

Deer Run Homeowners Association

Amended and Restated Declaration

of

Covenants, Conditions, Restrictions and Easements

AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
DEER RUN AT NOR'WOOD

April 2016
Revision 7

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This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Deer Run at Nor' Wood (this "Declaration") is made effective on the date on which it is recorded.

RECITAL

- a) Development Management, Inc., a Colorado corporation ("Original Declarant") recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements for Deer Run at Nor' Wood on March 15, 1994 in Book 6401 beginning at Page 1184 and recorded amendments in Reception Nos. 097081135 and 099080043 and any other supplemental documents which contained amendments or added additional real property to the Deer Run project (collectively the "Original Declaration").
- b) The project described in the Original Declaration has now been built (except for four Lots) and so references to the Original Declarant, the Original Declaration, and any Builders are not needed and so deleted from the text of this Declaration.
- c) Section 11.4 of the Original Declaration provided that it may be amended by approval by Members with at least 67% of the voting powers of the Association.
- d) As shown by the signatures as recorded by the Association Secretary, 67% of the Owners have approved this Amendment and the President has duly certified their signatures and certified that based upon authoritative evidence as to ownership, all compliances have been obtained.

NOW THEREFORE, the undersigned Owners and the Association do hereby submit the Property described in the Original Declaration and all improvements thereon to the provisions of this Declaration, including without limitation the Recitals hereof, and do hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land and shall be a benefit and burden to the Owners, their successors and assigns and to any person or entity acquiring or owning an interest in the above described real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, personal representatives and assigns. The Original Declaration is hereby completely amended, restated, replaced and superseded by this Declaration and the following amended and restated provisions, which shall be incorporated by this Declaration as if initially set forth therein.

ARTICLE 1
GENERAL

Section 1.1. Colorado Common Interest Ownership Act. Deer Run at Nor'Wood is a common interest ownership community as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103(22), Colorado Revised Statutes. Any provision of this Declaration which conflicts with such Act is hereby modified to comply, and any provision required by said Act is hereby deemed incorporated herein as if set forth herein.

Section 1.2. Property Affected. All of the real property is in the City of Colorado Springs, El Paso County, Colorado described on the attached Exhibit A and shown on the plats which are attached hereto are made part of this Declaration. The real property described in Exhibit A is referred to in this Declaration as a "Community Area".

Section 1.3. Purpose of this Declaration. This Declaration is executed to: (a) Eliminate obsolete material from the original documents as amended, (b) to include previous amendments, (c) to bring the covenants into compliance with state and federal law, (d), to provide for the Association to hold, maintain and manage certain Common Properties and amenities within the Community Area and to perform certain functions for the benefit of Owners of the land within the Community Area, (e) to define the duties, powers and rights of the Association, and (f) to define certain duties, powers and rights of Owners.

Section 1.4. Declarations. The Association, for itself, its successors and assigns, hereby declares that the Community Area and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations and reservations, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement, and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and until their expiration in accordance with Section 11.2 hereof, (a) all of the property in the Community Area and each part or partial thereof, (b) the Association and its successors and assigns, and (c) all other persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or portion thereof or any improvement thereon, and their encumbrances, claimants, heirs, prescriptions, successors and assigns.

ARTICLE 2
DEFINITIONS

Unless otherwise expressly provided in this Declaration, or in the Colorado Common Interest Ownership Act, the following words and phrases, whenever used in this Declaration, shall have the meaning specified in this Article 2.

Section 2.1. Architectural Committee. "Architectural Committee" shall mean the Architectural Control Committee described in Section 4.1 of this Declaration.

Section 2.2. Assessments. "Assessment" shall mean a Common Assessment pursuant to Section 7.3, a Special Assessment pursuant to Section 7.7, or a Site Assessment pursuant to Section 7.8.

Section 2.3. Association. "Association" shall mean Deer Run at Nor'Wood Homeowners Association, a Colorado nonprofit corporation, its successors and assigns.

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

- (a) The Articles of Incorporation of the Association;
- (b) The Bylaws of the Association;
- (c) This Declaration, including the plat and any and all amendments to this Declaration;
- (d) Any supplemental plat;
- (e) The Rules and Regulations; and

Section 2.5. Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of this Association. Unless approval by the Owners is specifically required by the Association Documents, any and all powers under the Association Documents may be exercised by the Board in its sole discretion.

Section 2.6. Common Properties. "Common Property" or "Common Properties" shall mean all real and personal property, together with any and all improvements now or hereafter thereon and appurtenances and rights thereto, hereafter owned by the Association or which the Association hereafter maintains, holds or uses for common use and enjoyment of all or certain other members as provided herein and for other purposes as may be permitted by this Declaration. The Common Properties include all perimeter fences along the boundaries of the Community Area (excluding the fence along Rangewood Drive, which is to be maintained by Nor'Wood Special Improvement Maintenance District) and all landscaping and improvements at the entry areas, which are or will be owned by the Association. All Yards of all Residences may be considered

Common Properties for certain purposes as set forth herein, notwithstanding that Yards and Residences are owned by Owners other than the Association. The landscaped area adjacent to the boundary of the Community Area along Saddlerock Road, which is located in the public right-of-way and owned by the City of Colorado Springs, is also Common Property. The Association as provided in this Declaration shall maintain this Common Property.

Section 2.7. Community Area. "Community Area" shall mean the real property described on Exhibit A and shown on Exhibit B, and any other real property hereafter made subject to the provisions of this Declaration, together with any and all improvements now or hereafter on such real property and appurtenances and rights to such real property.

Section 2.8. Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Deer Run at Nor'Wood in its entirety, including all attachments and amendments.

Section 2.9. Improvements. "Improvements" shall mean all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, working areas, concrete, paving, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, mailboxes, exterior tanks, solar equipment, satellite dishes, exterior air conditioning and water softener fixtures. Improvements shall also mean an excavation or fill, the volume of which exceeds two (2) cubic yards, and any evacuation, fill, ditch diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 2.10. Landscape. "Landscape" shall mean any treatment of ground surface with live plant materials, woodchips, crushed stone, decorative rocks, mulch materials, or other decorative surfacing materials approved by the Architectural Committee. For purposes of this definition, the word "landscape" shall include all other forms of the word landscape, such as landscaped and landscaping.

Section 2.11. Lot. "Lot" shall mean a parcel of land subject to this Declaration, which is shown as a Lot on the plat or any supplemental plat on which one (1) single-family Residence may be constructed pursuant to the subdivision ordinances of the City of Colorado Springs and which is not owned by the Association. Each Lot constitutes a "unit" as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103(30), Colorado Revised Statutes. The maximum number of Lots that may be created with the Community Area is sixty-five (65).

Section 2.12. Lot Lines. Front, side and rear Lot lines shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time. In the absence of such a definition, a front Lot line is each boundary line (whether one or more) between the Lot and any public street. A side Lot line is any boundary line, which meets and forms an angle with a public street except that for a corner Lot with two (2) front Lot

lines, the side Lot line is the boundary, which forms an angle with the street that affords the principal access to the Lot.

Section 2.13. Member. "Member" shall mean a member of the Association, who must also be an Owner; membership in the Association shall be appurtenant to, and may not be severed from ownership of a Lot.

Section 2.14. Owner. "Owner" shall mean the record titleholder whether one or more persons or fee simple title to a Lot, including sellers under executor contracts of sale and excluding buyers thereunder.

Section 2.15. Plat. "Plat" shall mean the land survey plat(s) of the Community Area, which is attached hereto as Exhibit A.

Section 2.16. Related User. "Related User" means (a) any person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser of any Residence on a Lot; (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing persons.

Section 2.17. Residence. "Residence" shall mean one (1) continuous, integrated single-family residential structure on a Lot, including any foundation, walls, roofs, supporting columns, eaves, downspouts, attached garages, decks, driveways and walled-in or fenced-in patios and dog runs integral with or contiguous to the structures and the land immediately underneath the portions of a structure permanently in contact with and affixed to the ground.

Section 2.18. Rules and Regulations. "Rules and Regulations" shall mean the rules, regulations, and policies adopted by the Board of Directors as provided for in the Association Documents.

Section 2.19. Supplemental Plat. "Supplemental Plat" shall mean a plat satisfying the requirements of Section 38-33.3-209 of the Colorado Revised Statutes, which amends the plat.

Section 2.20. Yard. The Yard is that portion of each Lot, which is not part of the Residence.

ARTICLE 3
**COVENANTS TO PRESERVE THE RESIDENCIAL CHARACTER
AND QUALITY OF THE COMMUNITY AREA**

Section 3.1. Property Uses. All Lots in the Community Area shall be used for private, single-family residential purposes only, and no Residence erected or maintained within the Community Area shall be used or occupied for any purpose other than for a single-family dwelling. Multiple family dwellings, group homes or other occupancies involving non-single family uses are prohibited. No business, trade, commercial activity, profession or similar activity, whether profit or nonprofit, shall be carried on or conducted within any Lot or Residence, except as provided for in Section 3.18. Other prohibited uses are as follows:

- (a) Leasing of Home. No Lot or Residence shall be used, occupied or rented for short-term, vacation, time-sharing, transient or hotel purposes, or any rental if the occupants are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. In addition, no Lot or Residence shall be used occupied or rented unless the following conditions are met: (a) the initial term of any lease or other tenancy shall be at least six (6) months in duration, and following the initial six months, occupancy or rental for that renter shall not be less than thirty (30) continuous, consecutive days; (b) no Owner may lease less than his entire Lot or Residence; (c) all leases shall be in writing; (d) no subleasing shall be permitted; (e) all leases shall provide that the terms of the lease, the tenant's occupancy of the Lot or Residence shall be subject in all respects to the provisions of the Association Documents and that any failure by the tenant to comply therewith shall be a default under the lease; and (f) the Association's Board will require that an Owner submit a copy of each lease to the Board, along with names and pertinent information of the renter.

- (b) Illegal Activities. No Owner or other Person shall use or allow the use of any Lot or Residence in any way whatsoever for any purpose which is a violation of Federal, State or City laws, including the growing, cultivating, producing, processing, manufacturing, packaging, advertising, distributing, transferring, selling, storing, or providing any drug or substance, such as marijuana or related drugs, which is illegal or prohibited under Federal, State or Local laws or regulations or under the Association Documents. No Lot or Residence shall be used in any way whatsoever which violates this Section (b). Any violation of this Section (b) is hereby declared to be a nuisance and may be enjoined or abated by the Association or any Owner entitled to enforce the provisions of this Declaration and may result in fines and other enforcement activity in the sole discretion of the Board.

- (c) Rules. The prohibitions and requirements of this Section 3.1 may be further amended, clarified or defined by the Board of Directors in its sole discretion through the Rules and Regulations.

Section 3.2. Residential Restrictions. No more than one (1) Residence shall be permitted on any Lot within the Community Area. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single- family Residence not to exceed 2 stories in height on Seton Place or the east side of Velvet Court. Residences on Doe Skin Court or Creekwood Court shall not exceed one story and not be built or modified so as to block the view of homes on Doe Skin Court or Velvet Court. All Residences must include a private garage for not less than two (2) cars, unless otherwise approved by the Architectural Committee. Garages shall not be converted to or used for living space. No building shall be permitted on any Lot unless such building has been duly constructed thereon. No building partially or completely finished or of a permanent nature and located elsewhere may be moved to or placed upon a Lot or portion of a Lot within the Community Area. Any building, wall, fence or other structure constructed, erected, moved to or placed on a Lot within the Community Area shall be constructed of new materials. The foregoing residential use restrictions shall not prohibit a builder or developer from using a residential type structure as a construction and/or sales office so long as the builder or developer has a permit for such use from the City and is actively marketing and/or constructing houses in the Community Area.

Section 3.3. Residence Qualities and Size. It is the intention and purpose of this Declaration to assure that all Residences shall contain a high quality of workmanship and materials. The floor area of Residences on the Lots, exclusive of one-story open porches and garages, shall be as follows:

- (a) No less than 1,250 square feet for a ranch-style one-story Residence;
- (b) No less than 2,200 square feet for a two-story Residence;
- (c) No less than 1,800 square feet for a bi-level Residence, of which 1,600 square feet must be finished; and
- (d) No less than 1200 square feet for the two upper levels of a 2-story Residence.

Section 3.4. Minimum Setbacks. No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than any minimum building setback lines which may be shown on development plans or subdivision plats of the Lots prepared and approved in accordance with the subdivision ordinances of the City of Colorado Springs. All structures shall have not less than ten (10) feet of area separation. For the purpose of this Declaration, eaves, steps, fireplaces and open porches may encroach into a setback area, but this shall not be construed to permit eaves, steps, fireplaces, porches or any other portion of the building on a Lot to encroach upon another Lot.

Section 3.5. Lot Areas. No Residence or other building shall be erected or placed on any Lot having an area of less than 3000 square feet.

Section 3.6. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Refuse piles or other unsightly materials or objects shall not be allowed to be placed or remain in open storage upon Lots or easements.

Section 3.7. Parking and Vehicles.

- (a) Parking. No vehicle shall be parked within the Community Area in violation of laws and ordinances, such as parking in fire lanes or no parking areas. Vehicles shall not be parked upon any landscaping, such as rock areas. The Board in its sole discretion may adopt Rules and Regulations which further regulate or restrict vehicles, parking and traffic within the Community Area.
- (b) Commercial Vehicles, Boats, Trucks, Campers and Trailers. No boat, trailer, (on or off supporting vehicle), tractor, commercial vehicle, utility trailer, any towed trailer unit or truck shall be parked overnight on any street or within any Lot. No commercial vehicles shall remain within public view on any Lot or on any street overnight. "Commercial vehicles" shall be defined by the Board based upon commercial tags or commercial advertising or commercial equipment or materials or other reasonable basis. Pickup trucks commonly known as 3/4-ton class (for example, F-250, Sierra 2500 and Ram 2500) or less, with or without bed toppers, and passenger vans for the private use of the residents of a Residence as primary transportation on a day-to-day basis, shall not be considered trucks for purposes of the above restrictions. Campers or motor homes may be parked on the street for no more than two (2) consecutive nights.
- (c) Variances. The Board may grant temporary variances to this Section 3.7 in its sole discretion.

Section 3.8. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a Residence or for storage, either temporarily or permanently.

Section 3.9. Inoperative Vehicles and Repairs. No unused, stripped-down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring Lot or street, unless fully screened in a manner approved by the Architectural Committee. An unused vehicle is any vehicle, which is not properly licensed, registered or has remained immobile for more than seven (7) days as determined by the Board. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed improvement which screens the sight and sound of the activity from adjoining streets and from neighboring

property.

Section 3.10. Clotheslines and Storage. No clotheslines, drying yards, service yards, wood piles or storage area shall be so located as to be visible from any street, unless screened, or enclosed in a manner approved by the Architectural Committee except as permitted by Federal or State law.

Section 3.11. Antenna and Roof Projections. No aerial, antenna, satellite dish or microwave system for reception or transmission of radio, television or other electronic signals, or other roof projections shall be maintained on the roof or other improvements on a Lot, unless approved by the Architectural Committee in its sole discretion or permitted by Federal or State law.

Section 3.12. Solar Energy Devices. A licensed architect must design all solar energy devices erected or installed on any Lot, and plans for solar energy devices submitted to the Architectural Committee must bear the architect's stamp. All solar energy devices must comply with all requirements imposed by the City of Colorado Springs or Pikes Peak Regional Building Department or any Federal or State laws.

Section 3.13. Fences and Dog Runs. No fences will be permitted on any Lots within the Community Area except as provided in this Section and only upon the prior written approval of the Architectural Committee. An Owner may install a fence on his Lot around the perimeter of a patio or for a dog run, provided the Owner obtains the prior written approval of the Architectural Committee. No fencing shall be allowed in the minimum building setback areas in front of a Residence.

Section 3.14. Oil and Mineral Operations. No oil drillings, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

Section 3.15. Signs and Mailboxes. No sign of any kind shall be displayed to the public view on any Lot, except one (1) sign for privacy, identification, or security of not more than one (1) square foot and one (1) sign of not more than five (5) square feet advertising the Lot and the Residence for sale or rent. No signs will be permitted within or in view of the area maintained by the Nor'Wood Special Improvement District, without prior approval by that District's Advisory Board. The foregoing restrictions in this Section do not apply to temporary signs erected by builders to market homes within the Community Area. Only those mailboxes approved by the Architectural Committee may be directed or installed within the Community Area. Nor do the restrictions apply to political signs, for forty-five (45) days prior to an election, up to seven (7) days after the election. Political signs may not be larger than 36" by 48" and may not be more than one (1) sign per political office or ballot issue.

Section 3.16. Livestock and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot, except that dogs, cats or other household pets may be kept in a reasonable number, provided that they are not kept, bred or maintained for any commercial purpose and further provided that the Board of Directors may adopt Rules and Regulations governing dogs, cats and other pets, including, without limitation, complete prohibitions and restrictions on numbers and activities. In addition to Rules and Regulations set by the Board, residents must comply with the City of Colorado Springs animal control and leash laws including Article 7 of the City of Colorado Springs, Animal Control and Leash Laws, which state:

"It shall be the duty of any owner or keeper of any dog to restrain the dog by means of confinement, collar and leash, or bridle from running at large upon any public place in the City, and to prevent the dog from becoming a danger to persons or property..."

To promote, maintain and preserve the residential character and quality of the Deer Run properties, as well enhance and ensure the health of all residents and their pets, owners are required to clean up all excrement left by their pets on any property within Deer Run.

Section 3.17. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be concealed from public view, except on the day of collection.

Section 3.18. Commercial Enterprises. No commercial enterprises shall be conducted or maintained upon, in front of, or in connection with any Lot. Nor shall any Lot in any way be used for other than strictly private single-family residential purposes, except that the following activities are permissible within a Residence:

- (a) The use of an office inside a Residence by the occupants of the Residence;
- (b) The use of a personal computer for business or commercial purposes;
- (c) Any business activity that is conducted by telephone, mail or their equivalents;
- (d) The prohibitions of Section 3.1 shall apply.

The Board may adopt Rules and Regulations and make decisions in its sole discretion whether any use constitutes a commercial use.

Section 3.19. Sight Distance at Intersections. No fence, wall, hedge or shrub which obstructs sight lines shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

Section 3.20. Landscaping.

- (a) All landscaping of Yards on all Lots (except the vacant Lots) has been installed by builders of Residences in accordance with an overall landscaping plan for the entire Community Area. The Owner of the Lot shall not change any of the landscaping in his Yard without the prior written approval of the Architectural Committee. All Yards shall be maintained by the Association in an attractive and well-groomed manner, as provided in this Declaration, but Owners must maintain and control drainage from the Residences in a manner that does not damage or flood the Yards.
- (b) Vacant Lots must have sod planted, a properly designed sprinkler system installed and sidewalks installed pursuant to approval by the Architectural Committee within twelve (12) months of a Lot being purchased or written notice from the Board, whichever is later. Association dues must commence being paid upon installation of the sod. The upkeep of the grass and sprinkler system will then become the responsibility of the Association to maintain to the extent provided in this Declaration.
- (c) Storage or parking of vehicles or other items shall not be allowed on the landscaping.

Section 3.21. Maintenance and Soils.

- (a) The soils within the State of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Residence if the Residence and a Lot containing it are not properly maintained. Expansive soils contain clay materials which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes the realignment of soil grains thereby resulting in consolidation and/or collapse of the soils.
- (b) Builders were and are required to prepare a grading plan for the Lot according to FHA or VA specifications, which plan shall be subject to the approval of the Architectural Committee. Once such grading plan is approved, no one shall be permitted to change the grading built in accordance with the approved grading plan without the approval of the Architectural Committee. Anyone desiring to change the grading plan shall prepare a professionally engineered revised grading plan, which must be submitted to the Architectural Committee prior to the changes of grading. The procedure for approving grading plans shall be the same as the procedure described in Section 4.2 for approval of plans and specifications.
- (c) An Owner shall not impede or hinder in any way the water falling on his Lot from reaching the drainage courses established by the builder for the Lot and for the Community Area.
- (d) An Owner shall maintain the grading and drainage patterns of the Community

Area and his Lot established by the builder of the Residence on the Owner's Lot according to the approved grading plan established by the builder or authorized by the Architectural Committee.

ARTICLE 4 **ARCHITECTURAL CONTROL**

Section 4.1. Architectural Committee. The Board may at its discretion serve as the Architectural Committee or it may appoint members of the Association to serve as the Architectural Committee. The Architectural Committee shall exercise the functions assigned to it by this Declaration, including reviewing and approving all plans for improvements as provided in this Declaration. A majority of the Architectural Committee may designate a representative to act for it. Any member of the Architectural Committee may resign at any time. Neither the members of the Architectural Committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this Declaration. However, the Board or the Architectural Committee may hire and pay a manager, an architect, a designer or any other agent to assist it in the review of plans and the enforcement of this Declaration and may pay attorneys' fees in connection with the interpretation, administration and enforcement of this Declaration. The Board or the Architectural Committee may require an Owner who submits a plan for approval to pay a reasonable fee to cover the cost of reviewing and approving plans.

Section 4.2. Approval Required. No improvement, including but not limited to buildings, fences, walls or other structures or landscaping shall be commenced, erected, installed, maintained or permitted to occur or exist on any Lot or elsewhere within the Community Area, nor shall any addition, change or alteration thereto be made, until two (2) copies of the plans and specifications, including a summary with the plans (as provided below), showing the nature, kind, shape, height, materials, location and approximate cost of each improvement, or the additions, changes or alterations thereto, and the grading plan of the Lot to be built upon, have been submitted to and approved in writing by the Architectural Committee. Likewise, the color and material of all the roofing, shingles, siding and exterior walls must be submitted to and approved by the Architectural Committee before installation. Concurrently with submission of the plans and specifications, the party submitting them shall submit to the Architectural Committee a summary of the plans, stating the square footage of any building, categorized by livable, finished and unfinished square footage, listing the building materials to be used on the exterior walls and roof, describing the exterior colors, and certified as true and correct by the party who prepared the summary. The Architectural Committee shall have the right to refuse to approve any plans or specifications, including the final grade elevations, which are not suitable or desirable in its opinion for aesthetic or other reasons or are not in conformance with a specific provision of this Declaration. In so passing upon such plans, specifications and grading plans, the Architectural Committee shall have the right to take into consideration, among other things, the use and suitability of the proposed building or structure and of the materials with which it is to be built, the Lot upon which the improvements will be erected, and the harmony of the external appearance with the surroundings.

Section 4.3. Changes in Appearance. Changes in color or other exterior appearance of buildings, fences or other structures shall be only in accordance with plans previously presented to and approved by the Architectural Committee.

Section 4.4. Procedures. All requests for approval shall be submitted to the address of the Association. Upon presentation of two (2) sets of plans and specifications for approval, and an address to which approval or disapproval may be mailed, the Owner or builder who submits the plans shall be issued a receipt by the Committee or its authorized agent who receives the same, receipt shall state the date, recite the documents and other items received, and be signed by the Owner or the builder or his agent and for the Architectural Committee by the individual issuing the receipt. The Architectural Committee's approval or disapproval as required by this Declaration shall be in writing. No approval shall be effective unless it is in writing. In the event the Architectural Committee or its designated representative fails to approve or disapprove within thirty (30) days after the plans and specifications have been received by it, the request and the plans shall be deemed to be disapproved and construction shall not commence until and unless written approval is obtained from the Architectural Committee. Approvals of all plans and specifications for an improvement will automatically expire one (1) year after approval. If construction is not commenced within one (1) year after approval and if approvals so expire, the Owner or applicant must resubmit a request for approval of the improvement. If plans are not approved, disapproval shall be designated and the reasons for disapproval shall be specified in writing by the Architectural Committee, on the plans and specifications, or letter attached thereto, with one (1) set being retained by the Architectural Committee for a period of one (1) year after approval or disapproval (after which the Architectural Committee may dispose of the plans) and the other being returned to the Owner or builder. Within thirty (30) days after receipt of the request for approval, the Architectural Committee's response should be deposited postage prepaid in the U.S. Mail, addressed to the Owner or builder at the address given by the Owner or builder at the time of his application, or response may be sent by electronic communication if provided by the applicant. In addition to keeping approved plans for one (1) year, the Architectural Committee shall also maintain a record of the action taken on each formally submitted request. The Architectural Committee may charge reasonable fees to cover expenses incurred in the review of plans, specifications, samples and material submitted pursuant to this Declaration, not including compensation to the members of the Architectural Committee for their time and services.

Section 4.5. Non-Liability. Neither the Board nor the Architectural Committee, nor any member or agent thereof, shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve any plans, specifications or variance. Approval by the Architectural Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Committee to comply with all codes, ordinances and regulations.

ARTICLE 5
THE ASSOCIATION

Section 5.1. General Purpose and Powers. As set forth in its Articles of Incorporation, the Association is established as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to provide for the ownership, care, management, control, preservation, operation, maintenance, repair, restoration and replacement of the Common Properties, and may assess all Owners and Lots for such purposes as provided in the Association Documents. The Association, through the Board, shall perform functions as provided in this Declaration and in the Association's Articles of Incorporation and Bylaws so as to further the ends of the Association's interests and the interest of Owners with respect to Common Properties and the Community Area. The Association may enter into contracts with independent contractors to manage, control, operate, maintain, repair, restore and replace the Common Properties and Community Area. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration or other Association Documents, or reasonably to be implied from the provisions of this Declaration or other Association Documents, or given or implied by the Colorado Common Interest Ownership Act, or otherwise by law or which may be necessary or desirable to fulfill the Association's duties, obligations, rights or privileges. Without limiting the generality of the foregoing the Association shall:

- (a) Manage, control, operate, preserve, maintain, repair, restore and replace all properties owned by the Association or the City of Colorado Springs, including the replacement of damaged or destroyed properties owned by the Association or by the City of Colorado Springs, as necessary.
- (b) Maintain, repair and restore all Yards within the Community Area subject to the limitations of Section 8.1; however, damage caused by the Owner, the Owner's contractor or the Owner's Related Users or animals (pets) shall be the responsibility of the Owner to repair or reimburse the Association for cost to repair such damage.
- (c) Pay Federal and State taxes, if any, assessed against the Association.
- (d) Obtain and maintain such insurance as may be required to insure the Common Properties against hazards and casualty, excluding fire and extended coverage and other property casualty insurance for all Residences and Yards, which insurance shall be the responsibility of each Owner, and to protect the Owners and the Association from liability for occurrences on or relating to the Common Properties, and amounts required by law and commensurate with the levels of insurance customarily carried with respect to high-quality projects of similar type in El Paso County, Colorado.

- (e) All improvements and areas to be maintained by the Association shall be maintained in good condition, and the maintenance obligations of the Association shall be performed in accordance with Section 8.1 below.

Section 5.2. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If additional Lots are added to the Association, membership shall automatically be expanded thereby. Members in good standing shall have the right to cast votes for the election of the Board of Directors and other matters to be voted on by the Members, as provided in the Association Documents. Each Member in good standing shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 5.3. Board of Directors. The Board shall manage the affairs of the Association. Members in good standing, as provided in the Bylaws of the Association, shall elect members of the Board of Directors annually. The Articles of Incorporation and Bylaws of the Association shall provide the number and qualification of directors.

Section 5.4. Bylaws and Articles. The purposes and powers of the Association and the rights and obligations of the Owners and the Association may be amplified and supplemented by provisions of the Articles of Incorporation and Bylaws of the Association, but no such provision may be inconsistent with any provision of this Declaration.

Section 5.5. Status of Association and Indemnity. The Association is a nonprofit corporation organized solely for the purposes set forth in this Declaration and in the Association's Articles of Incorporation. The Association is not, and shall not be, involved in or connected in any way with the professional or business activities of any Owner conducted on any Lot. Each Owner, by acceptance of a deed to any portion of the Community Area, indemnifies and holds the Association harmless from all losses, claims, damages or liabilities arising out of such Owner's professional or business activities conducted in or upon the Community Area.

Section 5.6. Non-liabilities of Association and Others. The Association and its officers, directors and Members, as well as members of the Architectural Committee and the agents of each of them, shall not be liable for damages to or any claims of any kind by any person whatsoever for any act or omission incident to their respective offices, employment or duties relating to the Association or Deer Run at Nor'Wood unless the act or omission is in bad faith and constitutes wanton and willful misconduct.

ARTICLE 6
DISPUTE RESOLUTION

Section 6.1. Dispute Resolution Policy. The Association hereby establishes procedures for addressing disputes arising between the Association and Owners and between Owners.

(a) Purpose. The Association believes that the relationships in our community may be damaged whenever litigation is used in order to resolve disputes, and that the inherent problems in court proceedings make litigation a particularly inefficient means of resolving community disagreements. As a result, the Association has adopted this policy to encourage the use of alternative methods for resolving disputes.

(b) Goal. In the event of any dispute between the Association and any Owner and/or disputes between individual Owners or residents, if the situation does not involve unpaid Assessments or an imminent threat to the peace, health, or safety of the community, the parties involved in the dispute should attempt to resolve the dispute using the procedures set forth below prior to filing a complaint in court or otherwise initiating a legal proceeding.

(d) Policy. If both parties to the dispute agree to attempt mediation, the dispute should be mediated in accordance with the procedure described below. In cases where the dispute is between Owners, and both Owners agree, the Board may, but is not obligated to, act as mediator.

Section 6.2. Procedure for Requesting Mediation. Any Owners wishing to resolve a dispute will provide each other party to the dispute with a written request describing:

- (a) The dispute, including the date, time, location and persons involved;
- (b) The requested action or proposal that would resolve the dispute; and
- (c) Times and dates that the requesting party would be available to meet with the other party to determine how to resolve the dispute.

Section 6.3. Board's Discretion. At the Board's discretion, the Association may, but shall not be required to, submit any dispute between the Association and any Owner(s) to mediation, arbitration, or other alternative dispute resolution device in accordance with the above procedure or any Rule or Regulation adopted by the Board; provided, however, that the Association reserves all rights to seek equitable and legal relief through any court having jurisdiction over the dispute.

ARTICLE 7
ASSESSMENTS

Section 7.1. Obligation for Assessments. Each Owner of each Lot within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such a deed, shall be considered to agree and agree to pay to the Association, in the manner, amount and at times prescribed herein, all Assessments which are described in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein. Each Owner of a Lot shall be jointly and severally liable, with any other Owners of the same Lot, to the Association for the payment of all Assessments attributable to them and/or their Lot. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by nonuse of the Common Properties or the facilities contained therein, by abandonment or leasing of his Lot, or by asserting any claims against the Association, or any other person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and Special Assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Common Properties owned by the Association shall be exempt from Assessments hereunder.

Section 7.2 Purposes of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, and welfare of the Owners and for the improvement and maintenance of the Common Properties as more specifically provided herein, and therefore will commence with respect to each Lot after a Residence has been substantially completed on the Lot or during a twelve (12) month grace period for the new Owner to begin construction of a Residence or install, at the minimum, sod, a sidewalk and a sprinkler system on the property.

Section 7.3 Common Assessments. The Common Assessments may include, but shall not be limited to, the following common expenses:

- (a) Expenses of management of the Association and its activities;
- (b) Taxes and Special Assessments upon the Association's real and personal property;
- (c) Premiums for all insurance which the Association is required or permitted to maintain by Law;
- (d) Common services to Owners as approved by the Board;
- (e) Landscaping and care of any Yards and Common Properties pursuant to Section 8.1(a) of this Declaration and any other property which is the responsibility of the Association or for improvements located thereon;
- (f) All other repairs and maintenance that are the responsibility of the Association under Section 8.1 hereof;
- (g) Wages for Association employees and payments to the Association contractors;
- (h) Legal and accounting fees for the Association;
- (i) Any deficit remaining from a previous Assessment year;
- (j) The creation of reasonable contingency reserves, surpluses, sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of Common Properties or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments;
- (k) The creation of reasonable contingency reserves for any applicable insurance deductible and emergencies; and
- (l) Any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, at its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

Section 7.4. Common Assessment Procedures. No later than thirty (30) days prior to an annual meeting to be scheduled in November of each year, the Board of Directors shall forward to each Member a proposed agenda for the meeting with the scheduled date and location of the meeting. Along with notification of the meeting, a proposed budget for the following year shall be included with the notification. Specific attention shall be called to any proposed change in the monthly Assessment included in the proposed budget.

Section 7.5. Maximum Common Assessments. The maximum monthly Assessment against each Lot may, at the Board's option, be increased effective each fiscal year by up to ten percent (10%). With the approval of a majority of the Members present at the annual membership meeting in November of each year, a larger Assessment may be made. Such approval shall be indicated by a vote of the Members present at the meeting and recorded in the minutes of the meeting. Any approved increase (or decrease) in the monthly Assessment shall become effective on the first day of January following the November membership meeting. All Owners shall be notified in writing of any change in the monthly Assessment within thirty (30) days after the November membership meeting.

Section 7.6. Rate of Assessments. Common and Special Assessments shall be fixed at uniform, equal rates for all Lots containing a substantially completed Residence as determined by the Board.

Section 7.7. Special Assessments. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital improvements upon the Common Properties, including personal property relating thereto; to add to the Common Properties; to provide for necessary facilities and equipment; to offer this service as authorized in this Declaration; to correct any deficit or cost overruns; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be equally, uniformly imposed upon each Lot containing a substantially completed Residence. No Special Assessment shall be imposed on any Owner or Lot unless the Special Assessment has been ratified by the Owners in accordance with a procedure substantially identical to the procedure set forth in this document. At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed improvements on the Common Properties, the Board may issue Special Assessments for the purpose of repair or reconstruction of such damaged or destroyed improvements; all such Special Assessments shall be equal to the amount by which the cost of repair or reconstruction of such improvements exceeds the sum of insurance proceeds awarded for the damage or construction, and shall be set in the same manner as other Special Assessments. The Board must notify Owners in writing of the amount of any Special Assessment and of the manner in which, and dates on which, any such Special Assessment is payable, and the Owner shall pay any such Special Assessment in the manner so specified.

Section 7.8. Site Assessments. The Board of Directors may, subject to the provisions hereto, levy a Site Assessment against any Member, Owner, or a Lot if the willful or negligent acts or omissions of the Member, Owner or other user or occupant of a Lot causes any violation of the Association Documents or causes any loss or damage to the Association or the Common Properties or causes an expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including without limitation Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment shall be levied only after such notices and hearing as may be required by the Bylaws. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owed. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies.

Section 7.9. Failure to Fix Assessment. The failure by the Board of Directors to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments for that or any subsequent period.

Section 7.10. Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Owner or other person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses, and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten (10) days after the date of any notice of default sent to the Owner shall bear interest from the due date at a rate determined by the Board, not to exceed twenty-eight percent (28 %) per annum, from the due date until paid.

Section 7.11. Attribution of Payments. If any Assessments payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board of Directors, in its sole discretion, determines.

Section 7.12. Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Owners against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien (defined in Section 7.14) is filed. The Board may in its sole discretion adopt Rules and Regulations to interpret and enforce the collection of Assessments hereunder.

Section 7.13. Lawsuit to Enforce Assessments. The Board may bring a suit at Law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, reasonable attorneys' fees.

Section 7.14. Lien to Enforce Assessments. In addition to or in lieu of bringing suit, the Board may elect to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien created by the Notice of Lien shall be prior to any homestead rights arising from statute or otherwise, all of which homestead rights are hereby waived. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Assessment Lien. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and Assessments which may have accrued subsequent to the filing of the Notice of Lien, including, without limitation, all court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and recording the release of the lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the Laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including deeds of trust), or in any other manner permitted by Law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The lien under this section shall be subject to the provisions and restrictions of Section 10.2 hereof.

Section 7.15. No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim or defense that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association, including the making of repairs or improvements to Common Properties, or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

Section 7.16. Working Capital Fund. The Board may, at its option, require each Owner, at the time when the Lot is conveyed to that Owner, to make a nonrefundable contribution to the Association of an amount equal to three (3) times the monthly Common Assessment against the Lot in effect on the date of delivery of the deed conveying the Lot. All such contributions shall be maintained in a non-segregated working capital account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures or purchasing additional equipment, property or services. The working capital contribution

shall be in addition to the Assessment, and shall not relieve the Owners from paying all Assessments as they come due.

ARTICLE 8 **MAINTENANCE OBLIGATIONS**

Section 8.1. Association Maintenance.

- (a) Landscaping. Following the initial landscaping of each Lot by a builder, the Association will water, mow, repair, keep clean and maintain all the Yards and other landscaped Common Properties in such a manner as to keep those landscaped areas in good condition and to present a neat, tidy and attractive appearance of the Community Area. Notwithstanding the foregoing, the Association shall provide only routine, periodic and ordinary maintenance, repair and restoration of Yards, as set forth regarding any specific maintenance described in this Article 8. Homeowners are expected to water their lawns during the winter months as recommended by the Maintenance Director. The Association is not responsible for replacing trees or shrubs on individual Lots in cases of plant demise. The Association shall not be responsible for repair, replacement or restoration of Yards needed as a result of casualties (or pet excrement) or hazards normally covered by property casualty insurance. The Owner shall be required to water all landscaping in an appropriate manner and to replace sod, trees or shrubs on that Lot as required by the Association.

- (b) Exterior Maintenance. In addition to Section 8.1(a) above, the Association shall maintain, repair, paint and restore the exterior gutters and downspouts, the wood trim and the fascia (except that it is the responsibility of the Owner to maintain or pay for maintenance of stained wood areas), paint garage doors, and front doors of Residences. The Association shall not maintain, repair, paint or restore, the roof, exterior walls or other exterior opening of a Residence, including without limitation windows, skylights, vents, chimneys, electrical light fixtures, water faucets, or basement window wells; structures or piping above or underground that collect water from downspouts or service drainages, including French drains and sump pumps; flat work cement, including without limitation walkways, driveways, patio slabs, steps and entry ways; or anything added to the exterior of a Residence by an Owner (for example, awnings, antennae, satellite dishes, and window well coverings). As of the date hereof, the Association is on a six (6) year cycle for repainting the trim on Residences.

- (c) Board to Determine Necessity and Standards for Maintenance. The Board shall have the sole discretion to determine the necessity and standards for maintenance in this Article and whether the Association or an Owner is responsible for the cost of such maintenance.

Section 8.2. Owner Maintenance. Except for the Association maintenance described in Section 8.1 above, the Owner shall be responsible for all other maintenance, repair, replacement and restoration of the Lot, all Improvements on the Lot, the Yard and the Residence to keep those items in a good condition and to present a neat, tidy and attractive appearance.

Section 8.3. Wood Decks. The Owners shall maintain all wood decks in a natural wood color approved by the Architectural Committee.

Section 8.4. Damage. If the need for maintenance or repair described in this Article 8 is caused by willful or negligent acts or omissions of any Owner, his family, guest or invitees, his contractor or other Related User or as a result of repairs to an underground utility services line, the cost of such maintenance or repairs shall be charged to the responsible Owner as a Site Assessment. No Owner shall, in whole or in part, change that Owner's Lot, Yard or any Common Property by the addition or removal of any items thereon without prior written approval of the Architectural Committee. Removal of dead trees and bushes are the responsibility of the Owner of the Lot (unless an Association contractor caused the damage).

ARTICLE 9 **EASEMENTS**

Section 9.1. Maintenance Easements. Despite the fact that each Yard of each Residence shall be maintained by the Association to the extent provided herein, each Owner shall maintain ownership of his Yard and Residence. Each Owner shall also have a permanent exclusive right of enjoyment in his Yard and Residence. Notwithstanding each Owner's ownership of and exclusive right of enjoyment in his Yard and Residence, a perpetual, non-specific easement in, over, under and across all Lots and Yards of all Residences is hereby reserved by the Association for the benefit of the Association to enter all Lots and to perform any and all repairs and maintenance activities authorized by this Declaration, without compensation to any Owner.

Section 9.2. Non-Exclusive Easements of Enjoyment in Common Properties. Subject to the provisions of Sections 9.3 and 9.4, each Owner shall have a non-exclusive easement of enjoyment in and to any Common Properties owned by the Association or dedicated to the City of Colorado Springs or any governmental entity.

Section 9.3. Extent of Easements of Enjoyment. Easements of Enjoyment shall be subject to:

- (a) Such Common Property as may be adopted by the Association for the use and enjoyment of the Common Properties and the Community Area.
- (b) The right of the Association to charge reasonable fees for the use of any Common Properties owned by the Association.
- (c) The right of the Association after due notice and an affirmative vote by two-thirds (2/3) of the voting power of the Association to transfer or dedicate for public use all or any part of the Common Properties owned by the Association.

Section 9.4. Suspension of Rights of Enjoyment. The Association may suspend some or all of any Owner's non-exclusive easements of enjoyment in any Common Properties for any period during which any Assessment remains overdue and unpaid and for violation of the restrictions imposed by this Declaration or the Rules and Regulations.

Section 9.5. Easements for Utility Service Lines. The Association shall implement the right of each Owner to bring to his Lot, underground, from the primary distribution system and across the Common Properties owned by the Association or publicly dedicated services lines for water, electricity, fuel, television and telephone services, and will grant to the public utilities supplying such service an easement across such common property to bring such service underground. Installation of the service line pursuant to order of the Association shall be sufficient to establish the grant of the easement. Any further grant of formal legal instrument shall be unnecessary, but the Board may execute any instrument upon request by the service provider.

Section 9.6 Title Exceptions. Title to the Community Area is subject to the following matters:

- (a) All easements and other matters shown on any recorded subdivision Plat for Deer Run Subdivision, in the City of Colorado Springs, El Paso County, Colorado.
- (b) Aviation easement recorded in Book 6229 at Page 168, records of El Paso County, Colorado.
- (c) Matters of Record in the office of the Clerk and Recorder of El Paso County, State of Colorado.

ARTICLE 10
FIRST MORTGAGEES

Section 10.1. Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statements of the Association; (d) receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association or the Common Properties following a decision of the Association to assume self-management of the Common Properties; and (i) receive written notice of any damage to the Common Properties if the cost of reconstruction exceeds \$50,000.00, and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Properties.

Section 10.2. Priority of First Mortgage over Assessments. Each First Mortgagee who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title. Notwithstanding any provision hereof, the First Mortgagee shall be liable for Assessments as provided by C.R.S. § 38-33.3-316 and shall be liable for Assessments if the First Mortgagee fails to foreclose within six (6) months of default and to pursue such foreclosure diligently as determined by the Board in its sole discretion. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, or on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, whichever is earlier.

Section 10.3. First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Common Properties, and may pay any overdue premiums on hazard insurance policies for any Common Properties, or may secure new coverage if the insurance policy on any Common Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE 11
MISCELLANEOUS

Section 11.1. Rules and Regulations. The Association may adopt Rules and Regulations to interpret, enforce or clarify any provision of the Association Documents or to regulate use of the Community Area and of any and all services and property of the Association while it holds title to it. The Rules and Regulations shall have the same force as the restrictions imposed by this Declaration and may be enforced in the same manner.

Section 11.2. Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date of this amended Declaration. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners with at least two-thirds (2/3) of the voting power of the Association, in the manner provided in Section 218 of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-218.

Section 11.3. Amendment Process. This Declaration may be amended in any manner as permitted by the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-217.

Section 11.4. Amendment of Declaration by Members. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, added, changed, or repealed at any time upon approval of the amendment or repeal by Members with at least sixty-seven percent (67%) of the voting power of the Association, in accordance with the requirements of Section 217 of the Colorado Common Interest Ownership Act.

Section 11.5. Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of Members, the recorded document implementing the amendment or revocation shall contain a certification by an officer of the Association that the approvals of the required percentages of Members were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public and legal notice of compliance.

Section 11.6. Notices. Any Notice permitted or required to be given under this Declaration shall be in writing or via email and may be given either personally or by mail, telephone or other form of electronic communication as allowed by law. If served by mail, each notice shall be sent postage prepaid, addressed to any Owner or other person at the address given by such Owner or person to the Association for the purpose of service of such notice or to the Lot of such Owner if no address has been

given to the Association. The notice shall be deemed given, if not actually received earlier at 5:00 p.m. on the second 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 11.7. Persons Entitled to Enforce Declaration. The Association, or any Member acting by authority of the Board, shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents. The right of enforcement shall include the right to bring an action for damages, assess fines for non-compliance of this Declaration or other Association Document as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

Section 11.8. Violations Constituting a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, or in Rules and Regulations, 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 anyone entitled to enforce the provisions of this Declaration.

Section 11.9. Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 11.10. Costs and Attorneys' Fees. In any action or proceeding under the Association Documents, the party which seeks to enforce the Association Documents and prevails, shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees.

Section 11.11. General. Each of the provisions of the Association Documents shall be deemed independent and severable. The invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision. Failure by the Association or any Owner to enforce any covenant, restriction, or provision contained herein shall in no event be deemed a waiver of the right to do so thereafter. Waiver or variance on one occasion shall not require waiver or variance thereafter. Use of one gender shall include all genders. Use of "include" or "including" shall mean "including without limitation".

Section 11.12. Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 11.13. Board Resolves Interpretations. If any doubt or question shall arise as to the meaning or intent or interpretation of any provision of any Association Document, the Board shall, by Rules and Regulations, determine the proper

construction of the provision in question and such resolution shall fix and establish the meaning, effect and application of the provision. The Board's decision shall be final, conclusive and binding on all parties, except for bad faith and wanton and willful misconduct by the Board.