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1 of 47 R 235.00 D 0.00 Weld County CO

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**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COLONY POINTE SUBDIVISION**

Name of Common Interest Community: COLONY POINTE
Name of Owners Association: COLONY POINTE HOMEOWNERS ASSOCIATION
Declarant: LOT HOLDING INVESTMENTS, LLC
Type of Common Interest Community: PLANNED COMMUNITY



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**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COLONY POINTE SUBDIVISION
(A Common Interest Community)**

PREAMBLE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made on the date hereinafter set forth by **Lot Holding Investments, LLC**, a Colorado limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of a parcel of land located in the Town of Milliken, County of Weld, State of Colorado, as described on **Exhibit A** attached hereto.

WHEREAS, this Declaration is executed pursuant to and in furtherance of a common and general plan: (i) to protect and enhance the quality, value, desirability, and attractiveness of all property that may be subject to this Declaration; (ii) to provide for an Association as a vehicle to perform certain functions for the benefit of Owners of Property which may become subject to this Declaration; (iii) to define duties, powers, and rights of the Association; and (iv) to define certain duties, powers, and rights of Owners of Property subject to this Declaration with respect to the Association and with respect to the functions undertaken by the Association.

NOW THEREFORE, Declarant for itself, its successors and assigns, hereby declares that all property herein or hereafter made subject to this Declaration, in the manner hereinafter provided, and each part thereof shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration for the duration thereof, all of which shall run with the title to such property and be binding upon all parties having any right, title, or interest in said property or any part thereof and upon their heirs, personal representatives, successors, and assigns and shall inure to the benefit of each party having any such right, title, or interest in said property or any part thereof.



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ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, the Articles of Incorporation or any Amendments thereto, and the Bylaws or any Amendments thereto, shall have the following meanings:

Section 1. *Act* shall mean and refer to the Colorado Common Interest Ownership Act found in Title 38 of the Colorado Revised Statutes. Any reference in the Association Documents to the Act or a section of the Act shall refer to the Act as presently enacted or subsequently amended.

Section 2. *Agency* shall mean any agency or corporation that purchases or insures residential mortgages.

Section 3. *Architectural Design Standards* shall mean design standards adopted by the Architectural Review Committee from time to time that govern the quality of workmanship, color of materials, harmony of external design with existing structures, and location with respect to topography and finish grade elevation and the master drainage plan and all other appearances of buildings and structures in the Project. The Minimum Architectural Design Standards are set forth in Exhibit "B" attached hereto.

Section 4. *Articles* shall mean the Articles of Incorporation for Colony Pointe Homeowners Association, a Colorado nonprofit corporation, and any amendments that may be made to those Articles from time to time.

Section 5. *Annual Assessment* shall mean the Assessment levied pursuant to an annual budget.

Section 6. *Assessments* shall mean the Annual, Special, and Default Assessments levied pursuant to the terms of this Declaration. Assessments are also referred to as a Common Expense liability as defined under the Act.

Section 7. *Association* shall mean Colony Pointe Homeowners Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 8. *Association Documents* shall mean this Declaration and any Supplemental Declaration, the Articles of Incorporation, the Bylaws, the Plat and any procedures, rules, regulations, Architectural Design Standards, or policies adopted under such documents by the Association.

Section 9. *Builder* shall mean any person who acquires from Declarant one or more Lots for the purpose of constructing thereon a building and selling such building, together with the Lot upon which it is situated to any member of the general public.

Section 10. *Bylaws* shall mean the Bylaws adopted by the Association, as amended from time to time.

Section 11. *Clerk and Recorder* shall mean the office of the Clerk and Recorder in the County of Weld, State of Colorado.

Section 12. *Common Elements* shall mean all real and personal property, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners. Common Elements shall also mean and refer to any and all personal property and Improvements owned or leased by the Association and shall include, by way of example but without limitation, any exterior signage which identifies the subdivision, exterior lighting, sprinkler systems, recreation equipment, and any other personal property owned by the Association. The Common Elements are to be devoted to the common use and enjoyment of the Owners (subject to the provisions hereof) and are not dedicated for use by the general public except as indicated on the subdivision Plat and the real estate records of the Clerk and Recorder of Weld County, Colorado. The definition of Common Elements shall expressly exclude any public streets or alleys as shown on the subdivision Plat identified above. Common Elements shall be owned by the Association. In no event shall the Common Elements fail to be transferred to the Association on a date which is not later than sixty (60) days after the completion of the transfer of all Lots from the Declarant or the Declarant's successors and assigns to third party purchasers.

Section 13. *Common Expenses* shall mean: (i) all expenses expressly declared to be common expenses by this Declaration or by the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements; (iii) insurance premiums for the insurance required or permitted under this Declaration; and (iv) all expenses lawfully determined to be Common Expenses by the Executive Board. Common Expenses benefitting fewer than all the Units may, in the discretion of the Executive Board, be assessed exclusively against those Units benefitted.

Section 14. *Declaration* shall mean this Declaration and the Plat and amendments and supplements to the foregoing.

Section 15. *Executive Board* shall mean the governing body of the Association.

Section 16. *First Mortgage* shall mean any Mortgage that is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 17. *First Mortgagee* shall mean any person named as a Mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 18. *Improvements* shall mean and refer to all improvements now or hereafter constructed including, without limitation, all buildings, exterior lighting, benches, walks, landscaping, sprinkling systems, irrigation ditches, and parking areas within the Project.

Section 19. *Lot* shall mean and refer to any numbered area of land designated for separate ownership or occupancy as shown on the recorded Plat. Lot shall also mean a "Unit" as defined in C.R.S. § 38-33.3-103 as originally enacted or subsequently amended. Lot shall not include any Common Elements including outlots.

Section 20. *Manager* shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive Board may authorize from time to time.

Section 21. *Member* shall mean and refer to every person or entity that holds membership in the Association by virtue of the ownership of a Unit.

Section 22. *Mortgage* shall mean any mortgage, deed of trust or other document pledging any Residential Unit or interest therein as security for payment of a debt or obligation.

Section 23. *Mortgagee* shall mean any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 24. *Notice* shall mean and refer to: (i) written notice hand delivered or sent by prepaid United States mail to the mailing address of a Unit or to any other mailing address designated in writing by the Unit Owner or to the last known address of the intended recipient, or (ii) notice through an Association publication which is hand delivered or sent by prepaid United States mail to the Units; or (iii) notice delivered by electronic mail or facsimile to an Owner at the electronic mail address or facsimile number designated by the Owner.

Section 25. *Owner* shall mean any person, corporation, partnership, association, contract seller, or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in a portion of one or more Lots and shall include the purchaser under any executory land sales contract wherein the Administrator of Veterans' Affairs is the seller, whether or not recorded, and whether owned by said Administrator or his assigns. The term Owner shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined or other person or entity having an ownership interest in any portion of a Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 26. *Parcel* shall mean each platted, numbered, and recorded division of vacant land as depicted on the Plat.

Section 27. *Plat* shall mean that part of this Declaration that is a land survey Plat recorded in the real estate records of Weld County, Colorado, depicting any portion of the Property subject to this Declaration.



Section 28. *Project* shall mean the common interest community created by this Declaration and as shown on the Plat.

Section 29. *Property* shall mean the real property described in Exhibit A together with such additional property as is subsequently subjected to this Declaration in accordance with the provisions set forth herein below.

Section 30. *Related User* shall mean any member of the family of an Owner who resides with such Owner, guests and invitees of an Owner, employees and agents of an Owner, and occupants, tenants, and contract purchasers residing in a Unit.

Section 31. *Single Family* shall mean an individual living alone, or any number of persons living together as a single household who are interrelated by blood, marriage, adoption or other legal custodial relationship; or not more than two (2) unrelated adults and any number of persons related to those unrelated adults by blood, adoption, guardianship or legal custodial relationship.

Section 32. *Successor Declarant* shall mean any person or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 33. *Supplemental Declaration* shall mean an instrument which amends this Declaration.

Section 34. *Supplemental Plat* shall mean a supplemental plat of the Project which depicts any change in the Project through a Supplemental Declaration. The initial phase recordings are not supplemental and do not require amendment to this document.

Section 35. *Undefined Terms.* Each term not otherwise defined in this Declaration, including the Plat, shall have the same meaning specified or used in the Act.

Section 36. *Unit* shall mean a physical portion of the common interest community which is designated for separate ownership or occupancy as shown on the recorded Plat. Unit shall not include any Common Elements including outlots.

ARTICLE II

NAME, PROPERTY SUBJECT TO THIS DECLARATION AND ALLOCATION

Section 1. *Name.* The name of the Project is Colony Pointe Subdivision. The Project is a planned community pursuant to the Act.

Section 2. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Town of Milliken, Weld County, Colorado, and is more particularly described on **Exhibit A**.

Section 3. Expansion Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration may be expanded only as specifically provided in this Declaration.

Section 4. Maximum Number of Units. Declarant reserves the right to create up to a total of three hundred (300) Units.

Section 5. Identification of Units. The identification number of each Unit is shown on the Plat.

Section 6. Description of Units. Each Unit presently consists of surveyed and platted undeveloped vacant land.

Section 7. Allocation of Interests. The Common Expense liability and voting in the Association are allocated to each Unit as follows:

- a. The percentage of liability for Common Expenses shall be determined by using a formula in which the numerator is one (1) and the denominator is the total number of Units subject to this original Declaration, or subject to this Declaration from time to time; and
- b. The number of votes in the Association is determined on the basis of one (1) vote being allocated to each Unit as determined by the total number of Lots that have been submitted to this original Declaration or submitted pursuant to a subsequent amendment of this Declaration and which are shown on a subdivision Plat required by the Town of Milliken and recorded with the Clerk and Recorder.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS: **ASSOCIATION STRUCTURE AND OPERATIONS**

Section 1. Association Name. The name of the Association shall be Colony Pointe Homeowners Association. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

Section 2. Transfer of Membership. An Owner shall not transfer, pledge, or alienate their membership in the Association in any way, except upon the sale or encumbrance of their Unit and then only to the purchaser or Mortgagee of their Unit. The Association shall not create a right



of first refusal on any Unit and Owners may transfer ownership of their Units free from any such right.

Section 3. Membership. The Association shall have one class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in the Association Documents, each Member shall be entitled to vote in Association matters as set forth in this Declaration and the Bylaws. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 4. Voting. There shall be one vote per Unit, except as otherwise provided in the Association Documents during the period of Declarant control.

- a. The Owner(s) of each Unit shall have one vote per Unit owned.
- b. If only one of several Owners of a Unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to the Unit. If more than one of the Owners are present, the vote allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Unit.

Section 5. Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act and as set forth in the Association Documents. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers are set out in the Articles and Bylaws of the Association. Declarant may voluntarily relinquish such power by recording a notice executed by Declarant with the Clerk and Recorder but, in such event, Declarant may at its option require that during the period Declarant would otherwise be entitled to appoint and remove directors and officers, specified actions of the Association or the Executive Board as described in the recorded notice be approved by Declarant before they become effective.

Section 6. Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 7. Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the



Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

Section 8. *Rights of Action.* The Association on behalf of itself and any aggrieved Owner, shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Owner shall have the right, but not the obligation, to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorney fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 9. *Implied Rights and Obligations.* The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act, and by the Colorado Revised Nonprofit Corporation Act.

ARTICLE IV

POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Section 1. *Powers.* Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

- a. Adopt and amend bylaws and rules and regulations and Architectural Design Standards;
- b. Adopt and amend budgets or revenues, expenditures and reserves, and collect Assessments;
- c. Hire and terminate managing agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;
- e. Make contracts and incur liabilities;

- f. Regulate the use, maintenance, repair, replacement, and modification of Common Elements, if any;
- g. Cause additional Improvements to be made as a part of the Common Elements, if any;
- h. Acquire, hold, encumber, and convey in the name of the Association any right, title, or interest to real or personal property, except that Common Elements, if any, may be conveyed or subjected to a security interest only if Members entitled to cast at least eighty percent (80%) of the votes agree to that action and if all Owners of Units to which any Limited Common Element ("Limited Common Element") is allocated agree to convey that Limited Common Element or subject it to a security interest. Notwithstanding the foregoing, the Association may, on vote only of the Executive Board and without the vote of Owners of the Units, convey any outlots shown on the plat to the Town of Milliken;
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements, if any;
- j. Annex additional property, pursuant to the terms of this Declaration, which does not result in an increase in Annual Assessments of more than ten percent (10%) per Owner;
- k. Impose and receive any payments, fees or charges for the use, rental, or operation of the Common Elements, if any;
- l. Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after Notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;
- m. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;
- n. Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- o. Assign its right to future income, including the right to receive Assessments;
- p. Exercise any other powers conferred by the Declaration or Association Bylaws;

- q. Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- r. Delegate powers to a master association as provided in C.R.S. § 38-33.3-220. If powers are delegated to a master association, the executive board of the master association must be elected pursuant to C.R.S. § 38-33.3-220.
- s. Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE V

MECHANICS' LIENS

Section 1. No Liability. If any Owner shall cause any material to be furnished to their Unit or any labor to be performed therein or thereon, no Owner of any other Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen, and other persons furnishing labor or materials to their Unit.

Section 2. Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements, if any, or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and hold all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses, or damages including, without limitation, reasonable attorney fees resulting therefrom.

Section 3. Association Action. Labor performed or materials furnished for the Common Elements, if any, if duly authorized by the Association in accordance with this Declaration or its Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements, if any. Any such lien shall be limited to the Common Elements, if any, and no lien may be effected against an individual Unit or Units.

ARTICLE VI

EASEMENTS

Section 1. *Recorded Easements.* The Property shall be subject to all easements as shown on any Plat, those of record, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

Section 2. *Utility Easements.* There is hereby created an easement as denoted on the Plat for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephone, cable TV, electricity, drainage, and fences. Said easement includes future utility services not presently available to the Units which reasonably may be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment within such easement on any of the Units.

Section 3. *Reservation of Easements, Exceptions and Exclusions.* The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Elements, if any, for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the Common Elements, if any, and Limited Common Elements, if any, appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements, if any, set forth in writing by the Association.

Section 4. *Use of Easement Area.* Within reserved easements, as shown on recorded Plats, or herein reserved, there shall be no structure, tree or shrub planting, or any other material installation which may damage or interfere with the installation or maintenance of utilities such as plumbed gas or water lines, wired electrical, cable television, or telephone utility lines. A Unit Owner shall not alter, inhibit, or change the direction of water flow in drainage channels established in said easements or in any way that discharges drainage onto adjacent Units. The easement area of each Unit and all Improvements in it, including fences, shall be maintained continuously in good repair by the Owner of said Unit, except for those Improvements for which a public utility shall be responsible. It shall be the responsibility of the Unit Owner to notify with due speed the appropriate public utility of any known flaws, defects, or damage to any utility Improvements on said Owners Unit. Fencing shall be allowed in easement areas only as approved by the Executive Board.

Section 5. *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

ARTICLE VII

MAINTENANCE

Section 1. *Maintenance by Owners.* Each Owner shall maintain and keep in repair his Unit, landscaping, and any structures or buildings thereon, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Units and to maintain a good appearance for the Project.

Section 2. *Maintenance by Association.* The Association shall be responsible for the maintenance and repair of the Common Elements including any drainage structure or facilities and any fences constructed by Declarant within the utility easement reserved herein for Units with perimeter Lot lines, and such maintenance and repair shall be the Common Expense of all Owners. This maintenance of the Common Elements shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, fences, gates, signage, irrigation systems, and Improvements located in the Common Elements, if any. In the event the Association does not maintain or repair the Common Elements, if any, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

Section 3. *Association Maintenance as Common Expense.* The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Owner equally. If maintenance is necessitated by damage caused by the negligence, misuse, or tortuous act of an Owner or Owner's agent, then the person or Owner causing the damage shall be responsible for the repair and expense.

ARTICLE VIII

INSURANCE

Section 1. *General Insurance Provisions.* The Association shall acquire and pay for, out of the Assessments levied in accordance with this Declaration, any insurance policies required by the Act and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the Common Elements, if any. Such insurance required by this Article or the Act shall conform to the requirements set forth in C.R.S. § 38-33.3-313(4)(a)-(d) which are as follows:

- a. Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association.
- b. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household.



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- c. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- d. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 2. *Property and Commercial General Liability Insurance.* Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

- a. **Insurance on Common Elements.** Property insurance on the Common Elements and also on property that must become Common Elements for broad form covered causes of loss, except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.
- b. **Commercial General Liability Insurance.** Commercial general liability insurance in a minimum amount of one million dollars (\$1,000,000.00) or otherwise larger amount deemed sufficient in the judgment of the Executive Board against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, insuring the Executive Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as the Unit Owner and board member. The Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

Section 3. *Fidelity Insurance.* Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, independent contractors, employees, and on the part of all others, including any Manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such insurance must be obtained by or for the Manager and its officers, employees, and agents, as applicable. Such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the

definition of "employees" or similar terms or expressions. Such fidelity bonds shall be a minimum of an amount equal to three (3) months Assessments plus replacement reserves.

Section 4. *Workers' Compensation Insurance.* The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 5. *Notice.* If any insurance required by this Article is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

Section 6. *Common Expenses.* Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 7. *Other.* An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit.

ARTICLE IX

ASSESSMENTS

Section 1. *Obligation.* Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association: (i) the Annual Assessments; (ii) Special Assessments; and (iii) Default Assessments.

Section 2. *Budget.* Within thirty (30) days after the adoption of any proposed budget for the Association by the Executive Board pursuant to the terms of the Bylaws, the Executive Board shall mail by ordinary first-class mail or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners pursuant to the provisions in the Bylaws. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 3. *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, if any, expenses of management and insurance premiums for insurance coverage as deemed desirable or

necessary by the Association, landscaping of the Property, care of grounds within the Common Elements, if any, routine repairs, replacements and renovations within and of the Common Elements, if any, wages, common water and utility charges for the Common Elements, if any, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous Assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of Improvements within the Common Elements, if any, on a periodic basis, as needed. Annual Assessments shall be payable in monthly installments or on such other dates as the Executive Board determines. The omission or failure of the Association to fix the Annual Assessments for any Assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 4. *Apportionment of Annual Assessments.* The Common Expenses shall be allocated among the Lots on the basis of the allocated interest for Common Expenses in effect on the date of Assessment, provided however that the Association reserves the right to allocate all expenses related to fewer than all of the Lots to the Owners of those affected Lots only. Notwithstanding the foregoing, the amount of Annual Assessment against Lots on which a certificate of occupancy has not been issued may be set at a lower rate than the rate of Annual Assessment against those Lots on which a certificate of occupancy has been issued pursuant to C.R.S. § 38-33.3-315(3)(b), as amended, since such Lots do not receive certain benefits including the same services as other Lots. The lower rate of Assessment against such Lots shall be determined by the Board based upon the costs and expenses of the services actually provided to such Lots.

Section 5. *Special Assessments.* In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements within the Common Elements, if any, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their allocated interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units which shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

Section 6. *Default Assessments.* All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner

or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 7. *Effect of Nonpayment; Assessment Lien.* Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- a. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- b. Assess an interest charge from the due date at the yearly rate of eighteen percent (18%), or such other lawful rate as the Executive Board may establish;
- c. Suspend the voting rights of the Owner during any period of delinquency;
- d. Suspend the rights of the Owner, and the Owner's family, guests, lessees, and invitees, to use Common Element facilities during any period of delinquency;
- e. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- f. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- g. Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Liens for Assessments and their priority shall be as provided in C.R.S. § 38-33.3-316.

Section 8. *Personal Obligation.* Each Assessment against a Unit is the personal obligation of the Owner of the Unit at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from



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liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements, if any. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 9. *Payment by Mortgagee.* Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 10. *Statement of Status of Assessment Payment.* Upon payment of a reasonable fee set from time to time by the Executive Board, the Association shall furnish to a Unit Owner or such Unit Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent or Manager, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board, and every Unit Owner. If no statement is furnished to the Unit Owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

Section 11. *Maintenance Accounts; Accounting.* If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer, or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must: (i) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Manager; (ii) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, and (iii) provide to the Association an annual accounting and financial statement of Association funds prepared by the Manager, a public accountant, or a certified public accountant.

ARTICLE X

RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 1. *General Provisions.* Declarant shall have the following Rights ("Special Declarant Rights") with respect to all of the Property:

- a. **Reservation of Development Rights.** Declarant reserves the right to exercise all "Development Rights" as defined from time to time in the Act



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including, without limitation, the right or combination of rights hereby reserved by Declarant, as follows:

- (i) The right to add real estate to the common interest community;
- (ii) The right to create Units, Common Elements, or Limited Common Elements within the common interest community;
- (iii) The right to subdivide Units or convert Units into Common Elements; or
- (iv) The right to withdraw real estate from the common interest community.

b. Limitation on Development Rights. The Development Rights reserved in this section are limited as follows:

- (i) The Development Rights may be exercised at any time but not more than twenty (20) years after the recording of the initial Declaration in the real estate records of Weld County, Colorado;
- (ii) All Units and Common Elements created pursuant to the Development Rights will be restricted to the same uses and to the same extent as the Units created under this Declaration as initially recorded.

c. Phasing of Development Rights. No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such Development Rights will be developed. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions.

d. Special Declarant Rights. Declarant reserves the following Special Declarant Rights as defined from time to time in the Act, including without limitation, the right or combination of rights as follows:

- (i) To complete any Improvements indicated on the Plat;
- (ii) To exercise any development right;
- (iii) To maintain sales offices, management offices, model homes, and signs advertising the common interest community;

- (iv) To use easements through the Common Elements and Lots for the purpose of making Improvements within the common interest community or within property which may be added to the common interest community;
 - (v) To make the common interest community subject to a master association;
 - (vi) To merge or consolidate a common interest community of the same form of ownership; and
 - (vii) To appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.
- e. **Models, Sales Offices and Management Office.** Declarant, its duly authorized agents, representatives, and employees may maintain any Unit owned by Declarant or any portion of the Common Elements as a model unit, sales office, or management office, and may post and maintain signs and displays in order to promote sales of Units. Declarant may assign the rights reserved hereunder to any individuals or entities including, but not limited to contractors, builders, and real estate agents for such periods of time and under such conditions as determined by Declarant. In addition, during periods of construction, Declarant may maintain a construction trailer on the Common Elements.
- f. **Construction: Declarant's Easement.** Declarant reserves the right to perform warranty work, repairs and construction in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and make repairs until completion. All work may be performed by Declarant without the consent or approval of the Executive Board. Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to a governmental entity.
- g. **Declarant's Property.** Declarant reserves the right to remove and retain all its property used in the sales, management, construction, and maintenance of the property, whether or not they have become fixtures.
- h. **Limitations on Special Declarant Rights.** Unless terminated earlier by a document executed by Declarant and recorded in the real estate records of Weld County, Colorado, any reserved Development Rights and Special Declarant Rights may be exercised by Declarant, as long as Declarant: (a) is obligated under any warranty or obligation; (b) holds a Development Right to

create additional Units or Common Elements; (c) owns any Unit; (d) owns any security interest in any Unit; or (e) ten (10) years have elapsed after recording of this Declaration in the real estate records of Weld County, Colorado. Earlier termination of certain rights may occur in accordance with the Act.

- i. Interference With Special Declarant Rights.** While the Declarant is entitled to exercise its Special Declarant Rights, neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.
- j. Rights Transferable.** Any Special Declarant rights or other Declarant rights created or reserved under this Declaration may be transferred by an instrument evidencing the transfer recorded in Weld County, Colorado. Such instrument shall be executed by the transferor, Declarant, and the transferee.

ARTICLE XI

ARCHITECTURAL REVIEW AND OTHER RESTRICTIONS

Section 1. Association Power. The Association shall have the right and power to prohibit any activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements, if any, by promulgating Rules and Regulations which restrict or prohibit such activities.

Section 2. Review. No buildings, structures or other Improvements including fences and landscaping shall be constructed, modified or altered unless first approved in writing by the Architectural Review Committee, provided however, that the Declarant and Builders whose plans and specifications have received Declarant's prior written approval shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's or such Builder's development of, construction on, or sales of any Unit. The Architectural Review Committee shall exercise reasonable judgment to the end that all buildings, structures, modifications, alterations, or additions to the Units conform to and harmonize with existing surroundings and structures. The Architectural Review Committee has the absolute right to deny any requested buildings, structures, modifications, alterations, or additions which the Architectural Review Committee reasonably determines do not conform to and harmonize with existing surroundings and structures.

Section 3. Membership of Architectural Review Committee. The Architectural Review Committee shall consist of three (3) members, all of whom shall be appointed by Declarant. Declarant shall have the continuing right to appoint all three (3) members during the Appointment Period (as hereafter defined). The Association shall have the right to appoint such members after the end of the Appointment Period. The "Appointment Period" shall mean the period of time commencing as of the date of recordation of this Declaration and continuing until the earliest to occur

of the following events: (a) when all Units in the Project have been conveyed to persons other than Declarant and certificates of occupancy have been issued for the residences constructed thereon; (b) ten (10) years after the date this Declaration is recorded; or (c) when, in its discretion, Declarant voluntarily relinquishes such right. During the Appointment Period, Declarant shall not be obligated to appoint members to the Architectural Review Committee. In such event, Declarant or Declarant's designated representative shall exercise all rights and obligations of the Architectural Review Committee as set forth in this Article. Members of the Architectural Review Committee may but shall not necessarily be members of the Association. Members of the Architectural Review Committee to be appointed by the Association shall be appointed by the Executive Board. Members of the Architectural Review Committee appointed by the Executive Board may be removed at any time by the Board, and shall serve for such term as may be designated by the Executive Board, or until resignation or removal by the Board. During the Appointment Period, Declarant shall give the Association written notice of the appointment or removal of any member of the Architectural Review Committee. After the Appointment Period, the Association may at any time and from time to time change the authorized number of members of the Architectural Review Committee, but the number of members of the Architectural Review Committee shall not be less than three (3). A majority of the Architectural Review Committee shall constitute a quorum of the Committee, and a majority of Committee members present at any meeting where a quorum is present shall be required for Committee action. Notice of all Architectural Review Committee meetings shall be furnished to each member of the Committee.

Section 4. Plan Review Procedure. Prior to commencement of any onsite work, the Owner or such Owner's designated representative (hereinafter referred to as "Applicant") must obtain the written approval of the Architectural Review Committee, provided however, that the Declarant and Builders whose plans and specifications have received Declarant's prior written approval shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's or such Builder's development of, construction on, or sales of any Unit.

- a. **Plan Submittal.** The Applicant must submit to the Architectural Review Committee the following minimum items (in addition to other items which the Architectural Review Committee deems necessary or advisable for it to act under the circumstances):
- (i) Site plan;
 - (ii) Complete construction plans;
 - (iii) Specifications, including color schemes and material samples for the building, addition or alteration; and
 - (iv) Payment in full of all anticipated costs as set forth below.



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- b. **Plan Approval.** Upon receipt by the Architectural Review Committee of all items set forth above, the Architectural Review Committee shall thereafter have thirty (30) days to furnish Applicant with written notice of approval or rejection of the plans as submitted. If rejected, the Architectural Review Committee shall furnish a written explanation of the basis for its rejection and shall, if practical, furnish suggested modifications which would render the plans acceptable, subject to resubmission for review and approval upon completion of any such modifications. The Architectural Review Committee may condition its approval upon certain modifications being made to the plans, in which event such plans shall be deemed approved only upon submission to the Architectural Committee of one (1) complete set of all revised plans fully incorporated and reflecting all such required modifications.
- c. **Failure to Respond.** If for any reason the Architectural Review Committee has not responded to the Applicant in writing within the thirty (30) day period as provided above, the Applicant shall notify the Architectural Review Committee of such failure in writing by certified mail, return receipt requested. Thereafter, unless the Architectural Review Committee furnishes written notice of approval or rejection as required above within fifteen (15) days following receipt of said notice from the Applicant, the plans as submitted shall be deemed approved. In the event the Architectural Review Committee has notified Applicant of the necessity of submitting additional documentation, the thirty (30) day and fifteen (15) day periods set forth above shall not begin until Applicant has submitted all required documentation.

Section 5. Notice of Completion. Upon completion of the construction, modification or alteration of any Improvements, the Applicant shall furnish written notice to the Architectural Review Committee of same, provided however, that the Declarant and Builders whose plans and specifications have received Declarant's prior written approval shall be exempt from furnishing written notice to the Architectural Review Committee during Declarant's or such Builder's development of, construction on, or sales of any Unit. Thereafter, the Architectural Review Committee or its designee shall have the right to inspect the Improvements to assure compliance with the approved plans and the Applicant shall cooperate with the Architectural Review Committee or its designee to arrange the inspection. If the Applicant fails or refuses to permit such inspection, or if upon inspection it is determined that such Improvements do not comply with the approved plans, the Architectural Review Committee may furnish Applicant with written notice of noncompliance and exercise all remedies permitted herein, at law or in equity.

Section 6. Remedies Upon Noncompliance. If at any time the Architectural Review Committee determines an Owner or Applicant is not in compliance with the Architectural Design Standards or approved plans, including without limitation the failure to submit plans for approval prior to commencing any onsite work, the Architectural Review Committee shall furnish notice of noncompliance to the Owner. Upon such notice, the Owner shall immediately cease all work other

than is required to bring the Improvements into compliance. If the Owner fails to immediately cease all such work, or fails to bring the Improvements into such compliance within a reasonable period of time not exceeding thirty (30) days, the Architectural Review Committee shall have all rights and remedies available pursuant to this Declaration, at law or in equity. Such rights and remedies include but are not limited to the following:

- a. **Injunctive Relief.** The Architectural Review Committee may seek appropriate injunctive relief in order to compel the Owner to cease all work and bring the Improvements into compliance or authorize the Architectural Review Committee to undertake all steps and actions, on the Owner's behalf and expense. Said expense shall be a personal obligation of the Owner and a charge and lien against said Owner's Unit as with Assessments as provided herein.
- b. **Damages, Costs, and Attorney Fees.** The Architectural Review Committee may recover from the Owner all damages, costs, and attorney fees suffered or incurred in connection with the existence or remedy of any Improvements found by a court of competent jurisdiction to be in noncompliance with this Declaration, the Architectural Design Standards or approved plans, as applicable. Said damages, costs, and attorney fees shall be a personal obligation of the Owner and a charge and lien against said Owner's Lot as with Assessments as provided herein.

Section 7. Authority to Hire, Assess Costs, and Raise Funds. The Architectural Review Committee has the authority to hire or retain such professionals or other persons as it deems necessary for the purposes described herein. The Architectural Review Committee shall also have the power to require the Owner submitting matters to it for approval to pay reasonably necessary costs of the submission prior to their review and as a necessary condition thereof. Any excess funds shall be returned, but the submitting Owner shall remain liable to pay any additional expense(s) if prepayment is insufficient.

Section 8. Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken thereon.

Section 9. Restrictions on Use. Use and enjoyment of each Unit shall be subject to the following restrictions and such additional restrictions as the Architectural Review Committee may propose and are accepted by the Owners by a vote of two-thirds (2/3) of all Owners:

- a. **Land Use.** No Unit or portion thereof shall be used for any purpose other than a Single Family residence. No group housing or board and care homes shall be permitted.

- b. **No Further Subdivision.** No Unit or any building shall be further subdivided or separated into smaller units by any Owner, and no portion less than all of any such Unit or building or any easement or other interest therein shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.
- c. **Nuisances.** No noxious or offensive activity shall be carried on upon any Unit, nor shall any thing be done thereon which may become an annoyance to the neighborhood. No annoying light, sound, or odor shall be emitted from any Unit onto any other Unit(s) which can be considered offensive or intrusive to other Unit Owners or occupants.
- d. **Temporary Structures.** No structures of a temporary character such as trailers, mobile homes, tents, shacks, garages, barns, or other outbuildings shall be used on any Unit at any time as a residence either temporarily or permanently.
- e. **Accessory Buildings.** No accessory buildings, storage barns, or sheds shall be constructed or moved onto any Unit without written consent of the Architectural Review Committee. Said structures shall not be unreasonably prohibited so long as full consideration is given to architectural integration of materials, colors, and placement on the property.
- f. **Move and Set Structures.** All structures within the Project shall be new construction and no previously erected building, structure, or Improvement shall be moved and set upon any Unit from any other location. Exceptions may be made for prefabricated storage buildings with written approval of the Architectural Review Committee.
- g. **Signs.** No sign of any kind shall be displayed to the public view on any Unit except as specifically permitted by the ordinances of the Town of Milliken and in no event shall any sign exceed two feet by three feet (2'x3').
- h. **Oil, Gas, and Mining.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon, in or under any Unit. Nor shall any oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Unit. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Unit.
- i. **Animals, Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Unit, except for dogs, cats, or other

household pets, provided that they are not kept, bred, or maintained for any commercial purposes and do not constitute a nuisance. No Owner may keep more than three (3) dogs and three (3) cats. Household pets shall not be permitted to roam freely around the properties and shall be kept under the strict supervision and control of their Owners at all times. Without limiting the foregoing, continuous and/or frequent barking or howling by dogs is hereby defined as a nuisance.

- j. **Garbage and Refuse Disposal.** No Unit shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Trash, garbage, or other waste shall not be kept except in sanitary and secure containers. All containers shall be kept in a clean and sanitary condition and shall not be kept in public view except during the scheduled day of pick up.
- k. **Storage of Materials.** Storage of materials shall be done in accordance with the following provisions:
- (i) No occupant or Owner of any Unit shall store or permit to be stored or to accumulate, upon any Unit, any debris, any piles of manure, piles of dirt, machinery or equipment or any part thereof, old or rusted pieces of metal, rubber or any type of junk, or other miscellaneous items unless concealed from public and neighbor views within an enclosed structure.
 - (ii) Storage of building materials is permitted only to facilitate continuous building projects in progress. Unit Owners shall supervise and assure secure storage of all building materials during construction to prevent damage to other structures or littering throughout neighborhood as a result of heavy winds.
 - (iii) No tanks for the storage of gas, fuel, oil or other flammable materials shall be erected, placed, or permitted above or below the surface of any Unit. Any firewood pile shall be screened and located within the confines of a privacy fence approved by the Architectural Review Committee.
- l. **Hazardous Activities.** No activities shall be conducted on any Unit which are or might be unsafe or hazardous to any person or any property. No firearms shall be discharged upon any Unit and no open fires shall be lighted or permitted on any Unit except in a contained barbecue unit while attended and in use for cooking purposes or within an interior approved fireplace. No burning of trash, leaves, or other materials shall be allowed. The storage of

any type of explosive devices, compounds, chemicals, or materials is prohibited.

- m. **Motor Vehicles, Recreational Vehicles, Disabled Vehicles, Vehicle Storage and Repair.** Only the motor vehicles normally used for family travel and work, which shall be properly licensed, shall be permitted to remain on a Unit. No boat, trailer, house trailer, camper, tractor-trailer or semi-truck, motor home, or recreational vehicle shall be stored on any driveway or any street within the Project. No boats, trailers, campers, trucks greater than one ton, recreational vehicles, or motor homes shall be parked in front or in open view of any Unit for more than seventy two (72) hours. No motor homes or recreational vehicles taller than five feet will be allowed to be stored on Lots at any time. No tractor-trailer or semi-truck shall be allowed at any time on any street in the Project except for delivery of materials during construction. Nothing contained herein shall prevent the Owner or Owners of any Unit from storing any of said vehicles (except tractor-trailers or semi-trucks) in a garage on their Lot. No automotive repairs shall be done on any street, driveway, or any parking area which may be seen from the view of adjacent properties. No disabled vehicles shall be allowed to remain on the street, driveway, or other parking area which may be seen from the view of adjacent properties. No grease or oil or other unsightly fluids shall be permitted to accumulate in any driveway, sidewalk, or street area. The restrictions set forth above shall not restrict the parking of trucks or other commercial vehicles for a reasonable time upon a Lot, which vehicles are necessary for the construction of the residential dwelling on said Lot.
- n. **Antennas.** No exterior radio antennas, television antennas, or other antennas may be erected unless approved in writing by the Architectural Review Committee. Any facility for the transmission or reception of audio or visual signals shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. Notwithstanding the foregoing, neither the restrictions nor the requirements of this Section shall apply to those antennas (which may include some satellite dishes and other devices) that are specifically covered by the Telecommunications Act of 1996, as amended from time to time. As to antennas which are specifically covered by the Telecommunications Act of 1996, as amended, the Committee shall be empowered to adopt rules and regulations governing the types of antennas that are permissible hereunder, and to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location, and maintenance.



- o. Home Occupations/Businesses.** The conduct of a home occupation or business within a residence shall be permitted provided that the following requirements are met: Home occupations or businesses must be conducted inside the residence and not occupy more than fifteen percent (15%) of the total floor area of the residence. Home occupations or businesses must be conducted only by the residents of said dwelling with no nonresidents employed at the residence. No retail sales shall be conducted on the Unit or in public view. Home occupations or businesses must be conducted within the scope of the zoning ordinances of the Town of Milliken. Customer visits must be limited to an occasional frequency. Customer parking must be in the driveway or immediately in front of the residence. There shall be no evidence of a home occupation or business from the outside of the residence.
- p. Clothes Lines and Dog Runs.** No clothes lines shall be located on any Lot and dog runs must first be approved by the Architectural Review Committee and shall not be located on any Lot where they are visible from a street or public view.
- q. Maintenance and Repair of Landscaping and Improvements:** Maintenance and repair of landscaping and Improvements shall be subject to the following provisions:

 - (i)** Each Owner shall provide prudent and regular exterior maintenance upon each Unit including painting, repairs and/or replacement of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass and other landscaping, walks, driveways and other surfaces, and all other exterior Improvements to maintain the value of said property. Owners shall comply with mandatory landscaping requirements as set forth in the Architectural Design Standards adopted by and available from the Architectural Review Committee. Owners benefiting from fencing and other Improvements immediately adjacent to their Lot, but installed by Declarant, are solely responsible for any and all maintenance and repairs with the exception of utility Improvements in easements owned and maintained by public utilities. Unit Owners shall not allow weeds or other unsightly vegetation on unimproved Units to exceed twelve inches in height.
 - (ii)** Failure to maintain: In the event an Owner of any Unit in the Project shall fail to maintain the premises and the Improvements thereon as provided herein, the Association shall have the right to enter upon said Unit to correct drainage, and to repair, maintain, and restore deficiencies that have not been corrected within thirty (30) days of duly written Notice. All costs related to such correction, repair, or



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restorations shall become a restoration Assessment upon such Unit and shall be paid by the Owner to the Association. Any amounts unpaid within thirty (30) days of final billing may be attached to the said Unit as a lien recorded with the Clerk and Recorder of Weld County. Nothing herein shall relieve the delinquent Owner of said Unit from any additional remedies at law as prescribed in other provisions of this Declaration.

- r. **Non-Owner Occupants.** All covenants, restrictions, rules, regulations, and provisions of this Declaration shall be binding on non-Owner occupants without exception. Property Owners who lease their property shall be required to furnish to lessees copies of this Declaration along with a written lease referencing this Declaration; leasing or being absent from the property shall not release property Owners from liabilities and responsibilities described herein.
- s. **Water and Sewer.** No individual water supply system or sewage disposal system shall be permitted on any Unit and all dwellings must attach to water and sewer in conjunction with Town of Milliken ordinances and construction standards.
- t. **No Violation of Law.** Nothing shall be done or kept in or on any portion of the Project by a Unit Owner or occupant which would be in violation of any statute, rule, ordinance, regulation, permit, or validly imposed requirement of any governmental body having jurisdiction over the Project. The Association shall have no duty or obligation to enforce any such statute, rule, ordinance, regulation, permit or validly imposed requirement.
- u. **Fencing.** No fencing of any type shall be constructed by any Lot Owner on any Lot within the Project without prior approval in writing by the Architectural Review Committee.
- v. **No Imperiling of Insurance.** Nothing shall be done or kept in or on any portion of the Project which might result in an increase in the premiums with respect to insurance obtained for all or any portion of the Project or which might cause cancellation of such insurance, except with the prior written consent of the Architectural Review Committee.
- w. **Architectural Design Standards.** The minimum Architectural Design Standards for the Project are set forth in **Exhibit B** attached hereto and made a part hereof. The Architectural Review Committee has the power and authority to make additional requirements for any residential construction or reconstruction within the Project. The Architectural Review Committee may



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modify or amend the Architectural Design Standards so long as such modifications and amendments are consistent with this Declaration. During the period of Declarant's reserved Development Rights, the minimum standards set forth in Exhibit B cannot be altered without Declarant's approval.

- x. **Intersection Obstructions.** No Owner shall construct or install any fence, berm, shrub, hedge, tree, or other Improvement which obstructs sight lines at an intersection. The Architectural Review Committee shall, in its discretion, have the right to determine if any such fence, berm, shrub, hedge, tree, or other Improvement obstructs such sight lines.
- y. **Underground Lines.** All electric, television, telephone, and other lines running from any property line of a Lot to a residence or other structure shall be placed underground.
- z. **Trash Burning.** Trash, leaves, and other similar materials shall not be burned within the Project.
- aa. **Drainage.** No Owner shall change the topography or drainage pattern of a Lot including, not by limitation, any drainage easement areas, from the topography or drainage pattern established by the Declarant unless such change is approved by the Architectural Review Committee. Any Owner who in any way materially modifies the topography or drainage pattern of a Lot without such consent shall be liable for any and all damages stemming therefrom, and may be required to return such topography or drainage patterns to their original state. If any Owner fails to fully abide by this provision, the Association or the Architectural Review Committee, after Notice to the Owner and a reasonable opportunity to perform all necessary work restoring drainage patterns, may undertake such work on behalf of and at the Owner's expense. Any such expense shall be reimbursed to the Association or Architectural Review Committee within thirty (30) days of the furnishing of Notice to such Owner that such reimbursement is owed, together with costs of collection thereof, attorney fees, and interest thereon. Said obligation shall be a personal obligation of the Owner and a charge and lien against each Owner's Lot as provided herein for Assessments.

Section 10. Variance. The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or

Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 11. *Waivers; No Precedent.* The approval or consent of the Architectural Review Committee or any representative thereof, or of the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee or any representative thereof, or by the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

ARTICLE XII

MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws, and Rules and Regulations of the Association.

Section 1. *Distribution of Insurance or Condemnation Proceeds.* In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 2. *Right to Pay Taxes and Charges.* Mortgagees who hold First Mortgages against Units may jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 3. *Audited Financial Statement.* Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee or Agency.

Section 4. *Notice of Action.* Any First Mortgagee and any Agency which holds, insures, or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

- a. Any proposed termination of the common interest community;
- b. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured, or guaranteed by such Agency;
- c. Any delinquency in the payment of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;
- d. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to this Declaration.

Section 5. *Action by Mortgagee.* If this Declaration or any Association Documents require the approval of Mortgagees, then if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee is given proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XIII

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. *Annexation.* Property may be annexed subject to the following:

- a. Additional property may be annexed to this Declaration with the consent of the Owners of Lots to which at least two thirds (2/3) of the Association votes are allocated. Notwithstanding the foregoing, Declarant may annex to this Declaration additional property within the lands described on the attached **Exhibit C**, until that date which is ten (10) years after the date of recording of this Declaration in the County of Weld, Colorado, without consent of any other Owners, security interest holders, or any other person; provided, however, that if Declarant desires to attempt to obtain Veterans' Administration or Housing and Urban Development approval of the property being annexed, then such annexation shall be subject to a determination by Veterans' Administration or Housing and Urban Development that the annexation is in accord with the general plan approved by it and the structures to be located thereon will be of comparable style, quality, size, and cost to the existing Improvements. Each annexation by Declarant shall be effected, if at all, by recording of a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording, in the Office of

the Clerk and Recorder of Weld County, Colorado, one of the following: (i) a deed from Declarant that provides for conveyance of a portion of the property described on the attached **Exhibit C** to any person other than Declarant, in which case each such lot in the property so conveyed shall constitute a Lot and the allocated interests shall thereupon automatically be reallocated to be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots then within the community upon recording of such deed, and any other portion(s) of such property so annexed shall constitute Common Elements; or (ii) an annexation of additional land, which document shall provide for annexation to this Declaration of the property described in such annexation of additional land, shall state that Declarant (or other person) is the Owner of the Lots thereby included, shall assign an identifying number to each new Lot, shall describe any Common Elements within the property being annexed, shall reallocate the allocated interests among all Lots, and may include such other provisions as Declarant deems appropriate (including, without limitation, covenants, restrictions, or other provisions which will be applicable to such annexed property and which are in addition to or more restrictive than the provisions of this Declaration). All provisions of this Declaration, including, but not limited to those provisions regarding obligations to pay Assessments to the Association and any right to cast votes, shall apply to annexed property immediately upon recording of a deed or an annexation of additional land with respect thereto, as aforesaid. In addition to the foregoing, Declarant may amend this Declaration at any time during the ten (10) year period noted hereinabove, in order to add additional real estate to the community from such locations as Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the community pursuant to this sentence is not described in the attached **Exhibit C** and does not exceed ten percent (10%) of the total area described in the attached **Exhibits A and C**.

- b. Declarant reserves the right at any time to record one or more documents in order to clarify the effect of any annexations which occur by deed, as permitted in subsection (a) above. Such documents, if any such documents are recorded by Declarant in its discretion, may state the legal descriptions of any property which has been annexed by deed, may state the reallocated allocated interests after such annexations, and may include other provisions which Declarant may determine to be appropriate in order to clarify any matters having to do with annexation of such property to this Declaration.
- c. Each portion of the community which is annexed to this Declaration by an annexation of additional land, as provided in the preceding subsection (a), shall be subject to a right of withdrawal by Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, Declarant's

right to withdraw each such portion of the community shall expire and terminate, as to each portion of the community which has been annexed to this Declaration, upon the first conveyance of any Lot in such annexed portion of the community to any person other than Declarant.

- d. Declarant may exercise its development rights in all or any portion of the real property described in the attached **Exhibit C** over which such rights have not already been exercised, and no assurances are made to the boundaries or order of exercise of any such development rights.

Section 2. Acquisition of Common Elements. Declarant may convey to the Association additional real estate, improved or unimproved, located within the common interest community or adjacent thereto, which upon conveyance or dedication to the Association shall be accepted by the Executive Board on behalf of the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its members.

ARTICLE XIV

DURATION OF COVENANTS AND AMENDMENT

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the land for twenty (20) years and shall be automatically extended for successive twenty-year periods, unless an instrument is signed revoking or terminating the Project pursuant to the provisions of this Declaration or the Act.

Section 2. Amendment. Except in cases of amendments that may be executed by the Declarant or the Association under the Act, this Declaration, or any provision of it, may be amended only by vote or agreement of Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration.

Section 3. Declarant Rights. To the extent permitted under the Act, provisions in this Declaration reserving or creating Special Declarant Rights may not be amended without the consent of Declarant.

Section 4. Execution of Amendments. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by including within or attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Plat to the fullest extent permitted under the Act and this Declaration.

Section 5. Revocation. This Declaration will not be revoked nor shall the common interest community created hereby be terminated (except as provided above regarding total destruction and/or total condemnation), without the consent of the Owners to which at least 67% of the votes in the Association are allocated evidenced by a written instrument duly recorded with the Clerk and Recorder.

ARTICLE XV

GENERAL PROVISIONS

Section 1. Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 2. Enforcement. Except as otherwise provided in this Declaration, the Executive Board, Declarant, Architectural Review Committee, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant, Architectural Review Committee, or by any Owner to enforce any restriction, condition, covenant, reservation, lien, or charge now or hereafter imposed by the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Registration of Mailing Address. Each Owner and each security interest holder, insurer, or guarantor of a security interest, shall register their mailing address with the Association. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the period of Declarant control shall be sent by registered or certified mail, postage prepaid, c/o Lot Holding Investments, LLC, P.O. Box 2150, 3026 4th Avenue, Greeley, CO 80632, unless such address is changed by the Association during the period of Declarant control. Subsequent to the termination of the period of Declarant control, the Association shall notify the Owners of a different address for notices.

Section 4. Veterans' Administration or Department of Housing and Urban Development Approval. Approval of either the Veterans' Administration or the Department of Housing and Urban Development shall be governed as follows:

- a. During the period of Declarant control, the following actions shall require the prior approval of the Veterans' Administration or the Department of Housing and Urban Development if, at the time any such action is taken, the Department of Housing and Urban Development has insurance or the Veterans' Administration has a guarantee on one or more security interests:

- (i) annexation of additional real property,
- (ii) amendment of this Declaration,
- (iii) termination of the common interest community, or
- (iv) merger or consolidation of the Association.

- b. Notwithstanding the provisions hereof, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration which any government mortgage agency requires to be amended or repealed as a condition to making, purchasing, insuring, or guaranteeing mortgages, or is required in order to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Authority, or other government mortgage agency, may be amended or repealed solely by Declarant and no approval, consent, or vote of any other person or entity shall be required. Any such amendment or repeal shall be effective upon the recordation of a certificate, executed by the Declarant, setting forth the amendment or repeal in full.

Section 5. *Limitation on Liability.* The Association, Board of Directors, Architectural Review Committee, Declarant, and any member, agent, or employee of any of the same, shall not be liable to any person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice.

Section 6. *No Representations or Warranties.* No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant or its agents and employees, in connection with any portion of the community, or any Improvement, or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 7. *Disclaimer Regarding Safety.* DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.



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Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9. Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 10. Conflict With Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

DECLARANT:

LOT HOLDING INVESTMENTS, LLC

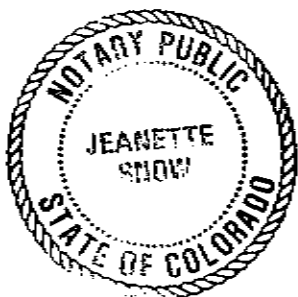

By: Bret Hall, Manager


STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me on December 17, 2001, by Bret Hall as Manager of Lot Holding Investments, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 10/20/05




Notary Public

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**EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
COLONY POINTE SUBDIVISION**

LEGAL DESCRIPTION

The legal description of the real property subject to this Declaration is:

All Lots and Outlots B, E, and F,
Colony Pointe Subdivision,
Town of Milliken, County of Weld, State of Colorado, in accordance with the Final Plat thereof
recorded October 26, 2000, at Reception No. 2802763, in the office of the Clerk and Recorder of
Weld County, Colorado.



EXHIBIT B

MINIMUM ARCHITECTURAL DESIGN STANDARDS FOR RESIDENTIAL CONSTRUCTION COLONY POINTE SUBDIVISION

The design standards set forth herein are in addition to the requirements of the ordinances of the Town of Milliken.

Section 1. *Diversity of Architectural Styles.* It is the intent of these guidelines to insure that each home remains compatible with the neighborhood as a whole. Domes, hyperbolic parabolas, modular homes, mansard roofs, and flat roofs will not be permitted in Colony Pointe Subdivision unless specifically approved by the Architectural Review Committee.

Section 2. *Minimum Square Footage and Building Height.* The ground floor finished area of any residence, exclusive of open porches, patios and vehicle garages, shall not be less than 1150 square feet for a one-story residence; not less than 600 square feet for the first floor of a two-story residence; and, not less than 1200 square feet above grade for the floors of a bi-level, tri-level or raised ranch residence. The total square footage minimum for the main floor and upper floors of a two-story, multi-level, bi-level, tri-level, or raised ranch residence shall not be less than 1200 square feet. The maximum building height of any residence constructed shall be 30 feet measured from the top of the foundation to the crest of the highest roof line (excluding chimneys, cupola).

Section 3. *Roof Pitches.* The roof pitch on any residence must be between 5/12 and 12/12.

Section 4. *Exterior Elevations of Residences.* Any residential plan should be designed to look attractive from all four sides. Decorative elements (masonry veneer, shutters, dormer windows, etc.) should not be limited to the front side of the residence.

Section 5. *Residence Window and Door Placement.* The placement of windows and doors within the residence on flat walls should not be randomly located.

Section 6. *Standards Regarding Use of Exterior Materials.* Exterior materials shall be limited as follows:

- a. Wood siding shall be restricted to natural wood boards or shingles, stained or painted, with a minimum recommended 20% pigment.
- b. Hardboard siding shall be restricted to pre-finished or painted with natural colors as defined in Section 7.



- c. Masonry siding shall be required for a minimum of twenty five percent (25%) net of window and door openings of the first floor facade of the residence. If stone or brick are used on the front of the residence, the stone or brick shall be extended a minimum of two (2) feet on both sides of the residence at the same height as the brick or stone on the front of the residence. The Architectural Review Committee may alter this requirement to accommodate specific styles of construction where, in the opinion of the Architectural Review Committee, the masonry requirements would be detrimental to the style, look, and appeal of the home.
- d. Garage fronts that are recessed or side load are encouraged on some plans.
- e. The roofing material to be utilized upon homes in the subdivision shall be a minimum twenty-five (25) year heritage or equivalent. No wood roofs or wood shingles shall be allowed. Roofing colors must be limited to natural material colors or earth tone.
- f. Window frames shall be painted wood, natural wood, painted steel, anodized painted aluminum, or vinyl cladding.
- g. Foundation walls shall not be exposed, except twelve (12) inches above grade.
- h. All fascia shall be a minimum of eight inches and all soffits shall be a minimum of twelve (12) inches.

Section 7. *Color of Exterior Materials.* ALL EXTERIOR COLORS MUST BE APPROVED BY THE Architectural Review Committee PRIOR TO CONSTRUCTION. The color of exterior materials used on the residence must be subdued and blend with the colors of the natural landscape. Earth tones, generally muted, are recommended. Accent colors on exterior doors, window frames, fascias, soffits and trim, used with restraint and in a manner which does not exceed ten percent (10%) of the surface of the residence, may be approved by the Architectural Review Committee.

Section 8. *Setbacks.* The setbacks which will be enforced by the Architectural Review Committee are the same building setbacks that are required by the Town of Milliken, Colorado.

Section 9. *Site Grading.* Exterior grading shall be adequate for drainage away from the house and adjacent houses; however, the grading shall not be forced to allow basement garden level or walkout windows and doors, except through the use of area walls. The type of grading and design of each Lot is shown on the recorded Plat and must be adhered to. Houses shall be sited to complement existing or planned houses on adjacent sites. Large elevated decks or patios are discouraged.



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Section 10. *Paved Areas.* Hard-surfaced private driveways and parking areas are required. Concrete is the preferred surface for private driveways and parking areas. If alternative materials are proposed, they must be submitted to and approved by the Architectural Review Committee

Section 11. *Location of Residences.* No two houses of the same plan shall be built on adjacent Lots.



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EXHIBIT C

PROPERTY SUBJECT TO ANNEXATION

The legal description of the real property subject to Annexation is:

Outlot A of Colony Pointe Subdivision as recorded in Weld County records at Reception No. 2802763, dated October 26, 2000, and a portion of the Southwest Quarter of Section 12, Township 4 North, Range 67 West of the 6th P.M., Town of Milliken, County of Weld, State of Colorado and being more particularly described as follows:

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 12, WHENCE THE SOUTHWEST CORNER OF SAID SECTION 12 BEARS SOUTH 00°15'56" EAST A DISTANCE OF 2636.18 FEET, SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION;

THENCE ALONG SAID LINE SOUTH 00°15'56" EAST 1400.42 FEET TO A POINT ON THE WESTERLY BOUNDARY LINE OF SAID COLONY POINTE SUBDIVISION, AND THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID WESTERLY BOUNDARY LINE NORTH 80°44'04" EAST, A DISTANCE OF 30.00 FEET; THENCE SOUTH 38°19'56" EAST, A DISTANCE OF 16.22 FEET; THENCE NORTH 00°15'56" WEST, A DISTANCE OF 0.83 FEET; THENCE NORTH 89°25'41" EAST, A DISTANCE OF 179.50 FEET; THENCE SOUTH 00°34'20" EAST, A DISTANCE OF 260.45 FEET; THENCE SOUTH 44°34'52" WEST, A DISTANCE OF 21.27 FEET; THENCE SOUTH 89°44'04" WEST A DISTANCE OF 205.89 FEET; THENCE NORTH 00°15'56" WEST, A DISTANCE OF 286.50 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL OF LAND CONTAINING 1.397 ACRES MORE OR LESS;

and

Outlots C and D,

Colony Pointe Subdivision,

Town of Milliken, County of Weld, State of Colorado, in accordance with the Final Plat thereof recorded October 26, 2000, at Reception No. 2802763, in the office of the Clerk and Recorder of Weld County, Colorado.

BYLAWS

OF

COLONY POINTE

HOMEOWNERS ASSOCIATION

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**BYLAWS
OF
COLONY POINTE
HOMEOWNERS ASSOCIATION**

INTRODUCTION

These are the Bylaws of Colony Pointe Homeowners Association, a planned community association. Capitalized terms are defined in the Declaration.

ARTICLE 1 - NAME

The name of the corporation is Colony Pointe Homeowners Association, hereinafter referred to as the "Association."

ARTICLE 2 - EXECUTIVE BOARD

2.1 *Number and Qualification.* The affairs of the Association shall be governed by an Executive Board which, until the termination of the period of Declarant control, shall consist of not less than one (1) person. Following the date of termination of Declarant control, the majority of Directors shall be Owners and the number of Directors shall be within a range of no less than three (3) or more than seven (7). The specific number of Directors shall be fixed from time to time by the Executive Board. However, no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. If any Residential Unit is owned by a partnership or corporation, any officer, partner, or employee of that Owner shall be eligible to serve as a Director and shall be deemed to be an Owner for the purposes of the preceding sentence. Directors shall be elected by the Owners, except for those appointed by Declarant. At any meeting at which Directors are to be elected, the Owners may by resolution adopt specific procedures which are not inconsistent with these Bylaws or the Corporation Laws of the State of Colorado for conducting elections.

2.2 *Powers and Duties.* The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Colorado Common Ownership Act (the "Act"). The Executive Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association, which shall include the powers and duties set forth in C.R.S. § 38-33.3-302(1) and in the Declaration, and shall specifically include:

2.2.1 *Owner Relations.* Maintain businesslike relations with Owners or occupants.

2.2.2 *Interpretation.* The powers herein granted or necessarily implied shall be construed to favor the broadest discretion of the Executive Board, except that the Executive Board shall have the duty to exercise all of such powers as required by law.

2.2.3 *Fiscal Responsibility.* The Executive Board shall be governed by the following with respect to its fiscal duties and responsibilities:

2.2.3.1 *Bank Accounts.* The depository of the Association shall be such bank or banks as shall be designated from time to time by the Executive Board and in which the monies of the Association shall be deposited. Withdrawals of monies from such accounts shall be only by checks signed by such persons as are authorized by the Executive Board, provided that a management agreement may include among its provisions authority for the Manager to sign checks on behalf of the Association for payment of the obligations of the Association.

2.2.3.2 *Interest and Attorney Fees.* The Executive Board, at its option, shall have the right in connection with the collection of any Assessments, fees, or charges, to impose late charges and assess an interest charge of 18% per annum and to recover reasonable attorney fees and costs of collection.

2.2.3.3 *Budget.* The Executive Board shall prepare a proposed annual budget for the upcoming fiscal year at least four (4) months prior to the end of the current fiscal year. Within thirty (30) days after adoption of any proposed budget for the common interest community, the Executive Board shall mail, by ordinary first class mail or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) and not more than sixty (60) days after mailing or other delivery of the summary. Unless a majority of the Owners present or represented by proxy at the meeting vote to reject the budget, the budget is ratified whether or not a majority is present. In the event the budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

2.2.3.4 *Disbursement.* The Executive Board shall take and hold the funds as collected and shall disburse the same for the purposes and in the manner set forth herein and as required by law.

2.2.3.5 *Reserves.* The Executive Board shall not be obligated to expend all of the revenues collected in any accounting period but may maintain a reasonable reserve for, among other things, emergencies, contingencies of bad weather, or uncollected accounts. Said reserve fund or funds shall, however, be kept in interest bearing securities, either short or long term, or in an insured, interest bearing savings account. The foregoing shall not be construed to mean that the

Executive Board shall not be permitted to keep additional cash on hand in a checking or petty cash account for the necessary discharge of its function.

2.2.3.6 *Annual Audit.* The Executive Board may submit its books, records and memoranda to an annual audit by a disinterested certified public accountant to audit the same and render a report thereon in writing to the Executive Board and in summary form to the Members and such other persons, firms or corporations as may be entitled to same. If such audit is performed, it shall be a Common Expense unless otherwise provided in the Declaration.

2.3 *Standard of Care.* In the performance of their duties, the officers and members of the Executive Board are required to exercise (1) if appointed by Declarant, the care required of fiduciaries of the Owners and (2) if elected by the Owners, ordinary and reasonable care.

2.4 *Term of Office.* A term of office shall be three (3) years. Any member shall be permitted to serve a maximum of two (2) full terms of office in succession, upon the completion of which such person shall be disqualified from holding office as a member of the Executive Board for a period of three (3) years. The limitation upon terms of office of Board members herein shall not apply to any member of the "First Board of Directors," who shall serve fewer than three (3) years as a member of the Board of Directors during his or her first term in office, it being the intention of these Bylaws that a member of the "First Board of Directors" may serve two (2) three-year terms in addition to any shorter term served as a member of the "First Board of Directors."

2.5 *Election of Directors.* To the maximum extent permitted by the Act, there shall be a period of Declarant control of the Association, during which period the Declarant, or persons designated by such Declarant, may appoint or remove the officers and members of the Executive Board. Following the period of Declarant control, election of Directors shall be by simple majority vote of the Members at the annual meeting.

2.6 *Removal of Directors.* The Owners, by a two-thirds vote of all persons present and entitled to vote, at any meeting of the Owners at which a quorum is present, may remove any Director of the Executive Board, other than a Director appointed by Declarant, with or without cause.

2.7 *Vacancies.* Vacancies in the Executive Board, caused by any reason other than the removal of a Director by a vote of the Owners, may be filled at a special meeting of the Executive Board held for that purpose at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be made by a majority of the remaining elected Directors constituting the Executive Board. Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced.

2.8 *Regular Meetings.* The first meeting of the Board following the first annual meeting of the Owners shall be held within ten (10) days thereafter and no notice shall be necessary.

Thereafter, regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of the members of the Executive Board, but at least one (1) meeting shall be held each year. Notice of regular meetings of the Executive Board shall be given to each member of the Board by mail or facsimile at least three (3) business days prior to the day of the meeting. Any member of the Executive Board may, at any time, waive notice of any meeting of the Executive Board in writing and such waiver shall be deemed equivalent to the giving of notice.

2.9 *Special Meeting.* Special meetings of the Executive Board may be called by the President or by a majority of the Directors on at least three (3) business days' notice to each Director. The notice shall be hand delivered or mailed and shall state the time, place and purpose of the meeting.

2.10 *Location of Meetings.* All meetings of the Executive Board shall be held at such time and place as shall be fixed by the Executive Board.

2.11 *Waiver of Notice.* Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Executive Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

2.12 *Quorum of Directors.* At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Executive Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.13 *Compensation.* No member of the Executive Board shall receive any compensation for acting as a Director. However, Directors may receive reimbursement for necessary expenses actually incurred in connection with the Director's duties. Directors acting as employees may be compensated for those duties.

2.14 *Consent to Corporate Action.* If all the Directors or all Directors of a committee established for such purposes, as the case may be, severally or collectively, consent in writing to any action taken or to be taken by the Association, and the number of the Directors constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The Secretary shall file these consents with the minutes of the meetings of the Executive Board.

2.15 *Telephone Communication in Lieu of Attendance.* A Director may attend a meeting of the Executive Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members

on any matter properly brought before the Executive Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

2.16 *Non-Waiver.* All the rights, duties and privileges of the Executive Board shall be deemed to be continuing and shall not be exhausted by a single act or series of acts. To the same extent, the failure to use or employ any remedy or right hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Executive Board.

ARTICLE 3 - OWNERS

3.1 *Annual Meeting.* Annual meetings of Owners shall be held as provided in the minutes of the first annual meeting of the Association or, if not provided therein, in the month in which the Articles of Incorporation for the Association were recorded, or at such other date as set forth in the notice. At these meetings, the Directors shall be elected by ballot of the Owners in accordance with the provisions of Article 2 of the Bylaws. The Owners may transact other business as may properly come before them at these meetings.

3.2 *Special Meetings.* Special meetings of the Association may be called by the President whenever he deems such a meeting advisable. A special meeting shall be called by the Secretary when so ordered by the majority of the members of the Executive Board or upon written request of Owners comprising no less than twenty percent (20%) of the votes in the Association. A request by the Owners shall state the purpose or purposes of such meeting and the matter proposed to be acted upon at the special meeting. The Secretary shall give notice stating the purpose or purposes of the meeting to all Members entitled to vote at such meeting. No special meeting need be called upon the request of Owners entitled to cast less than fifty percent (50%) of the votes of the Association to consider any matter which is substantially the same matter voted upon at any meeting of the members held during the preceding twelve (12) months.

3.3 *Place of Meetings.* Meetings of the Owners shall be held at the principal office of the Association or may be adjourned to a suitable place convenient to the Owners, as may be designated by the Executive Board or the President.

3.4 *Notice of Meetings.* The Secretary, or other officer specified in the Bylaws, shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Residential Unit or to the mailing address designated in writing by the Owner, not less than ten (10) nor more than fifty (50) days in advance of a meeting. The notice of the meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Executive Committee. No action shall be adopted at a meeting except as stated in the notice.

3.5 *Waiver of Notice.* Any Owner may, at any time, waive notice of any meeting of the Owners in writing, and the waiver shall be deemed equivalent to the receipt of notice.

3.6 *Adjournment of Meeting.* At any meeting of Owners, a majority of the Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

3.7 *Order of Business.* The order of business at all meetings of the Owners shall be as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports
 - Officers' reports;
 - Committee reports;
- (e) Election of Directors of the Executive Board (when required);
- (f) Ratification of budget (if required and noticed);
- (g) Unfinished business; and
- (h) New business.

3.8 *Voting.* Voting shall be subject to the following provisions:

(a) The Owner(s) of each Residential Unit shall have one (1) vote per Residential Unit owned.

(b) If only one (1) of several Owners of a Residential Unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to the Residential Unit. If more than one (1) of the Owners are present, the vote allocated to the Residential Unit may be cast only in accordance with the agreement of a majority in interest of the Owners. There is a majority agreement if any one of the Owners casts the vote allocated to the Residential Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Residential Unit.

(c) A vote allocated to a Residential Unit may be cast under a proxy duly executed by a Owner. If a Residential Unit is owned by more than one (1) person, each Owner of the Residential Unit may vote or register a protest to the casting of votes by the other Owners of the Residential Unit through a duly executed proxy. An Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term.

(d) The vote of a corporation or business trust may be cast by any Officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Executive Board or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any partner of the owning partnership in the absence of

) express notice of the designation of a specific person by the owning partnership. The vote of a Limited Liability Company may be cast by a Member or Manager in the absence of express notice of the designation of a specific person by the Limited Liability Company. The moderator of the meeting may require reasonable evidence that a person voting is qualified to vote.

(e) Cumulative voting shall not be permitted.

(f) The election of Directors shall be by ballot. Unless demanded by at least twenty five percent (25%) of the Members present in person or by proxy at such meeting and entitled to vote there at, or determined by the President to be advisable, the vote on any other question need not be by ballot.

3.9 *Quorum.* At each meeting of the Owners, one-third of the Owners, present in person or represented by proxy shall constitute a quorum at that meeting. In the absence of a quorum, the Owners present in person or represented by proxy and entitled to vote, by majority vote, may adjourn the meeting from time to time until a quorum shall be present or represented. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at the meeting originally called.

) 3.10 *Majority Vote.* The vote of a majority of the Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Owners for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws or by law.

3.11 *Voting by Mail.* The Executive Board may decide that voting of the Members on any matter required or permitted by the statutes of Colorado, the Declaration, the Articles of Incorporation, or these Bylaws shall be by mail. Any action that may be taken at any annual, regular or special meeting of Lot Owners may be taken without a meeting if the Secretary delivers a written ballot to every Member entitled to vote on the matter.

3.11.1 A written ballot shall: (i) set forth each proposed action; and (ii) provide an opportunity to vote for or against each proposed action.

3.11.2 Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

3.11.3 All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than the election of members of the Executive Board; (iii) specify the time by which a ballot must be received by the Association in order to be

counted; and (iv) be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

3.11.4 A written ballot may not be revoked.

ARTICLE 4 - OFFICERS

4.1 *Designation.* The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an Assistant Treasurer, an Assistant Secretary and other officers as it finds necessary. Any number of offices may be held by the same person, except the combination of offices of President and Vice President and President and Secretary. Officers must be 18 years of age or older. Nothing herein shall prohibit a Director from being an officer.

4.2 *Election of Officers.* The officers of the Association shall be elected annually by the Executive Board at the organizational meeting of each new Executive Board. They shall hold office at the pleasure of the Executive Board.

4.3 *Removal of Officers.* Upon the affirmative vote of a two-thirds majority of the Directors, any officer may be removed either with or without cause. A successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board called for that purpose.

4.4 *President.* The President shall be the Chief Executive Officer of the Association. The President shall preside at all meetings of the Owners and of the Executive Board. The President shall have all of the general powers and duties which are incident to the office of President of a non-stock corporation organized under the laws of the State of Colorado including, but not limited to, the power to appoint committees from among the Owners from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association. The President may fulfill the role of Treasurer in the absence of the Treasurer. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

4.5 *Vice President.* The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform other duties imposed by the Executive Board or by the President.

4.6 *Secretary.* The Secretary shall keep the minutes of all meetings of the Owners and the Executive Board. The Secretary shall have charge of the Association's books and papers as the Executive Board may direct and shall perform all the duties incident to the office of Secretary of a non-stock corporation organized under the laws of the State of Colorado. The Secretary may cause

to be prepared and may attest to the execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

4.7 *Treasurer.* The Treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board, and shall perform all the duties incident to the office of Treasurer of a non-stock corporation organized under the laws of the State of Colorado. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Executive Board. Except for reserve funds described below, the Treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stocks, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Executive Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the Treasurer, and executed by two (2) Directors, one of whom may be the Treasurer if the Treasurer is also a Director.

4.8 *Agreements, Contracts, Deeds, Checks, Etc.* Except as provided in Sections 4.4, 4.6, 4.7, and 4.10 of these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Executive Board.

4.9 *Compensation.* The President and Vice President shall not receive any compensation for their services except reimbursement for necessary expenses actually incurred in connection with Association duties. The Secretary and Treasurer may be compensated for their services if the Executive Board determines that such compensation is appropriate. Compensation, if any, shall be in an amount proposed by the Executive Board and approved by the majority of Owners present or represented by proxy at a meeting.

4.10 *Statements of Unpaid Assessments.* The Treasurer, Assistant Treasurer, a Manager employed by the Association or, in their absence, any officer having access to the books and records of the Association, may prepare, certify and execute statements of unpaid assessments in accordance with Section 38-33.3-316 of the Act and the Declaration. The Association may charge a reasonable fee for preparing statements of unpaid Assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. The Association may refuse to furnish statements of unpaid Assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Residential Unit for which the statement is furnished.

4.11 *Fidelity Bonds.* All officers, Members of the Association, agents, or other persons having the responsibility of handling funds of the Association shall be bonded pursuant to the provisions of the Declaration.

4.12 *Other Duties and Powers.* The officers shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Executive Board.

ARTICLE 5 - REMEDIES FOR VIOLATIONS

5.1 *Enforcement.* The Association shall have the power, at its sole option, to enforce the terms of this instrument, the Articles, the Declaration or any rule or regulation promulgated pursuant thereto, by any means set forth in the Declaration or these Bylaws and by all of the following: self-help; by sending notice to the offending party requiring certain things to be done or undone; by taking action to remedy any breach of the Association Documents and charging the breaching party with the entire cost or any part thereof; by taking any other action before any court as may be provided by law; by complaint to the duly constituted authorities.

5.2 *Abatement and Enjoinment of Violations by Owners.* The violation of any of the Rules and Regulations adopted by the Executive Board or the breach of any provision of the Declaration shall give the Executive Board the right after notice and hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

(a) To enter upon the Residential Unit or limited Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition (except for additions or alterations of a permanent nature that may exist in that Residential Unit) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Declaration. The Executive Board shall not be deemed liable for trespass by this action; or

(b) To enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

5.3 *Fine for Violation.* By resolution, following notice and hearing, the Executive Board may levy a fine of up to twenty five dollars (\$25.00) per day for each day that a violation of the Declaration or Rules and Regulations persists after notice and hearing.

5.4 *Assessments.* Remedies for late payment or default of payment of Assessments shall be governed by the Declaration.

ARTICLE 6 - BOOKS AND RECORDS

6.1 *Examination.* All records maintained by the Association or the Manager shall be available for examination and copying by any Owner, any holder of a security interest in a Residential

Unit or its insurer or guarantor, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

6.2 *Records.* The Association shall keep the following records:

(a) An account for each Residential Unit, which shall designate the name and address of each Owner, the name and address of each Mortgagee who has given notice to the Association that it holds a Mortgage on the Residential Unit, the amount of each Common Expense Assessment, the dates on which each Assessment comes due, the amounts paid on the account and the balance due;

(b) An account for each Owner showing any other fees payable by the Owner;

(c) A record of any capital expenditures in excess of three thousand dollars (\$3,000.00) approved by the Executive Board for the current and next two (2) succeeding fiscal years;

(d) A record of the amount and an accurate account of the current balance of any reserves for capital expenditures, replacement, and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specific project;

(e) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;

(f) The current operating budget;

(g) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;

(h) A record of insurance coverage provided for the benefit of Owners and the Association;

(i) A record of any alterations or Improvements to Residential Units or limited Common Elements which violate any provisions of the Declarations of which the Executive Board has knowledge;

(j) A record of any violations, with respect to any portion of the common interest community, of health, safety, fire or building codes or laws, ordinances or regulations of which the Executive Board has knowledge;

(k) A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements, if any;

- (l) Tax returns for state and federal income taxation;
- (m) Minutes of proceedings of incorporators, Owners, Directors, committees of Directors, and waivers of notice; and
- (n) A copy of the most current versions of the Declaration, Bylaws, Rules and Regulations, and resolutions of the Executive Board, along with their exhibits and schedules.

ARTICLE 7 - MISCELLANEOUS

7.1 *Notices.* All notices for the Association or the Executive Board shall be delivered to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Owners and to all holders of security interests in the Residential Units who have notified the Association that they hold a security interest in a Residential Unit. Except as otherwise provided, all notices to any Owner shall be sent to the Owner's address as it appears in the records of the Association. All notices to holders of security interests in the Residential Units shall be sent by registered or certified mail to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

7.2 *Fiscal Year.* The Executive Board shall establish the fiscal year of the Association, or if no fiscal year is established by the Executive Board, the fiscal year shall be the calendar year.

7.3 *Waiver.* No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

7.4 *Office.* The principal office of the Association shall be on the Property or at such other place as the Executive Board may from time to time designate.

7.5 *Title to Parcels.* Title to Parcels may be taken in the name of an individual, or in the name of two or more persons as tenants in common or as joint tenants with right of survivorship, or in the name of a corporation, limited liability company, partnership, or fiduciary. Any officer of a corporate Owner shall be eligible to serve on the Board.

7.6 *Additions, Alterations or Improvements by the Board.* Whenever, in the judgment of the Executive Board, Common Elements shall require additions, alterations, or Improvements costing in excess of ten thousand dollars (\$10,000.00), said alterations and Improvements shall not be made unless they have been approved by a majority of the Members present and voting at a meeting at which a quorum is present. When said approval has been obtained, all Members shall be assessed for the cost thereof above and beyond that allocated from the reserve fund as a common charge.

7.7 *Right of Access.* Each Owner shall grant a right of access to his Residential Unit to any person authorized by the Executive Board for the purpose of inspecting for and correcting any condition originating on his Residential Unit and threatening another Residential Unit or any Common Element, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate, whether the Owner is present at the time or not.

7.8 *Common Expenses Payable by the Declarant.* Until the sale of the first Residential Unit, the Declarant shall be solely responsible for all Common Expenses.

7.9 *Invalidity.* The invalidity of any part of these Bylaws shall not impair or affect in any manner the enforceability or affect the balance of these Bylaws.

7.10 *Amendments.* These Bylaws, or any one of them, may be altered or repealed, or new Bylaws may be made, at any meeting of the Association duly constituted for such purpose, a quorum being present, by an affirmative vote of two-thirds (2/3) of the votes entitled to be cast in person or by proxy, except that the first annual meeting may not be advanced and the first Board of Directors (including replacements in case of vacancies) may not be removed by reason of any such amendment or repeal.

7.11 *Exculpability of Board and Officers.* Neither the Board as a body nor any member thereof nor any officer of the Association shall be personally liable to any Owner in any respect for any action or lack of action arising out of the execution of his office. Each Owner shall be bound by the good faith actions of the Board and officers of the Association in the execution of the duties of said Directors and officers. Unless acting in bad faith, no Director or officer of the Association shall be liable to any Owner or other person for misfeasance or malfeasance in office.

7.12 *Conflict.* Anything to the contrary herein notwithstanding, if any provision of this instrument is in conflict with or a contradiction of the requirements of any law, then the requirements of said law shall be deemed controlling.

ATTEST:

CERTIFIED to be the Bylaws adopted by consent of the Directors of Colony Pointe Homeowners Association, dated _____

Secretary