replacement of Improvements. The Association shall establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements (the Reserve Fund). This Reserve Fund shall be a line item in the periodic budget and shall be collected from and as part of the regular Common Expense Assessments.

12. Use and Occupancy of Units. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used for residential purposes only, and no Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence, each Unit shall be deemed to have been designed to accommodate safely a maximum of two permanent occupants per bedroom. No Unit shall be used at any time for any business or commercial activity, except as follows: (i) the Owner thereof may lease or rent such Unit for private residential or living purposes; (ii) Declarant or its nominee or agents may use any Unit(s) as a model or sales unit until all Units owned by Declarant are conveyed by Declarant; and (iii) the Association shall have the right, but not the obligation, to purchase, own, or lease any Unit for a manager's residence or office.

13. Use of Common and Limited Common Elements. Each Owner may use the Common Elements and his appurtenant Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Association and/or the Board may from time to time adopt rules and regulations governing the use of Common and Limited Common Elements, but such rules and regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument of conveyance or assignment agrees to accept and be bound by any such adopted rules and regulations.

14. Various Rights and Easements.

(a) Owner's Rights in Limited Common Elements. Subject to the other provisions of this Declaration, each Owner, his family and Guests, shall have an exclusive right to use and enjoy the Limited Common Elements designated herein, in the Map or in the initial deed from Declarant as appurtenant to the Unit owned by such Owner.

(b) Association Rights. The Association and the Board shall have a non-exclusive right and easement to make such use of and to enter into or upon the Common Elements, the Limited Common Elements and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration.

(c) Owners' Easements for Access, Support and Utilities. Each Owner shall have a non-exclusive easement for access between his Unit and the roads and streets adjacent to the Project and exterior access and other easements which are part of the Common Elements. Each Owner shall have a non-exclusive easement in, on and over the Common and Limited Common Elements, for horizontal and lateral support of the Unit which is part of his Unit, for utility service to that Unit, including but not limited to, water, sewer, gas, electricity, telephone and television service.

(d) Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on a Unit for purposes of marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

(e) Easements in Units for Repair, Maintenance and Emergencies. Some of the Common Elements may be conveniently accessible only through a particular Unit. The Association, Board and each Owner shall have an easement, which may be exercised for any Owner by the Association, the Board or its agent, for access through each Unit and to all Common Elements, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit, or for making repairs or replacements. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of emergency repairs within another Unit, at the instance of the Association or the Board, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs and expenses of repairing such damage.

(f) Easements Deemed Appurtenant. The easements, uses and rights herein created for an owner shall be appurtenant to the Unit of that Owner and all conveyances of and other instruments affecting title to a Unit shall be deemed to grant and reserve the easements, uses and

rights as are provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

(g) Emergency Easement. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Project, to enter upon all streets, roads and driveways located in the Project, and upon the Property, in the performance of their duties.

#### 15. Owners' Maintenance Responsibility.

(a) Individual Units. It shall be the duty and obligation of each Unit Owner, at such Unit Owner=s expense, to beautify and keep neat, attractive, sightly, and in good order such Owner=s Residence (Townhouse) and the exterior portions of the Unit, and to maintain, repair and replace the same to the extent such duties are not the responsibility of the Association. Owner is also responsible for maintaining the back yard of the Owner=s Residence (Unit), unless he or she separately contracts with the Association for same. If the Owner does not discharge this obligation, then, following Notice and Hearing, the Association may arrange to have the work done and assess the Owner for the cost of such work plus twenty-five percent (25%) of such cost for inspection, administrative costs, and overhead of the Association and other incidental expenses.

(b) Duties of Association. The Association shall maintain, repair, replace, beautify and keep neat, attractive, sightly, free from snow and in good order, to the extent that such functions are not expected to be performed by Fremont County or any other political subdivision thereof or of the State of Colorado, all of the Common Elements, including, but not limited to, the sidewalks, the Party Walls (subject to the provisions of paragraph 23), and the front yards of the individual Units outside of the Residences. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of the paragraph. If such expense is attributable to a Unit Owner, such expense will be assessed following Notice and Hearing.

(c) Right of Access. Any person authorized by the Board shall have the right of access to all portions of the Property outside the Residence constructed on a Unit for the purpose of performing emergency repairs or to do other work reasonable necessary for the proper maintenance of the Common Interest Community as set forth herein, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no request or notice is required, and the right of entry shall be immediate whether or not the Unit Owner is present at the time. This provision is in addition to the provisions in paragraph 26 concerning the Party Walls.

(d) Repairs Resulting From Negligence. Each Unit Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by such Owner=s failure to properly maintain, repair, or make replacements to the Owner=s Unit. If such expense is caused by misconduct, it will be assessed following Notice and Hearing. The Association will be responsible for damage to Units that is caused by the Association intentionally, negligently, or by the Association=s failure to maintain, repair or

make replacements to the Common Elements.

16. Compliance With Provisions of Declaration, Articles and Bylaws of the Association. Each Owner shall comply strictly with, and shall cause each of his Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws, and the decisions, rules, regulations and resolutions of the Association or the Board adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

17. The Association.

(a) General Purposes and Powers. The Association, through the Board, shall perform functions and hold and manage property as provided in this Declaration and the Act so as to further the interests of Owners of Units in the Project. It shall have all powers necessary or desirable to effectuate such purposes.

(b) Membership. The membership of the Association at all times shall consist exclusively of all Unit Owners or, following termination of the Declaration, of all former Unit Owners entitled to distribution of proceeds under the Act, or their heirs, personal representatives, successors, or assigns. Said membership is appurtenant to the Unit of said Owner and the ownership of the membership for a Unit shall automatically pass with fee simple title to the Unit. Each Owner shall automatically be entitled to the benefits and be subject to the burdens relating to the membership for his Unit. If the fee simple title to a Unit is held by more than one Person, each Owner of a Unit shall be a member of the Association. Memberships in the Association shall be limited to Owners of Units in the Project.

(c) Board of Directors. The affairs of the Association shall be managed by the Board of Directors, elected or appointed as provided in the Bylaws. Notwithstanding anything to the contrary provided for herein, however, until Declarant has conveyed 100% of the Units in the Project, the members of the Board of Directors shall be appointed by Declarant and may consist of one member.

(d) Voting of Owners. The Owner or Owners of each Unit shall be entitled to one vote for each such Unit owned by said Owner or Owners.

(e) Bylaws and Articles. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws of the Association.

(f) Notices. Notice of matters affecting the Project may be given to Unit Owners by hand delivery or by first class mail, postage prepaid, addressed to each Owner at each Unit. Provided, however, attendance by a Unit Owner at any meeting for which a notice would be required constitutes a waiver of notice unless such attendance is for the sole purpose of objecting to a lack of notice.

18. Certain Rights and Obligations of the Association.

(a) Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of each Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Project upon its destruction or obsolescence as hereinafter provided and to grant utility easements through any portion of the Common Elements. The acceptance by any Person of any interest in any Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, but subject to the provisions of Paragraphs 7 and 28 hereof, unless at least three-fourths (3/4) of the first Mortgagees of Units (based upon one vote for each first Mortgage owned) or at least three-fourths (3/4) of the Owners (excluding Declarant) have given their prior written approval, the Association shall not be empowered or entitled to:

(i) by act or omission, seek to abandon or terminate the Project;

(ii) change the pro rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) partition or subdivide any Unit;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer (excluding the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements) any of the Common or Limited Common Elements; and

(v) use hazard insurance proceeds for loss to the Project (whether Units or Common Elements) for other than repair, replacement or reconstruction thereof.

(b) Common Elements. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Elements, except as is provided for in Paragraph 15 herein. Without limiting the generality of the foregoing, said obligations shall include the keeping of such Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such Common Elements which might impair access to the Project or the Units; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

(c) Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners on a self-supporting, special assessment or common assessment basis. Such activities, functions or services may include the providing of police or similar security services, and the providing of garbage and trash collection services.

(d) Labor and Services. The Association (I) may obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any Person with whom or which it contracts; (ii) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration; and (iii) may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services.

(e) Property of Association. The Association may pay for, acquire and hold or lease real property and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each Owner's family and Guests may use such property. Upon termination of ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interests in the Common Elements. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Unit.

(f) Association Right to Lease and License Common Elements. The Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-owners, on either a short-term basis or long-term basis and with or without charge as the Association may deem desirable, any portion of the Common Elements or any Unit owned by the Association (which Unit may be purchased from the Declarant). The rights granted to the Association in this subparagraph shall only be used in the promotion of the collective best interests of the Owners. Further, the Association shall have the right to grant utility easements under, through or over the Common Elements which are reasonably necessary to the ongoing development and operation of the Project.

(g) Mortgagee Notification. The Association shall notify each first Mortgagee of any proposed material amendment of the Association's Articles or Bylaws at least ten (10) days prior to the effective date of such amendment or change. Further, upon the written request of any first Mortgagee, such first Mortgagee shall be entitled to receive the most recent annual financial statement of the Association and written notice of all meetings of the Association and such first Mortgagee shall have the right to designate a representative to attend any such meeting.

(h) Enforcement by Association. The Board may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with the Association's rules and regulations, or with any other obligations of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations herein or in the Bylaws contained or to obtain damages for noncompliance thereof, all to the extent permitted by law.

(i) Certificate. The Board of Directors may, from time to time, record a certificate of the identity and the mailing addresses of the persons then comprising the Board of Directors, together with the identity and address of the Managing Agent, if any there be. Such certificate shall be conclusive evidence thereof in favor of any Person relying thereon in good faith regardless of the time elapsed since the date thereof.

(j) Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration or the Articles or Bylaws, or reasonably to be implied from the provisions of said documents, or given or implied by the Act, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

(k) Storm Drainage Maintenance and Operation: The Association shall be responsible for the following:

(i) Check all irrigation and drainage control structure trash racks at least once per week and remove any accumulations of debris or obstructions.

(ii) After each significant storm event, but no less often than once per month, check build up of silt or debris outside the chimney drain. Remove any accumulation of silt to expose gravel drain around base of unit to assure free drainage around outside of unit.

(iii) No less often than once per month, between April and October or once per quarter from October to April, remove gratings at each skimmer structure and remove all accumulated oil and grease or other floating material.

(iv) After each significant storm event, but no less often than once per week, check for accumulated water in each detention pond to assure no significant ponding. Remove any accumulated debris, silt, sand, or other foreign material.

(v) After each significant storm event, but no less often than once per month, check each curb inlet, remove grating and check inlet box and remove any accumulation of debris, sand, silt or other foreign materials. Make sure that grating is unclogged and provides for free flow.

(vi) After each significant storm event, but no less often than once per month, check interior compartment of chimney drain and remove any build up of any foreign materials on the sand filter/intake. In shoulder seasons when freezing is likely, check regularly to assure that ice does not build up and clog any of the drainage or irrigation facilities.

(vii) Monitor park usage to assure that patrons do not leave behind picnic debris, or other materials, toys, sports gear etc. that could clog the chimney drain.

(viii) Keep park grass well sown and covered to prevent unnecessary accumulation of silt and sand at the pond bottoms, the chimney drain, or the lower skimmer facility.

(ix) Monitor operation of the Oil Creek Ditch laterals crossing the property to

assure that proper operating procedures are being observed and that no irrigation water overflow is being allowed to back up onto Cranberry Park property or inordinately load detention ponds.

(x) Clean street gutters on a regular basis, especially in the fall when leaves are falling, to prevent unnecessary quantities of silt, sand and debris accumulating at any storm drainage collection points within the subdivision.

(xi) Rake and dispose of leaves in the fall as much as practical before they can be blown onto streets and into the ponds to minimize potential for clogging of storm drainage intake facilities.

(xii) Provide a viable on-site means for disposal for lawn clippings, tree and shrub trimming, etc. to minimize potential accumulation of that debris at stormwater drainage facilities.

(xiii) After any major storm event, monitor the detention ponds on a daily basis to assure that water is steadily and rapidly dissipated and not being allowed to accumulate. If any storm event is of such proportions as to cause overflow.

#### 19. Insurance.

(a) The Board of Directors shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financially responsible and able companies licensed to do business in Colorado, covering the risks set forth below. The types of coverages to be obtained and risks to be covered are as follows, to-wit:

(i) Insurance against loss or damage by fire and lightning, and such other hazards as are customarily covered in projects under extended coverage and all risk endorsements. Said casualty insurance shall insure the entire Project and any property, the nature of which is a Common Element (including all of the Units and the fixtures therein initially installed or conveyed by the Declarant) together with all service equipment contained therein in an amount equal to the full insurable replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each first Mortgagee, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of such first Mortgagees as their interests may appear.

(ii) If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid principal balances of the first Mortgages on the Condominium Units comprising the Project.

(iii) Commercial general liability insurance in such limits as the Board may from time to time determine, but not in an amount less than \$50,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the



ownership, operation, maintenance and other use of the Project. All liability insurance shall name the Association, the Board, the Managing Agent, the Declarant, first Mortgagees, the Owners and the officers of the Association, as insureds thereunder.

(iv) Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to any employees and subcontractors of the Association in the amounts and in the forms now or hereafter required by law.

(v) The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including plate or other glass insurance, insurance for any personal property of the Association located thereon, and errors and omissions insurance with respect to the actions of the Board of Directors and officers of the Association.

(vi) All policies of insurance shall contain all requirements of the Act, particularly including section 38-33.3-313 thereof.

(vii) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions of this insurance paragraph, the Board shall obtain an appraisal from the insurance appraiser of the company issuing such insurance, which appraiser shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost with an agreed amount endorsement. Determination of maximum replacement value shall be made annually, and each first Mortgagee, if requested, shall be furnished with a copy thereof, within thirty (30) days after receipt of such written appraisals. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

(viii) Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Owner. Insurance coverage on improvements and fixtures installed by an Owner and furnishings, including draperies, unattached carpeting and appliances, wallpaper and other items of personal property belonging to an Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association and/or the Managing Agent shall have no responsibility therefor.

(ix) In the event that there shall be any damage, destruction or loss to a Unit or any damage, destruction or loss to the Common Elements, then notice of such damage or loss shall be given by the Association to the first Mortgagee of said Unit within ten (10) days after the occurrence of such event.

20. Mortgaging a Unit -- Priority. Any Owner shall have the right from time to time to mortgage or encumber his Unit by deed of trust, mortgage or other security instrument.

## 21. Restrictive Covenants and Obligations.

(a) No Imperiling of Insurance. No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on the Project which might result in an increase in the premiums of insurance obtained for the Project or which might cause cancellation of such insurance.

(b) No Violation of Law. No Owner and no Owner's Guests shall do anything or keep anything in or on the Project which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(c) No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on or in any part of the Project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project which are or might be unsafe or hazardous to any Person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of the Project which is unreasonably bright or causes unreasonable glare.

(d) No Unsightliness. No unsightliness or waste shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the General Common Elements; nor shall any Owner hang, erect, affix or place anything upon any of the General Common Elements (except for decorative items within his Unit); nothing shall be placed on or in windows or doors of Units, which would or might create an unsightly appearance; and laundry shall not be hung on any deck.

(e) Restriction on Animals. No animals, livestock, reptiles or fowl shall be kept on any part of the Project, except two pets approved by the Association, subject to all governmental animal ordinances and laws, and provided that they are not kept for any commercial purposes. An Owner is responsible for any damage caused by his animal(s) and shall be obligated to clean up after his animal(s) on the Project. No animals shall be allowed to remain tied or chained to any balconies, patios or other parts of the Project, and any such animal(s) so tied or chained may be removed by the Association or its agents. The following breeds of dogs are strictly forbidden within the Project: pit bull, chow, Doberman pinscher, rottweiler, and German shepherd. Other dog breeds are subject to Board approval at its sole discretion. All dogs and cats, or any other approved pets, are subject to all local and state licensing and nuisance rules and regulations. No dog run or kennels of any type shall be permitted on any Unit. All dogs or cats will follow the 22" height limit and the 30 pound weight limit.

(f) Restriction on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the Project without the prior written consent of the Board. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify the Project and the Units therein. So long as any Unit owned by Declarant in the Project remains unsold, no Owner shall be permitted to place any sign on the Project or on his Unit or on any

Building advertising his Unit for sale or lease.

(g) No Violation of Rules. No Owner and no Owner's Guest shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Units, the use of Common or Limited Common Elements, or otherwise.

(h) Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests or family, loss or damage shall be caused to any Person or property, including the Project or any unit therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorneys' fees) shall be secured by a lien on the Unit of such Owner as provided hereinabove for assessments or other charges.

(i) Leasing of a Unit: The Owner of a Unit, including Declarant, shall have the right to lease his Unit under the following conditions:

(i) No Owner may lease less than his entire Unit;

(ii) All leases shall be in writing;

(iii) All leases shall provide that the terms of the lease and lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration and to the provisions of the Articles and Bylaws. Any failure by the lessee to comply therewith shall be a default under the lease. Any Owner who leases his Unit shall, within ten (10) days after the execution of such lease, forward a copy of the same to the Board;

(iv) Except for a first Mortgagee in possession of a Unit following the default under its Mortgage or in connection with foreclosure proceedings or any deed or other arrangement in lieu of foreclosure proceedings by such first Mortgagee, no Owner may lease his Unit for transient or hotel purposes nor may he lease the same for less than 30 days.

(j) Parking of Vehicles. Parking of any and all vehicles on the Project shall be subject to the rules and regulations of the Association.

(k) Restrictions on Parking and Storage. No part of the Project, including the public streets and private streets, drives, or parking areas, unless specifically designated on the Map or by the Association therefor, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck or recreational vehicle, except as a temporary expedience for loading, delivery, emergency, etc. (provided that this restriction shall not restrict trucks or other commercial vehicles within the Project which are necessary for the maintenance of the Project.) The Association may establish rules and regulations for the use of any storage area within the Common Elements.

(l) Parking for Owner=s With Service Oriented Employers. The parking of a motor

vehicle by a unit owner on a street, driveway, or guest parking area in the common parking areas if the vehicle is required to be available at designated periods at the unit owner=s residence as a condition of the unit owner=s employment will be allowed by the Association if all of the of the following criteria are met:

1. The vehicle has a gross vehicle weight rating of ten thousand pounds or less.
2. The Unit Owner is a Bona Fide Member of a Volunteer Fire Department or is employed by an Emergency Service Provider, as defined in Section 29-11-101(1.6), C.R.S.
3. The vehicle bears an official emblem of other visible designation of the emergency service provider.
4. Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Unit Owners to use streets and driveways with the Common parking area.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph shall be made by the Board of Directors and shall be final.

## 22. Architectural Review Committee.

(a) Creation of Committee. There is hereby created a standing committee of the Association to be known as the Architectural Review Committee or ARC. Members of the ARC shall be appointed by the Board to hold office at the will of the Board, or may be the Board itself.

(b) Purpose of ARC. The purpose of the ARC is to maintain the superior beauty and quality of the Improvements constructed on the Property and the harmony thereof with the surroundings, and to evaluate the use and suitability of the proposed Improvements and the effect of the same on any adjacent or neighboring properties.

(c) Approval of Improvements. Except for initial Improvements constructed by Declarant and Improvements made at any time by the Association, all plans and specifications in connection with (i) exterior remodeling, rebuilding, refurbishing, or alteration of a Residence, including, without limitation, the exterior appearance, color or texture, and patio covers or awnings; or (ii) any Improvements or alterations to the Unit other than to the Residence, including, but not limited to, landscaping not initially provided by Declarant, the roof, patio covers, awnings, sculpture or art work, driveway, sidewalk, fence, outside deck, grading, excavation, and filling or similar disturbance of the surface of the land, all of which shall require the prior written approval of the ARC.

(d) Owner to Submit Plans. Before any construction work begins, the Owner of the Unit shall be responsible for submitting to the ARC complete plans, specifications, and color/material/texture samples for the scheduled work and the qualifications of the parties to be performing the scheduled work.

(e) Action by ARC. The ARC=s approval or disapproval as required by this Declaration shall be in writing. In the event the ARC fails to give its written approval or disapproval within thirty (30) days after complete submission of the required plans and specifications, the submitted plans and specifications shall be deemed approved by the ARC.

(f) Construction of Improvements after Approval by ARC. Following approval of proposed Improvements by the ARC, the Unit Owner shall cause the approved Improvements to be made to the Unit in a timely fashion.

(g) Guidelines, Standards, and Procedures. The ARC shall adopt guidelines, standards, and procedures for its day-to-day operations and the performance of its duties under this Declaration, which guidelines, standards, and procedures shall be consistently applied for all matters coming before the ARC.

(h) Compensation of Members of ARC. The members of the ARC may receive reasonable compensation for services performed, together with reimbursement for actual and reasonable expenses incurred by them in the performance of their duties.

(i) Non-Liability of ARC Members. Non of the ARC, any member thereof, or the Executive Board shall be liable to any Owner or to any other person for any loss, damage, or injury arising out of, or in any way connected with, the performance of the ARC=s duties under this Declaration. By granting its approval of proposed Improvements, the ARC will not be deemed to have approved or to have made any representation as to the safety, structural soundness, or compliance with local building codes or other governmental laws or regulations concerning the proposed Improvements.

### 23. Party Wall Provisions.

(a) Along and over the common boundaries between the Units lie Party Walls that, in conjunction with the footings underlying and the portion of the roof thereover, form a structural part of, and physically join, the improvements on the adjoining Unit(s).

(b) The Owners of adjacent Units shall each be deemed to own the necessary easements for the perpetual lateral and subjacent support, maintenance, repair, and inspection of the respective support, maintenance, repair, and inspection of the respective Party Wall with equal rights of joint use. The Association shall have the same necessary easements with respect to all Party Walls.

(c) No Owner of a Unit shall have the right to destroy, remove, or make any structural changes in a Party Wall that would jeopardize the structural integrity of either of the Units sharing such Party Wall without the prior written consent of the association, the adjacent Unit Owner, and any first mortgagee with respect to such adjacent Property; nor shall any Unit Owner subject a Party Wall to the insertion or placement of timbers, beams, or other materials in such a way as to adversely affect the Party Wall=s structural integrity. No Unit Owner shall subject a Party Wall to any use that in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by an adjoining Unit Owner.

(d) Should a Party Wall be structurally damaged or destroyed by the intentional act or negligence of either adjacent Unit Owner (the Responsible Unit Owner) or the Responsible Unit Owner's agent, contractor, employee, tenant, family member, licensee, guest, or invitee, the Association shall promptly rebuild and/or repair the Party Wall, the cost of which shall be a Common Expense apportioned to the negligent Unit Owner under paragraph 11.

(e) Should a Party Wall be Structurally damaged or destroyed by causes other than the intentional act or negligence of either adjacent Unit Owner (or their agents, contractors, employees, tenants, family members, licensees, guests or invitees), the damaged or destroyed Party Wall shall be repaired or rebuilt by the Association, the cost of which shall be a Common Expense apportioned among all the Unit Owners under paragraph 11.

(f) To the extent not inconsistent with the terms and conditions of this Declaration, the general rules of law of the State of Colorado concerning party walls shall be applicable hereto.

24. Association as Attorney-in-Fact - Damage and Destruction - Obsolescence. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project upon its destruction, repair or obsolescence.

Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place and stead for the purpose of dealing with the Project upon its destruction, repair or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each Unit and the Common Elements and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. Except as is otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless all Owners and all first Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

(a) In the event of damage or destruction to the Project to the extent of not more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s).

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost of the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Units. Such deficiency assessment shall be a Common Expense and made pro rata according to each Owner's interest in the Common Elements and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided hereinbefore. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (i) for payment of taxes and special assessment liens in favor of any assessing entity;
- (ii) for payment of the balance of the lien of any first Mortgage;
- (iii) for payment of unpaid Common Expenses;
- (iv) for payment of junior Mortgages and encumbrances in the order of and to the extent of their priority; and,
- (v) the balance remaining, if any, shall be paid to the Owner.

(c) If the Project is destroyed or damaged to the extent of more than sixty-six and two-thirds (66-2/3%) of the total replacement cost thereof, not including land, the Board shall adopt a plan for the repair and reconstruction of the Project, and all Owners shall be bound by the terms and provisions of such plan, unless the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more, of the Common Elements and at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each first Mortgage owner) vote not to adopt such plan within one hundred (100) days after the damage or destruction. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance for such destruction or damages, as well as the proceeds of an assessment to be made against all of the Owners and their Units. Any assessment made in connection with such plan shall be a Common Expense and made pro-rata according to each Owner's percentage interest in the Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided hereinabove. In addition thereto, the Association, as





sales proceeds shall be apportioned between the Owners on the basis of each owner's percentage interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraphs (b) (I) through (v) of this paragraph.

25. Miscellaneous.

(a) Duration of Declaration. All of the provisions contained in this Declaration shall continue and remain in full force and effect until ownership of the project and this Declaration are terminated, revoked, or amended as hereinafter provided.

(b) Amendment and Termination. Any provision contained in this Declaration may be amended, or additional provisions may be added to, this Declaration or this Declaration and ownership of the Project may be terminated or revoked, by the recording of a written instrument or instruments specifying the amendment or addition or the fact of termination and revocation, executed by all the Owners, as shown by the records in the office of the Clerk and Recorder of the County of Fremont, Colorado, of Units of the Common Elements and first Mortgagees whose liens encumber an aggregate ownership interest of one-hundred percent (100%), or more of the Common Elements: provided however, that in no event shall the undivided interest of an Owner in the Common Elements be decreased without the unanimous consent of each Owner and each first Mortgagee; and provided further, that so long as Declarant continues to own one or more Units, which he is holding for rental or sale, no rights of Declarant contained in this Declaration may be amended or modified without the consent of Declarant. The consent(s) of any junior Mortgagees shall not be required under the provisions of this paragraph. The Association shall at least ten (10) days prior to the effective date of any amendment to this Declaration notify all first Mortgagees of record of such amendment.

In general, except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under C.R.S. 38-33.3-107, or by certain Owners under C.R.S. 38-33.3-218, and except as otherwise limited by this Declaration, this Declaration and the Plat may be amended only by vote or agreement of at least sixty-seven percent (67%) of the Unit Owners. The procedure for amendment must follow the procedures at C.R.S. 38-33.3-217.

(c) Effect of Provisions of Declaration. Each provision of this Declaration, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration shall:

(i) be deemed incorporated in each deed or other instrument by which any right, title or interest in the Project or in any Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument;

(ii) by virtue of acceptance of any right, title or interest in the Project or in any Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other non-aggrieved Owner;

(iii) be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Project and each Unit; and

(iv) be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Project and each Unit in favor of the Association.

(d) Protection of Encumbrancer. No violation or breach of or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any first Mortgage, or other lien on any Unit taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of the County of Fremont, Colorado, prior to the time of recording in said office of an instrument describing the Unit and listing the name or names of the Owner or Owners of fee simple title to the Unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such first Mortgage, or other lien or the title or interest acquired by any purchaser upon foreclosure of any such first Mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration; provided, however, that violation or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

(e) Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to the Act of the State of Colorado and to all other provisions of law.

(f) Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the masculine shall include the feminine and the neutral.

IN WITNESS WHEREOF, Declarant has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 2008.

DCS Development & Construction, LLC

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

STATE OF COLORADO    )  
                                          )  
County of Fremont        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## EXHIBIT 1

### LEGAL DESCRIPTION:

A tract of land located in the Northwest Quarter of Section 35, Township 18 South, Range 70 West of the 6<sup>th</sup> P.M., Fremont County, Colorado, described as follows: Commencing at the point of intersection of the West Line of Steinmeier Street and the North Right of Way Line of the D & R G W Railroad Right of Way; thence running North along said West line of Steinmeier Street 979 feet; thence South 89E51'05" West, 979 feet, more or less, to a point on the Northerly Right of Way Line of the D & R G W Railroad; thence Southeasterly along this Northerly Right of Way Line of said Railroad to the point of beginning.

## EXHIBIT 2

UNIT	ALLOCATED INTEREST IN THE GENERALAND LIMITED COMMON ELEMENTS
Unit 1a	1/49
Unit 1b	1/49
Unit 2a	1/49
Unit 2b	1/49
Unit 3a	1/49
Unit 3b	1/49
Unit 4a	1/49
Unit 4b	1/49
Unit 5a	1/49
Unit 5b	1/49
Unit 6a	1/49
Unit 6b	1/49
Unit 7a	1/49
Unit 7b	1/49
Unit 8a	1/49
Unit 8b	1/49
Unit 9	1/49
Unit 10a	1/49
Unit 10b	1/49
Unit 11a	1/49
Unit 11b	1/49
Unit 12a	1/49
Unit 12b	1/49
Unit 13a	1/49
Unit 13b	1/49

Unit 14a	1/49
Unit 14b	1/49
Unit 15a	1/49
Unit 15b	1/49
Unit 16a	1/49
Unit 16b	1/49
Unit 16c	1/49
Unit 16d	1/49
Unit 17a	1/49
Unit 17b	1/49
Unit 18a	1/49
Unit 18b	1/49
Unit 19a	1/49
Unit 19b	1/49
Unit 20a	1/49
Unit 20b	1/49
Unit 21a	1/49
Unit 21b	1/49
Unit 21c	1/49
Unit 22a	1/49
Unit 22b	1/49
Unit 23a	1/49
Unit 23b	1/49
Unit 24	1/49