

FIRST AMENDMENT OF THE AMENDED  
AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF  
THE HOMESTEAD

THIS FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS dated July 1, 1996 is by WARNER PROPERTIES, INC., a Colorado corporation, ("WPI") and WARNER DEVELOPMENTS, INC., A Colorado corporation, ("WDI").

RECITALS

HOMESTEAD RANCH DEVELOPMENT CORP., a Colorado corporation, ("HRD") executed and caused to be recorded on October 1, 1984, in Book 396 at Page 54, the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Homestead (the "Declaration") whereby certain restrictions and limitations were imposed upon real property more particularly described therein. By instrument dated July 13, 1995, and recorded July 21, 1995, in Book 671 at Page 676, WPI as successor and interest to HRD and the Owners consented to the annexation of the real property described in Exhibit A attached hereto and made a part hereof ("Filing No. 2"). WDI, as the record and beneficial owner of Filing No. 2, by instrument dated March 29, 1996, and recorded April 30, 1996, in Book 693 at Page 462, subjected Filing No. 2 to Planned Unit Development Guidelines.

WDI and WPI desire to subject Filing No. 2 to the provisions of the Declaration. All recording references herein are to the real property records of Eagle County, Colorado. Certain capitalized terms used in this First Amendment shall have the same meaning as when used in the Declaration.

AMENDMENT

1. WDI and WPI hereby subject Filing No. 2 to Articles III, IV, V, VI, VII, VIII and Sections 9.1, 9.2, 9.3, 9.5, 9.6 and 9.7 of Article IX of the Declaration.
2. In the event any of the provisions of this First Amendment shall in any way conflict with the provisions of the Planned Unit Development Guidelines, the provisions of the Planned Unit Development Guidelines shall govern.
3. In the event any of the provisions of this First Amendment shall in any way conflict with the provisions of the Declaration, the provisions of this first Amendment shall

control. Except as herein specified, the Declaration and all terms and conditions thereof shall remain in full force and effect and are hereby ratified and confirmed.

EXHIBIT "A"

Township 5 South, Range 82 West of the 6<sup>th</sup> P.M.

Section 8: E1/2NE1/4, E1/2SE1/4

Section 9: W1/2NW1/4, SE1/4NW1/4, NW1/4SW1/4, SW1/4NE1/4, N1/2SE1/4, SE1/4SE1/4

Section 10: NW1/4SW1/4

Eagle County, Colorado

AMENDED AND RESTATED  
DECLARATIONS OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE HOMESTEAD

THIS AMENDED AND RESTATED DECLARATION is made and entered into this 28<sup>th</sup> day of September, 1984, by HOMESTEAD RANCH DEVELOPMENT CORP., a Colorado Corporation ("Homestead") and by WPI PARTNERSHIP NO. 2, LTD., a Colorado limited partnership ("WPI"), and consented to by the Members referred to hereafter (Homestead and WPI are hereinafter referred to individually as "Declarant and collectively as "Declarants").

WITNESSETH

WHEREAS, Homestead has previously executed and recorded that certain Declaration of Covenants, Conditions and Restrictions of the Homestead dated July 29, 1981 and recorded on August 5, 1981 in Book 327 at Page 169 in the records of the Clerk and Recorder of Eagle County, Colorado (collectively, the "Original Declaration"); and

WHEREAS, the undersigned Declarants and Members constituting at least two-thirds of Members of all classes, as defined and required by the Original Declaration, desire to amend and restate the Original Declaration in its entirety.

NOW, THEREFORE, the Original Declaration is hereby amended and replaced in its entirety by the following, which is recorded and executed for the purpose of creating and maintaining within the hereinafter described property conditions which are desirable and attractive, with improvements which are safe, suitable and harmonious in architectural design and complementary to the natural environment of said property, and

Declarants and the undersigned hereby declare that all of such Properties shall be owned, held, sold, leased, transferred, used and conveyed in accordance with and subject to the following easements, restrictions, covenants and conditions, all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the above described Properties or any part thereof, their heirs, successors and assigns.

## ARTICLE I

### DEFINITIONS

Section 1.1 “Association” shall mean and refer to The Homestead Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 1.2. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any vacant Lot or Dwelling Unit located on a Lot which is a part of the Properties, including contract sellers, but excluding those having such an interest merely as security for the performance of an obligation.

Section 1.3. “Properties” shall mean and refer to that certain real property in the County of Eagle, State of Colorado, which is described as The Homestead Filing No. 1, according to the recorded plat thereof filed under Reception No. 23530, and recorded in Map Case 2, Drawer 14 of plats, and also The Homestead Filing No. 3, according to the recorded plat thereof filed under Reception No. 292280, and recorded in Map Case 395, Drawer 986 of plats, together with such additions thereto as may hereafter be brought within the jurisdiction of the Association in accordance with the terms and provisions of this Declaration.

Section 1.4. “Common Area” shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described on the final plat for The Homestead Filing No. 3. Roadways and sidewalks for pedestrian and vehicular uses and underground utility lines, and fixtures and devices used or useful in the operation of said lines, may be constructed, operated and maintained over, through and across the Common Areas. Buildings to be used by utilities, fire department, and other public agencies may be constructed on Common Areas upon approval of the Design Review Committee. Residential Dwelling Units located in public facilities for public employees are acceptable on Common Areas, subject to approval of the Design Review Committee and the granting of a special use permit by the Board of County Commissioners of Eagle County, Colorado, or other successor governmental authority.

Section 1.5. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map including all or a portion of the Properties, with the exception of (a) the Common Area, (b) private tracts as so described on the plat of The Homestead – Filing No. 1 and The Homestead – Filing No. 3, and (c) Private Open Space as so designated on said plat.

Section 1.6. “Declarant” shall mean and refer to Homestead Ranch Development Corp., a Colorado corporation or to WPI Partnership No. 2, Ltd., a Colorado limited partnership, and any successor or assign as may hereafter be designated by Developer by a written instrument duly recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

Section 1.7. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 1.8. “Design Review Committee” shall mean and refer to the committee created pursuant to the provisions of Section 3.1 of Article III of this Declaration.

Section 1.9. “Single Family Lot” shall mean and refer to a Lot which may be used solely for residential purposes and upon which not more than one building containing not more than one Dwelling Unit, together with not more than one garage/accessory building, may be constructed, as so designated on a recorded plat of all or a part of the Properties.

Section 1.10. “Duplex Lot” shall mean and refer to a Lot which may be used solely for residential purposes and upon which not more than one building containing not more than two Dwelling units, sharing a common wall which comprises of at least 10 percent of the linear measurement of the perimeter of each unit, together with not more than one garage/accessory building, may be constructed, as so designated on a recorded plat of all or a part of the Properties.

Section 1.11. “Tri-plex Lot” shall mean and refer to a Lot which may be used solely for residential purposes and upon which not more than one building containing not more than three Dwelling units, together with not more than one garage/accessory building, may be constructed, as so designated on a recorded plat of all or part of the Properties.

Section 1.12. “Multi-Family Lot” shall mean and refer to a Lot which may be used solely for residential or child daycare purposes, upon which may be constructed a

building or buildings to be used for multi-family residential purposes (condominiums, townhouses, apartments or other comparable uses), provided that the total number of Dwelling Units to be constructed on a particular Multi-Family Lot shall not exceed the number of Dwelling Units allowed for such Lot on the recorded plat designating such Lot.

Section 1.13. “Four-plex Lot” shall mean and refer to a Lot which may be used solely for residential purposes and upon which not more than one building containing not more than four Dwelling Units, together with not more than one garage/accessory building, may be constructed, as so designated on a recorded plat of all or a part of the Properties.

Section 1.14. “Dwelling Unit” shall mean and refer to one or more rooms in a building designed to be used and occupied by one family living independently of any other family, having not more than one kitchen and cooking facility, to be used solely for residential occupancy.

Section 1.15. “Community Park” shall mean and refer to a parcel so designated on a plat of all or a part of the Properties, which shall be Common Area and may be used for recreational or child daycare facilities and structures, both publicly and privately owned, provided that such facilities are available to the public, or commercial uses oriented specifically to recreational facilities such as restaurants, sports equipment sale or rent, and the like. Said commercial uses are limited to one building and the sale of equipment is limited to athletic equipment used in said building. In addition, buildings to be used by utilities, fire departments, and other public agencies may be constructed on a Community Park upon approval of the Design Review Committee. Residential Dwelling Units located in public facilities for public employees are acceptable on a Community Park, subject to approval of the Design Review Committee and the granting of a special use permit by the Board of County Commissioners of Eagle County, Colorado or other successor governmental authority.

Section 1.16. “Vacant Lot” shall mean and refer to a Lot which does not have one or more completed Dwelling Units constructed thereon.

Section 1.17. “Private Open Space” shall mean and refer to a Lot which shall remain in its present, unimproved and undeveloped state so long as the adjacent and surrounding land remains in similar use. At such time as the use of the adjacent and surrounding land changes, uses shall be permitted thereon which are similar and compatible to the new uses of the adjacent and surrounding land.

Section 1.18. “Church Site” shall mean and refer to a Lot which may be used for religious purposes.

## ARTICLE II

### USE REGULATIONS

Section 1. Land Uses. The Lots in the Properties fall within the following land use categories:

<u>Lots in Filing No. 1:</u>	<u>Category:</u>
Lots 1 – 50, Block 1	Single Family Lots
Lots 1 – 11, Block 2	Single Family Lots
Lots 1 – 2, Block 3	Single Family Lots
Lots 1 – 2, Block 5	Single Family Lots
Lots 1 – 13, Block 6	Single Family Lots
Lots 1 – 35, Block 7	Single Family Lots
Lots 1 – 14, Block 10	Single Family Lots
Lots 1 – 45, Block 11	Single Family Lots
Lots 1 – 11, Block 9	Four-plex Lots
Lots 1 – 2, Block 8	Multi-Family Lots
Lot 3, Block 8	Multi-Family Lot and Community Park
Lot 1, Block 12	Church Site
Lot 1, Block 4	Private Open Space
<u>Lots in Filing No. 3:</u>	<u>Category:</u>
Lots 1 – 9 and 36	Multi-Family Lots
Lots 10, 11 and 17	Four-plex Lots
Lots 12 – 16, 18 – 25, 37 – 40 and 44 – 52	Duplex Lots
Lots 26 – 35	Single Family Lots
Lots 41 – 43	Tri-plex Lots

Section 2. Use Restrictions. Each Lot shall be subject to the following maximum site use limitations:

<u>Single Family</u>	<u>Duplex</u>	<u>Tri-Plex</u>	<u>Fourplex</u>	<u>Multi-Family</u>
<u>Lots</u>	<u>Lots</u>	<u>Lots</u>	<u>Lots</u>	<u>Lots</u>

Maximum Floor to Lot Area Ratio	.30	.30	.35	.35	.40
Maximum Building Footprint*	.35	.35	.40	.40	.40
Maximum Coverage With Impervious Materials*	.55	.55	.60	.60	.60

\*Areas of upper floor overhang or projections less than seven feet above finish grade shall be included in calculating site coverage.

Section 2.3. Setbacks. No building or other structure shall be located closer than twenty-five (25) feet from the road right-of-way nor closer than twelve and one-half (12 ½) feet from any other property line of a Lot.

Section 2.4. Drainage and Grading. All plans and specifications for the construction of improvements on a Lot, and the actual construction of such improvements, shall maintain all drainage easements and rights-of-way within the Properties clear and unobstructed. Further, all grading on a Lot shall be one with a minimum of disruption to the Lot and shall not drain surface water to adjoining Lots unless along a natural drainage path, nor shall grading cause soil erosion. Grading shall be confined to each Lot, and shall be subject to review by the Eagle County Department of Community Development.

### ARTICLE III

#### DESIGN REVIEW COMMITTEE

Section 3.1. Composition of Committee. The Design Review Committee shall consist of between three and seven persons, as determined by the Board of Directors of the Association from time to time, appointed by the Board, provided, however, that until all filings of the entire Homestead project are completed and all Lots have been conveyed by Declarants, the Declarant or Declarants who still own a Lot shall appoint the Design Review Committee. A majority of the Committee may designate a representative to act for it.

Section 3.2. Review by Committee. No building, home, Dwelling Unit, structure or any attachment to an existing structure, whether a residence, an accessory building, a

tennis court, a swimming pool, fence, wall, barrier, exterior lighting facility, athletic facility, or other similar improvement or attachment or sign, shall be constructed upon the Properties, no alteration of the exterior of a structure shall be made, and no change in the final grade, nor the installation of any landscaping shall be performed, unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks and the grading plan) shall have been first submitted to and approved in writing by the Committee. The Committee shall exercise its best judgement to the end that all attachments, improvements, construction, landscaping and alterations to structures and on land within the Properties conform to and harmonize with existing surroundings and structures.

Section 3.3. Procedures. The Design Review Committee shall approve or disapprove all plans within thirty (30) days after submission. In the event that the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 3.4. Vote. A majority vote of the Committee is required to approve a proposed improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 3.5. Records. The Committee shall maintain written records of all applications submitted to it and of all actions taken by it thereon, and such records shall be available to Owners for inspection at reasonable business hours.

Section 3.6. Liability. The Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 3.7. Variance. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained herein. 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 3.8. Fees. The Committee shall be authorized to levy and collect a reasonable fee for the review of final plans and specifications, to be paid at the time approval is applied for.

Section 3.9. Landscaping. In order to receive approval of the Design Review Committee, landscape plans must:

- A. Minimize disruption of the natural terrain by grading;
- B. Provide for revegetation and restoration of ground cover disturbed by grading;
- C. Use only those man-made elements that blend with, or complement the natural landscape;
- D. Use existing or natural drainage paths whenever possible;
- E. Provide for adequate snow storage and control of surface runoff; and
- F. Conserve and protect topsoil, vegetation, rock formations, and unique landscape features.

#### ARTICLE IV

##### EXTERIOR MAINTENANCE

Section 4.1. General. The structures and grounds of each Lot shall be maintained in a neat and attractive manner by the Owner(s) thereof.

Section 4.2. Failure to Maintain. Upon the Owner's failure to maintain the exterior of any structure or grounds on his Lot in good repair and appearance, the Committee may, at its option, after giving the Owner thirty days' prior written notice, make repairs and improve the appearance in a reasonable and workmanlike manner.

Section 4.3. Completion of Landscaping. Each Owner shall complete the landscaping of his Lot, in accordance with plans approved by the Committee, at the time of his construction of improvement thereon, or, if weather conditions then prohibit such installation, as soon as possible thereafter. If any Owner fails to timely complete the landscaping of a Lot as aforesaid, the Association may, at its option, after giving the Owner thirty (30) days' prior written notice forwarded to such Owner (unless within said thirty (30) day period the Owner of the Lot shall proceed and thereafter pursue with diligence the completion of such landscaping) undertake and complete the landscaping of the Lot in accordance with the approved landscaping plan.

Section 4.4 Assessment of Cost. The cost of such maintenance and landscaping referred to in Sections 4.2 and 4.3 of this Article shall be added to and become part of the regular assessment or charge to which such Lot is subject.

Section 4.5. Access at Reasonable Hours. For the purposes solely of performing the maintenance of landscaping referred to in Sections 4.2 and 4.3 of this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

## ARTICLE IV

### RESTRICTIONS

Section 5.1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Properties which shall be binding on and inure to the benefit of the Owners of the Properties, all thereof in order to enhance the value, desirability and attractiveness of the Properties and to subserve and promote the sale thereof.

Section 5.2. Restrictions Imposed. The Declarant hereby declares that all of the Properties shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated upon and subject to the following provisions, conditions, limitations, restrictions, agreements and covenants.

#### Section 5.3. Use of Common Area

- A. No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.
- B. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.
- C. No use shall ever be made of the Common Area which will deny ingress and egress to those Owners having access to Lots only over Common Area and the right of ingress and egress to said Lots by vehicle and otherwise is hereby expressly granted.

Section 5.4. Use. No Lot shall be used for any purpose other than that allowed for such particular Lot in accordance with the categories set forth in Section 2.1 of Article II above and the definitions set forth in Article I above.

Section 5.5. Animals. No cattle, sheep, goats, pigs, rabbits, poultry, or other animals of any description shall be kept or maintained on any Lot, except that Owners may keep not more than two dogs, cats or other domestic animals which are bona fide household pets so long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and in compliance with all existing applicable local ordinances. No horses shall be kept or maintained on any Lot, except that Owners in Block 3 and 5 of Filing No. 1 may keep not more than four horses per Lot. Owners in Block 3 and 5 of Filing No. 1 shall be required to maintain the irrigated pasture land and provide supplemental feeding of their horses as needed so as not to overgraze their pasture.

Section 5.6. Temporary Structures. No temporary house, trailer, tent, garage, or outbuilding shall be placed or erected upon any Lot, and no Dwelling Unit placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any Dwelling Unit when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions herein set forth; provided, however, that during the actual construction or alteration of a building on any Lot, necessary temporary buildings for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any building on any part of any Lot shall be pursued diligently from the commencement thereof until the completion thereof.

Section 5.7. Miscellaneous Structures. No advertising, billboards or signs of any character shall be erected, placed, permitted or maintained on any Lot unless the prior, written consent of the Committee has first been obtained.

Section 5.8. Property to be Maintained. Each Lot at all times shall be kept in clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, limber or other building materials shall be permitted to remain exposed upon any Lots so that same are visible from any neighboring Lot or street, except as necessary during the period of construction.

Section 5.9. Underground Utility Lines. All electric, television, radio, telephone and other utility line installations and connections from an Owner's property line to a residence or other structures shall be placed underground, except that during the construction of a residence, the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

Section 5.10. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon the Properties nor shall anything be done or placed on

any of the Properties which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 5.11. No Hazardous Activities. No activities shall be conducted on the Properties or on improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Properties and no open fires shall be lighted or permitted on the Properties except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfires or picnic fires on property designated for such by the Association.

Section 5.12. No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot or Dwelling Unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot or in any Dwelling Unit which is unreasonably loud or annoying; and no odor shall be emitted on any Lot or Dwelling Unit which is noxious or offensive to others.

Section 5.13. Restrictions on Parking and Storage. No Lot, streets, private streets, drives or parking areas, unless specifically designated by the Association therefor, shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, boat or accessories thereto, truck larger than a 3/4 tone pick-up truck, or any type of motor home except as a temporary expedience for loading, delivery, emergency, etc. (however, this restrictions shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of structures or maintenance of the Common Area), unless the same shall be stored, parked or maintained wholly within a garage area of a Dwelling Unit with the garage door in a closed position.

Section 5.14. Height Restrictions. No structure shall be erected or maintained on any Lot which is in excess of thirty-five (35) feet in height. Height shall be the vertical distance of the structure measured from the average point of a finished grade on the Lot within two (2) feet of the structure to the uppermost point of the structure. Chimneys, if allowed, shall be excluded in determining the height of a structure.

Section 5.15. Clothes Lines and Storage. No clothes lines, drying yards, service yards or storage areas shall be so located on any Lot so as to be visible from a street and/or public view and/or from the Common Area.

Section 5.16. Garbage and Refuse Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street nor on any Lots, unless placed in a suitable

container suitably located in a concealed manner. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

Section 5.17. Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, or servicing of any kind may be performed on any Lot unless it is done within completely enclosed garages or other structures located on the Lot which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer or motor driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 5.18. Tanks. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon any Lot without the prior written approval of the Committee.

Section 5.19. Fireplaces. No more than one fireplace or wood burning stove will be allowed in each Dwelling Unit; and all fireplaces and wood burning stoves must be of an energy efficient design.

Section 5.20. Driveways. No more than one connection for vehicular access to a public street shall be allowed for each Single Family Lot, Duplex Lot, Tri-plex Lot or Four-plex Lot unless the Eagle County Engineer specifically determines that additional connections are desirable.

Section 5.21. Wood Storage. Firewood storage is permitted on a Lot only in the event same is neatly stacked or stored, and no firewood shall be stored in the Common Area.

Section 5.22. Trees. No existing trees within the Properties shall be cut or trimmed without the express, prior written approval of the Committee.

Section 5.23. Utilities. Each Dwelling Unit shall connect with the water and sanitation facilities of the Edwards Metropolitan District and the Upper Eagle Valley Sanitation District, and no private wells or private sewage systems shall be allowed on the Properties.

Section 5.24. Mechanical Equipment. All antenna, boiler, air conditioning equipment and other mechanical equipment, excluding solar collection devices, shall be concealed from public view.

## ARTICLE VI

## PROPERTY RIGHTS IN THE COMMON AREA

Section 6.1. Owner's Easements of Enjoyment. Subject to the provisions of Section 6.2 of this Article, every Owner, other than the Owners of Private Open Space and Church sites, shall have a non-exclusive right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot and Dwelling Unit.

Section 6.2. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, with the written consent of the Members entitled to vote two-thirds (2/3) of the votes of each class of membership and 100% of all first mortgagees, to mortgage said property as security for any such loan; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(c) The right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area; and

(d) The rights of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any Assessment against his Lot or Dwelling Unit remains unpaid, and for any infraction of its published rules and regulations; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility or private party for such purposes and subject to such conditions as may be approved by the Board of Directors of the Association; and

(f) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area; and

(g) The right of the Association to lease portions of the Common Area to others.

Section 6.3. Delegation of Use. Any Owner may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot or in his Dwelling Unit.

Section 6.4. Payment of Taxes or Insurance by Mortgagees. First mortgagees of Lots and/or Dwelling Units shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may become a lien against the

Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and any first mortgagees making any such payment shall be owed immediate reimbursement therefor from the Association.

## ARTICLE VII

### MEMBERSHIP AND VOTING RIGHTS

Section 7.1. Membership. Every Owner of a Vacant Lot and/or Dwelling Unit, other than the Owners of Private Open Space and Church Sites, within the Properties shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Vacant Lot or Dwelling Unit.

Section 7.2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, other than Owners of Private Open Space and Church Sites and with the exception of the Declarants, and shall be entitled to one vote for each Vacant Lot and/or Dwelling Unit owned. When more than one person holds an interest in any Vacant Lot and/or Dwelling Unit, all such persons shall be Members, and the vote for such Vacant Lot and/or Dwelling Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Vacant Lot and/or Dwelling Unit.

Class B. The Class B Member(s) shall be the Declarants and shall be entitled to three (3) votes for each Vacant Lot and/or Dwelling Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or
- (b) December 31, 1986.

## ARTICLE VII

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. Creation of the Lien and Personal Obligation for Assessments. The Declarants, for each Vacant Lot and/or Dwelling Unit owned within the Properties, other than Private Open Space and Church Sites, hereby covenant, and each Owner of any such Vacant Lot and/or Dwelling Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments, such assessments to be

established and collected as hereinafter provided. The annual and special assessments, together with interest thereon, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot and/or Dwelling Unit against which each such assessment is made. To evidence such lien the Board of Directors or Managing Agent shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner and a description of the Lot and/or Dwelling Unit. Such a notice shall be signed by the President of the Association or one of the Directors and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, Colorado. Such lien may be enforced by foreclosure of the defaulting Owner's property by the Association in like manner as a mortgage on real property, upon the recording of a notice or claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. Each such assessment, together with interest thereon, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 8.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Properties and for the improvement and maintenance of the Common Area.

The Association shall maintain an adequate reserve fund out of the annual assessments for the maintenance, repair and replacement of those elements of the Common Area that must be replaced on a periodic basis.

Section 8.3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.4. Notice and Quorum for Any Action Authorized Under Section 8.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 8.3 of this Article shall be sent to all Members not less than 30 days nor more than 60 days in advance of this meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not



present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 8.5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Vacant Lots and Dwelling Units which are subject to assessment, except those owned by Declarants, sufficient to meet the expected needs of the Association, provided that, the rate set for the Vacant Lots and Dwelling Units owned by Declarants shall be fixed at one-third (1/3) of the assessment rate for the other Vacant Lots and Dwelling Units, until such Vacant Lots and Dwelling Units are conveyed by Declarants.

Section 8.6. Date of Commencement of Annual Assessment. The initial and all subsequent annual assessments shall commence on the first day of such month as determined by the Board of Directors of the Association, and shall be made due and payable in twelve monthly installments per annum on such dates as determined by the Board. Any Owner purchasing a Lot or a Dwelling Unit between installment due dates shall pay a pro rata share of the last installment due.

Section 8.7. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot or Dwelling Unit, and in the event a judgement is obtained, such judgement shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with the cost of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein for non-use of the Common Area or abandonment of his Lot or Dwelling Unit.

Section 8.8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage. The lien of the assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado. Transfer of actual or constructive possession of any Lot or Dwelling Unit shall not affect the assessment liens. However, the transfer of title or actual or constructive possession of any Lot or Dwelling Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such transfer of title or actual or constructive possession. No transfer of title or actual or constructive

possession shall relieve such Lot or Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE IX

### GENERAL PROVISIONS

Section 9.1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding of law or in equity, all restrictions, conditions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or by an Owner to enforce any restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.2. Severability. Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 9.3. Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control.

Section 9.4. Annexation. Additional residential property and Common Area may be annexed with the consent of two-thirds of each class of members, provided that while there is a Class B membership, Homestead may annex additional property and Common Area from the lands described as follows without the consent of the individual Owners:

Township 5 South, Range 82 West of the 6th P.M.

Section 8: E1/2 NE1/4, E1/2 SE1/4

Section 9: W1/2 NW1/4, SE1/4 NW1/4, NW1/4 SW 1/4

SW1/4 NE1/4, N1/2 SE1/4, SE1/4 SE1/4

Section 10: W1/2 SW1/4

Eagle County, Colorado.

Section 9.5. Duration, Revocation and Amendment. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Subject to the provisions of Section 9.4 above, this Declaration may be amended or revoked by an instrument approved in writing by not less than 66% of the Members of all classes and by Declarants, so long as either of them own any Lot which it is holding for sale. Such amendment or revocation shall be effective when duly recorded; provided, however, that

any amendment or revocation must comply with the Statutes of Colorado and the resolutions and ordinances of the County of Eagle, Colorado.

Section 9.6. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association shall be sent by certified mail, postage prepaid, to P.O. Drawer B-100, Avon Colorado, 81620, until such address is changed by a notice of change of address mailed to each Owner by the Association.

Section 9.7. Leases. Any lease agreements between an Owner and a lessee for a Lot and/or Dwelling Unit shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing.