

**THE**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**HEARTWOOD RANCH**

This copy contains the following amendments:

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**THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HEARTWOOD RANCH**

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**PREAMBLE**

THIS DECLARATION is made on the date hereinafter set forth, BRUCE M. THOMSON and SANDRA K. THOMSON ("Declarant").

WHEREAS, Declarant is the owner of certain real property located in La Plata County, Colorado, as more particularly described on Exhibits A, B and C attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Declarant intends to create a residential community on the Property together with other improvements thereon; and

WHEREAS, Declarant will convey the said Property, subject to the protective covenants, conditions and restrictions, as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the real property described on Exhibits A and B, together with all rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, as it may be amended from time to time. In the event the said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that all of the said real property described on said Exhibits A and B shall be held and conveyed subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be for the protection of the value of the said real property, and for the benefit of any persons having any right, title or interest in the said real property. Said covenants, conditions and restrictions shall be deemed to run with the land and shall be a burden and a benefit to any persons acquiring such interest, their grantees, heirs, legal representatives, successors and assigns.

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## ARTICLE ONE: DEFINITIONS

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

1.1 ACT means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, et seq., as it may be amended from time to time.

1.2 AGENCIES means and collectively refers to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

1.3 ALLOCATED INTERESTS means the Votes in the Association and the Common Expense Assessment Liability which are allocated to each of the Dwelling Unit Lots in the Planned Community. The formulas used to establish the Allocated Interests are as follows:

(a) Votes. The Owners of each Dwelling Unit Lot in the Planned Community shall be entitled to one vote for each Dwelling Unit Lot owned.

(b) Common Expense Assessment Liability. The Common Expense Assessment is levied upon all Dwelling Unit Lots on the basis of the following calculation: fifty percent of the total assessments to be collected is divided by the number of homes which have begun paying assessments to arrive at the per home assessment. Fifty percent of the total assessments to be collected is divided by the number of people living in the community to arrive at the per person assessment. The per person assessment is multiplied by the number of people in each home to arrive at the total per person assessment for each home. The total per person assessment for each home is added to the per home assessment to arrive at the total assessment to be paid by each homeowner.

(c) Insurance Assessment Liability/Attached Dwelling Units. The Insurance Assessment Liability is levied upon Attached Dwelling Units pursuant to Paragraph 9.2 on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Attached Dwelling Units insured by the Association subject to the provisions of Paragraph 9.3 hereof.

In the event that the Declarant exercises its right to enlarge this Planned Community in Phases by submitting to the Planned Community additional real property in accordance with ARTICLE TWELVE hereof, the Common Expense Assessment Liability set forth above will be reallocated by the Declarant in accordance with the above.

1.4 ARTICLES means the Articles of Incorporation of the Association.



1.5 ASSESSMENTS mean the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, and (d) Fines levied pursuant to this Declaration.

1.6 ASSESSMENT LIEN means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

1.7 ASSOCIATION means THE HEARTWOOD RANCH HOMEOWNERS ASSOCIATION, a Colorado Corporation, not for profit, its successors and assigns. The Articles of Incorporation and Bylaws, which, along with this Declaration, shall govern the administration of the Planned Community, the Members of which shall be all of the Owners of the Lots within the Planned Community.

1.8 ATTACHED DWELLING UNIT means a Dwelling Unit with a party wall along the property line. The length of the party wall is at least 50% of the length of the Attached Dwelling Unit's wall facing the property line (including the party wall). If the two Attached Dwelling Units have walls of different lengths facing the property line, the shorter of the two Attached Dwelling Unit walls facing the property line will be used for this calculation.

1.9 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

The term Board of Directors as used herein is synonymous with the term Executive Board as the latter term is used in the Act.

1.10 BUILDING means and refers to any structure containing two or more Attached Dwelling Units, each such Attached Dwelling Unit to be situated upon its own individual Lot, separated by a Party Wall.

1.11 BYLAWS means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association.

1.12 CARPORTS means the Carports located on individual Lots within the Planned Community, the ownership of which has been conveyed to an Owner.

1.13 COMMON AREAS means any real property (including all improvements thereon) owned by the Association, all of which is held for the common use and enjoyment of the Owners, the descriptions of which are more fully described in Exhibit B attached hereto.

The term Common Areas as used herein is synonymous with the term Common Elements as the latter term is used in the Act.

1.14 COMMON EXPENSE ASSESSMENTS means the funds required to be paid by each Owner in payment of such Owner's Common Expense Liability as more fully defined in Paragraph 5.2 hereof.

1.15 COMMON EXPENSE ASSESSMENT LIABILITY means the funds required to be paid by each Owner in payment of such Owner's Common Expense Liability as more fully defined in Paragraph 5.2 hereof.

1.16 COMMON EXPENSES means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

1.17 COSTS OF ENFORCEMENT means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

1.18 COUNTY means La Plata County, Colorado.

1.19 DECLARANT means BRUCE M. THOMSON AND SANDRA K. THOMSON, or their heirs, personal representatives and assigns as defined by § 38-33.3-103(12) of the Act.

1.20 DECLARATION means this Declaration, the Plat and any supplements and amendments thereto recorded in the Office of the County Clerk and Recorder.

1.21 DESIGN REVIEW COMMITTEE (the "Committee") means the Committee formed pursuant to ARTICLE SIX hereof to review and approve or disapprove plans for Improvements as defined herein as more fully provided for by this Declaration.

1.22 DESIGN REVIEW GUIDELINES means the DESIGN REVIEW GUIDELINES FOR HEARTWOOD COHOUSING, as amended and supplemented. These guidelines may be adopted by the Design Review Committee to implement and interpret the Design Review/Architectural Approval provisions of ARTICLE SIX of this Declaration.

There will also be a separate Design Review Committee and separate DESIGN REVIEW GUIDELINES FOR HEARTWOOD OUTBACK which will provide design review guidelines for the construction of improvements of the real property described on Exhibit C. The details of such Committee and Guidelines shall be set forth in the Supplemental Declaration annexing the real property described on the attached Exhibit C to the Planned Community.

1.23 DETACHED DWELLING UNIT means all Dwelling Units not defined as Attached Dwelling Units shall be considered Detached Dwelling Units.

1.24 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS means the rights as defined by §§ 38-33.3-103(14) and (29) of the Act reserved by the Declarant under ARTICLE THIRTEEN hereof.

1.25 (a) DWELLING UNIT means the residence constructed on each Dwelling Unit Lot within the Planned Community and any replacement thereof, which residence shall be either a Detached Dwelling Unit or Attached Dwelling, Unit, as defined herein, and shall include a Carport as herein defined.

1.25 (b) DWELLING UNIT LOT means a Lot on which a Dwelling Unit has been constructed or which is designated for construction of a Dwelling Unit.

1.26 ELIGIBLE MORTGAGEE means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Security Interest, requesting that the Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

1.27 FIRST MORTGAGEE means any Person which owns, holds, insures or is a guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering a Lot within the Planned Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.28 FIRST SECURITY INTEREST means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.29 GUEST means (a) any person who resides with an Owner within the Planned Community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Dwelling Unit within the Planned Community, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.

1.30 HEARTWOOD RANCH means the real property described on Exhibits A, B and C.

1.31 HEARTWOOD COHOUSING means the real property described on Exhibits A and B.

1.32 HEARTWOOD OUTBACK means the real property described on Exhibit C.

1.33 IMPROVEMENTS means:

(a) all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind;

(b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements;

(c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern;

(d) all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(e) any change, to include basement remodel, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

1.34 LOT means each platted lot shown upon the Plat of the Planned Community which is subject to this Declaration, together with all appurtenances and improvements now or hereafter located thereon.

"Lot" shall include any Carport or Dwelling Unit constructed thereon as the term "Dwelling Unit" and "Carport" are herein defined.

The term Lot as used herein is synonymous with the term Unit as the latter term is used in the Act.

1.35 LOTS THAT MAY BE CREATED means thirty-eight Dwelling Unit Lots, which shall be the maximum number of Dwelling Unit Lots unless 80% of the members vote to allow for additional lots.

1.36 MANAGING AGENT means any one or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.37 MEMBER means each Owner, as defined in Paragraph 1.34 hereof.

1.38 NOTICE AND HEARING means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Bylaws.

1.39 OWNER means the record Owner of the fee simple title to any Lot which is subject to this Declaration.

1.40 PARTICIPATING BUILDER means and refers to a Person or Persons who acquires a portion of the Planned Community for purposes of improving such Lots in accordance with any development plans for resale to third party purchasers, and who is designated by the Declarant as such by an instrument duly recorded in the Office of the Clerk and Recorder.

1.41 PERIOD OF DECLARANT CONTROL means that period of time as defined in Paragraph 4.7 hereof.

1.42 PERSON means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.43 PLANNED COMMUNITY means such real property and the improvements located thereon as more fully described on Exhibits A and B attached hereto.

1.44 PLAT means the final plat of the Planned Community recorded in the records of the County Clerk and Recorder.

1.45 PROJECT DOCUMENTS means this Declaration, the Plat, the Articles of Incorporation and Bylaws of the Association, the Design Review Guidelines, and the Rules and Regulations, if any, as they may be amended from time to time.

1.46 RULES means the Rules and Regulations adopted by the Board of Directors for the regulation and management of the Planned Community as amended from time to time.

1.47 SECURITY INTEREST means an interest in real estate or personal property created by contract which secures payment of an obligation. The term includes a lien created by a deed of trust, contract for deed, land sales contract and UCC-1.

1.48 SPECIAL ASSESSMENT means those Assessments defined in Paragraph 5.4(f) hereof.

1.49 SUPPLEMENTAL DECLARATION means a written instrument containing covenants, conditions and restrictions which is recorded, annexing in accordance with ARTICLE TWELVE hereof, a portion of the real property described on Exhibit C hereof to the Planned Community.

1.50 TURNOVER DATE means the date the Period of Declarant Control terminates as more fully set forth in Paragraph 4.7 hereof.

1.51 VA AND/OR FHA APPROVAL means that the Planned Community has been or is to be approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots within the Planned Community.

In the event additional real property is made subject to this Declaration in the manner provided for in ARTICLE TWELVE hereof, certain terms defined above shall be expanded to encompass said property from the date such additional real property is made subject to this Declaration.

## ARTICLE TWO: SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration. Declarant, as the Owner of fee simple title to the Planned Community, by recording this Declaration does hereby subject the Planned Community to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration. All covenants, conditions and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having any interest in the Planned Community, their respective heirs, successors, personal representatives or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and effect any interest in the Planned Community shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner's Rights Subject to this Declaration. Each Owner shall own his or her Lot in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

2.4 First Phase, Number of Lots. The number of Dwelling Unit Lots within the First Phase of the Planned Community is twenty-four. The Declarant reserves the right but not the obligation to create additional Lots by the expansion of the Planned Community in accordance with ARTICLE TWELVE hereof.

2.5 Identification of Lots. The identification number of each Lot is shown on the Plat of the Planned Community.

2.6 Lot Boundaries. The boundaries of each Lot are located as shown on the Plat of the Planned Community.

## ARTICLE THREE: THE COMMON AREAS

3.1 Common Area Dedication. The Declarant, in recording the Plat of the Planned Community in the records of the County Clerk and Recorder, has designated certain areas of the Planned Community as Common Areas, more fully described on Exhibit B attached hereto.

The Common Areas are not dedicated for use by the general public, but are dedicated to the common use and enjoyment of only the Owners of Lots located within the Planned Community and such Owner's Guests, as more fully provided for in this Declaration.

Said Plat is hereby incorporated herein and made a part of this Declaration.

3.2 Title to the Common Areas. The Declarant hereby covenants that it will convey to the Association fee simple title to the Common Areas free and clear of all liens and encumbrances prior to the conveyance of the first Lot within the Planned Community to an Owner other than Declarant or Participating Builder.

3.3 Duty to Accept the Common Areas Transferred by Declarant. The Association shall accept title to said Common Areas and agrees to own and maintain any property, including all improvements located thereon, and personal property relating thereto, transferred to the Association by Declarant as Common Areas. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all liens and encumbrances (other than the lien of real estate taxes not then due and payable).

3.4 Duty to Manage and Care for the Common Areas. The Association shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and the improvements located thereon and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners.

3.5 Owner's Rights in the Common Areas. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title of the Lot to such Owner.

3.6 Board of Directors' Rights. The Board of Directors shall have the following rights:

(a) to borrow money to improve the Common Areas and to mortgage said Common Areas as security for any such loan; provided, however, that the Association may not subject any portion of the Common Areas to a security interest unless such is approved by Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Lots not owned by the Declarant as more fully set forth in §38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the Common Areas for such purposes and subject to such conditions as may be agreed to by the Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Lots not owned by the Declarant as more fully set forth in §38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Paragraph as more fully set forth in §38-33.3-312 of the Act.

(c) To promulgate and adopt Rules and Regulations with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of a Owner for any period during which any Assessment remains unpaid.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Areas by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(g) To close or limit the use of the Common Areas temporarily while maintaining, repairing and making replacements in the Common Areas, or permanently if approved by Owners to which at least eighty percent of the votes in the Association are allocated.

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Board of Directors in Paragraph 4.13 hereof.

3.7 Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Areas and facilities to their Guests.



## ARTICLE FOUR: THE ASSOCIATION

4.1 Name. The name of the Association is THE HEARTWOOD RANCH HOMEOWNERS ASSOCIATION, and it is a Planned Community.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall perform functions and manage the Planned Community as provided in this Declaration so as to further the interests of the residents of the Planned Community and Members of the Association.

4.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.5 Membership. There shall be one class of membership appurtenant to each Dwelling Unit Lot. Members of the Association shall be every record owner of a Dwelling Unit Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit Lot. Where more than one person holds interest in any Dwelling Unit Lot, all such persons shall be Members.

The membership of the Association at all times shall consist exclusively of Dwelling Unit Lot Owners or, following termination of the Planned Community, of all former Dwelling Unit Lot Owners entitled to distribution of the proceeds under Section 38-33.3-218 of the Act, or their heirs, personal representatives, successors or assigns.

4.6 Voting Rights. The Association shall have one class of voting membership. Owners shall be entitled to one vote for each Dwelling Unit Lot owned.

The vote for such Dwelling Unit Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them unless an objection or protest by any other holder of an interest of the Dwelling Unit Lot is made prior to the completion of the vote, in which case the vote for such Dwelling Unit Lot shall be exercised as the persons holding such interest shall determine between themselves. Should the joint owners of a Dwelling Unit Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

4.7 Declarant Control of the Association. Subject to provisions of Paragraph 4.8 hereof, there is a "Period of Declarant Control" during which Period the Declarant may appoint and remove any officer of the Association or any member of the Board of Directors. The Period of Declarant Control is a length of time terminating upon the sale of twenty-four Lots; provided, however, the

Period of Declarant Control in any event terminates no later than either (a) sixty days after conveyance of seventy-five percent of the Lots That May Be Created to Owners other than the Declarant; (b) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business to Owners other than Declarant; or (c) two years after any right to add new Lots was last exercised.

A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

4.8 Election by Owners. Not later than the termination of the Period of Declarant Control as set forth in Paragraph 4.7 hereof, the Owners shall elect a Board of Directors consisting of three members, at least a majority of whom must be Owners other than the Declarant. The Board of Directors shall elect the officers of the Association. The Owners' Board of Directors shall take office upon termination of the Period of Declarant Control upon election.

4.9 Delivery of Documents by Declarant. Within sixty days after the Owners termination of the Declarant Control Period, the Declarant shall deliver without charge to the Board of Directors all property of the Owners and of the Association relating to the Planned Community held by or controlled by the Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, as amended, the Association's Article of Incorporation, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with §38-33.3-303(9)(b) of the Act;

(c) The Association funds or control thereof;

(d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common Areas; a copy of any plans and specifications used in the construction of any improvements in the Common Areas; and an inventory of these properties;

(e) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;

(f) Any other permits issued by governmental bodies applicable to the Planned Community and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

(g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;

(h) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(i) Employment contracts in which the Association is a contracting party; and

(j) Any service contract in which the Association is a contracting party or in which the Association of the Owners have any obligation to pay a fee to the persons performing the services.

#### 4.10 Budget.

(a) In accordance with § 38-33.3-303 of the Act, the Board of Directors shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year. Within thirty days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen days nor more than sixty days after delivery of the summary.

Unless at that meeting Owners to which at least sixty-seven percent of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) If the Board of Directors deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Paragraph 4.10(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least sixty-seven percent of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

4.11 Association Agreements. Any agreement for professional management of the Planned Community or any contract providing for services of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice.

The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Period of Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such conversion upon not more than thirty days' notice to the other party thereto.

4.12 Indemnification. Each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

4.13 Certain Rights and Obligations of the Association.

(a) Contracts, Easements and Other Agreements: The Board of Directors shall have the right to enter into, grant, perform, enforce, cancel and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guests, and other persons, concerning the Common Areas.

Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(b) Other Association Functions: The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Members on a self-supporting, Special Assessment or Common Expense Assessment basis.

(c) Implied Rights: The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.14 Certain Rights and Obligations of the Declarant and/or Participating Builder. So long as there are unsold Lots within the Planned Community owned by the Declarant or Participating Builder, the Declarant and Participating Builder shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Lot.

## ARTICLE FIVE: ASSESSMENTS

5.1 Obligation. Each Owner of a Dwelling Unit , including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement. Each Owner of an Attached Dwelling Unit also covenants, agrees and shall be personally obligated to pay to the Association Insurance Assessments pursuant to Paragraph 9.3, all of which shall be a continuing lien upon the Lot against which each such Assessment or Fine is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments, Fines and Costs of Enforcement attributable to their Lot.

The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

The omission or failure of the Board of Directors to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Areas or the abandonment of his or her Lot.

5.2 Purpose of the Assessments. The assessments levied by the Association upon all Owners shall be used exclusively for the purpose of (a) promoting the health, safety and welfare of the residents of the Planned Community and the Members of the Association, (b) providing for the improvements, repair, maintenance and reconstruction for the Common Areas; (c) providing blanket hazard insurance for any insurable improvements located on the Common Areas; (d) providing liability insurance to cover incidents on the Common Areas; and (e) satisfying any other purpose reasonable, necessary or incidental to such purposes.

The assessments levied by the Association upon Owners of Attached Dwelling Units shall be used exclusively for the purpose of (a) providing blanket hazard insurance for Attached Dwelling Units; and (b) providing liability insurance to cover incidents occurring on the Attached Dwelling Units' Lots.

Such assessments shall include the establishment and maintenance of a Reserve Fund for those items which the Association has an on going duty to repair, maintain or reconstruct on a periodic basis, provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purposes of constructing capital improvements.

5.3 Date of Commencement of the Assessments. The Common Expense Assessment shall commence as to all Lots no later than sixty days after the fifteenth Lot is conveyed to an Owner other than the Declarant or Participating Builder. The Insurance Assessment shall commence as to any Attached Dwelling Units' upon the issuance of a Certificate of Occupancy for such Dwelling Unit or the occupancy of an Attached Dwelling Unit, whichever occurs first.

Until the commencement of the collection of the Common Expense Assessment, the Declarant and Participating Builder shall pay all of the expenses incurred and paid for by the Association on a pro rata basis based on the number of Lots owned by each within the Planned Community.

5.4 Levy of Assessments.

(a) Common Expense Assessments. Common Expense Assessments shall be levied on all Lots based upon a budget of the Association's cash requirements. The Common Expense Assessment shall be allocated among the Lots in accordance with that Lot's Common Expense Assessment Liability as set forth in Paragraph 1.3 hereof.

The Common Expense Assessment shall not include the expense of procuring and maintaining the insurance coverages for Attached Dwelling Units required by Paragraph 9.2 herein, but shall be assessed against the Attached Dwelling Units as provided for in Paragraph 5.4(b).

An additional amount will be added to the Common Expense Assessment for a Lot which uses the private water and septic system constructed in the Planned Community. This amount shall be collected from each water and septic system user and be used solely for the maintenance, repair and the creation of a reserve fund for the replacement and/or reconstruction of the water and septic system located within the Planned Community.

An additional amount will be added to the Common Expense Assessment for each Owner who owns a Carport. This amount shall be collected from each Carport Owner and be used solely for the maintenance, repair and the creation of a reserve fund for the replacement and/or reconstruction of the Carports located within the Planned Community.

(b) Insurance Assessment. The Board of Directors shall assess each Owner of an Attached Dwelling Unit the cost of procuring, maintaining and administering the insurance coverage for such Dwelling Units in accordance with Paragraph 9.2 hereof. Only Owners who have completed a separate written agreement in accordance with Paragraph 9.3 shall be exempt.

Such Assessments shall be prorated among the Attached Dwelling Units in accordance with that Unit's Insurance Assessment Liability as set forth in Paragraph 1.3(c) hereof and shall commence in accordance with Paragraph 5.3 hereof.

(c) Individual Assessments. The Board of Directors shall have the right to individually levy upon any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 6.6, 6.7, 7.9, 7.10, 9.2, 9.7, 10.3 and 11.1 hereof. No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association. Individual Assessments shall be collected as part of the Costs of Enforcement.

Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the membership required by other assessments called for under the Declaration.

(d) Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules and Regulations of the Association. No such Fine shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association.

Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement. Fines may be levied at any time as required and are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

(e) Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association provided that any such Assessment shall have the approval of Owners to whom at least sixty-seven percent of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance with Paragraph 1.3 hereof. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Owners not less than fourteen days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies to whom at least sixty percent of the votes in the Association are allocated 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 of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.



If the Planned Community has been or may be approved by the Federal Housing Administration and/or Veterans Administration, then until the termination of the Period of Declarant Control all Special Assessments for capital improvements in addition to the approval of the Owners as required above will require the written consent of the Veterans Administration and/or the Federal Housing Administration.

5.5 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

All other Assessments shall be levied on an annual basis and shall be due and payable in installments, in advance, in such frequency as the Board of Directors determines in its discretion from time to time, provided that the initial assessments shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

Mortgagees are not required to collect assessments.

5.6 Remedies for Nonpayment of Assessments. If any Assessment (to include Costs of Enforcement) is not fully paid within thirty days after the same becomes due and payable, then:

interest shall accrue at the default rate set by the Board of Directors on any amount of the Assessment in default accruing from the due date until date of payment, and the Board will assess a Late Fee of 3% of the Assessment. In addition, the Board may:

- (i) accelerate and declare immediately due and payable all unpaid installments of the Assessment payable for the balance of the fiscal year during which such default occurred;
- (ii) bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and
- (iii) proceed to foreclose its lien against the Dwelling Unit pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages;
- (iv) suspend the utility service to a delinquent Owner's Dwelling Unit.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments.

Failure to pay assessments does not constitute a default under an insured mortgage.

**5.7 The Assessment Lien.** The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board of Directors and for Costs of Enforcement levied against such Lot Owners when the Lot Owner fails to pay as required by the Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except the following:

(a) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(b) the lien of any loan evidenced by a first mortgage of record (including deed of trust) and any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanics' or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare, and record in the Office of the County Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for said Assessments except that sale or transfer of any Lot pursuant to foreclosure by any First Mortgagee, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Costs of Enforcement against that Lot which have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

In any action by an Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Lot for Assessments and Costs of Enforcement shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

5.8 Assignment of Assessments. The Board of Directors shall have the unrestricted right to assign its right to receive Common Expense Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved in writing by Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Lots not owned by the Declarant.

5.9 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Association's expenses and funding the Reserve Fund shall be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Assessment Liability.

5.10 Working Capital Fund. At the closing of the initial sale of a Lot to an Owner other than the Declarant or Participating Builder, a one time non-refundable contribution of \$100 shall be made by such Owner to the Working Capital Fund of the Association. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or Participating Builder of each Lot and shall, until used by the Association, be maintained in a

segregated account with other such working capital funds for the use and benefit of the Association to cover the costs of the initial period of the Association's operation, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services.

Such contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the later sale or transfer of his or her Lot, an Owner shall be entitled to a credit from his or her transferee, but shall NOT BE ENTITLED to a credit from the Association for the aforesaid contribution.

The Declarant is prohibited from using the Working Capital Fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits during the Declarant Control Period.

5.11 Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's Registered Agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within fourteen business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or First Mortgagee, 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 priority lien upon the Lot for unpaid Assessments which were due as of the date of the request.

5.12 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

## ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW

6.1 Introduction. The Heartwood Cohousing Design Review Guidelines are established to promote the Vision of creating and living in a community which fosters harmony with each other, the larger community, and nature.

(a) Goals.

- (i) To encourage community interaction through design.
- (ii) To preserve solar access, air quality, and other local natural resources.
- (iii) To promote a cohesive village look while at the same time allowing members' individual expression.
- (iv) To promote environmentally friendly construction.
- (v) To ensure compliance with design and construction standards included herein while at the same time keeping the compliance process simple and quick for members.

(b) Inclusion. Standards are only included in this agreement for one or more of the following reasons:

- (i) They address one or more of the Goals listed above.
- (ii) They proactively address construction plans before the construction occurs to avoid disputes related to construction that would be very difficult to resolve afterwards because of the relative irreversibility of the construction. Construction is considered to be relatively irreversible if it is expensive and relatively permanent in nature.
- (iii) They help encourage compliance with other standards contained herein and provide the community with specific legal recourse should the standards not be complied with.
- (iv) They protect property values.

A Design Review Committee ("Committee") will be established to administer these Standards. In order to maintain the integrity of these standards, they will be consistently enforced.

## 6.2 Compliance Review Process.

### (a) Situations Requiring Compliance Review.

- (i) Construction of any building.
- (ii) Renovation, expansion or refinishing of exterior of any building (Construction of decks and patios and reapplication of same color stucco are specifically excluded from this review requirement).
- (iii) Installation of any wood burning appliance.

### (b) Design Review Committee.

- (i) The Committee will consist of not less than three Members of the Association.
- (ii) At least two-thirds of the Committee Members must attend any Committee meeting to establish a quorum; however, the Committee may select an alternate member of the Association to act in the place of an absent member of the Committee.
- (iii) The Committee will seek consultation from architects and other professionals as needed. The fees of such consultations, not to exceed \$500, will be paid by the Applicant. Before such consultations take place, the Applicant will be notified and will be given the choice of either going ahead with the consultation and review or withdrawal of his/her application.

### (c) Steps in Preliminary Review.

- (i) Members will submit the following to the Committee:
  - a. Name of Applicant/Member, architect and builder (if available).
  - b. Written proof of notice of application for compliance review to any neighbors owning a Lot within 40 feet of Applicant's Lot. All Members are welcome to give input into the review process.
  - c. One set of schematic plans consisting of floor plans and 4 building elevations with all exterior materials specified (min 1/8 in = 1 ft scale) and building specifications.
  - d. Site plan of Lot showing:
    - (1) Setback dimensions to all 4 property lines.
    - (2) Any outbuildings or other structures not part of the Dwelling Unit.
    - (3) Proposed drainage plan.
    - (4) Any existing trees to be removed.

- (5) A north arrow.
- (6) Any unusual topographic features.

- e. Preliminary construction schedule.
- f. If any materials are different from the accepted materials of the

Design Review Guidelines, then material samples, color charts and/or descriptive brochures of proposed alternative materials.

(ii) Upon receipt of a complete submission, the Committee will set up a review meeting with Applicant within 10 days.

(iii) The Committee will hold the review meeting with the Applicant to review the plans for compliance with the Guidelines.

(iv) Within 5 days of the review meeting, the Committee will provide to the Applicant either written preliminary approval or denial of the plans. In the case of a denial, the Committee must provide a detailed listing of areas of noncompliance.

(v) If the application is denied, the Applicant may modify the plans and reapply to the Committee.

(d) Steps in Final Review.

(i) Applicant/Member submits the following to the Committee:

- a. Copy of written preliminary approval from the Committee.
- b. Name of Applicant/Member, architect and builder.
- c. Written proof of notice of application for compliance review to any neighbors owning a Lot within 40 feet of Applicant's Lot. All members are welcome to give input into the review process.
- d. One set of construction documents and building specifications suitable for submitting to the County.
- e. Description for any changes since the Preliminary Review to Lot site plan, construction schedule, etc. (Lot site plan to include location of utility lines).

(ii) Upon receipt of a complete submission, the Committee will set up a review meeting with Applicant within 10 days.

(iii) The Committee will hold the review meeting with the Applicant at which they will focus on ensuring that the final plans are consistent with the preliminary plans and that the plans continue to be in compliance with the Design Review Guidelines.

(iv) Within 5 days of the review meeting, the Committee will provide to the Applicant either written final approval or denial of the plans. In the case of a denial, the Committee must provide a detailed listing of areas of noncompliance.

(v) If the application is denied, the Applicant may modify his/her plans and reapply to the committee.

(vi) Construction may commence only upon receipt of final approval from the Committee and subject to the provisions detailed in the “Custom Home Construction Section”.

(vii) A majority vote of the Committee shall constitute the action of the Committee.

(viii) The Committee shall not be required to keep the materials submitted beyond one year from date of approval.

(e) Informal Review. Member is welcome to hold an informal review meeting with the Committee to review design plans not yet ready for a formal Preliminary or Final Review. The findings from an informal review meeting are not binding on the Committee.

(f) Appeal.

(i) If after either a Preliminary or Final Review denial, the Applicant believes that his/her plans are in compliance with the Design Review Guidelines and the denial was wrongly issued, they may appeal to the Committee. The purpose of the appeal will be to seek genuine resolution between the positions held by the Applicant and the Committee. If either the Applicant or the Committee wishes to have the appeal mediated, a mediator mutually acceptable to both the Applicant and the Committee will be selected to participate in the appeal.

a. To initiate an appeal, the Applicant must submit a letter to the Committee requesting an appeal meeting and stating why they believe they are in compliance.

b. The Committee will then have 10 days to schedule an appeal meeting with the Applicant.

c. The Applicant and the Committee will hold a second appeal meeting within 10 days of the first if resolution is not attained.

(ii) If resolution is not attained at the second appeal meeting and the Applicant still believes that the plans are in compliance with the Design Review Guidelines, they may appeal to the Board of Directors in writing stating why they believe they are in compliance. The Board of Directors will then follow the same appeal process as detailed above for the Committee. The Board of Directors may choose to include a representative(s) from the Committee at their appeal meetings.

(iii) If resolution is not attained with the Board of Directors and the Applicant still believes that their plans are in compliance with the Design Review Guidelines, they may further appeal to the entire membership. The Applicant’s appeal will be considered at the next regularly scheduled Business Meeting.

(g) Expedient Process. If the Committee fails to meet with the Applicant and render a written decision of approval or denial within 30 days of the receipt of a complete application,



the application will automatically be given final approval. Such automatic approval will not be given if the Applicant agrees to any extension in writing or if the missed deadline is due to the Applicant not being available for a meeting.

### 6.3 Standards.

(a) Buildings (includes new construction, renovation, expansion or refinishing of exterior of any building).

(i) Outbuildings. Outbuildings will be allowed only in backyards and must comply with these Design Review Guidelines.

(ii) Setbacks.

a. The setbacks specified below are minimum and maximum standards. In order to coordinate setbacks throughout the community, the Committee will have ultimate discretion in establishing setbacks specific to each building.

(1) From front Lot line (adjacent to central pathway):  
minimum of 5 ft and maximum of 20 ft.

(2) From side and back Lot lines: minimum 7.5 ft. (For duplexes, there is no minimum setback from their shared side Lot line.)

b. Under no circumstances will a private building be constructed on the Common Areas without the written consent of the Board of Directors.

(iii) Bulk Plane.

a. For Lots B1, B2, B3, D2, D3 and D4 as shown on the Plat, in order to protect solar access for their northern neighbors, no part of any structure may extend above a plane defined as beginning at a line 15 ft above the northern (side) Lot line and extending up and to the south at an angle of 30°.

b. For Lots A1, A2, E1, E2, E3, E4, E5, and E6, in order to protect solar access for the central pathway and their northern neighbors, no part of any structure may extend above a plane defined as beginning at a line 10 feet above the northern (front) Lot line and extending up and to the south at an angle of 30°.

(iv) Grading and Drainage.

a. Grading will comply with the drainage plan and soils report for the Planned Community. Grading will be blended into the existing terrain and surrounding properties in an aesthetically pleasing manner.

b. Site plans will indicate surface drainage patterns and any drainage

improvements that change the existing topography. The effects of drainage on other Lots will be considered.

(v) Style and Materials.

a. Building finishes must be consistent with the Southwest Mountain Rustic style. The stucco may be from a range of shades of the same brown color. The Committee will provide color samples for matching.

b. Dwelling Units may also have native stonework exposed. (Native stones are the type found on the land with harsh angles, as opposed to rounded river stones.)

c. All roofs will be one of two colors designated by the committee. The Committee will provide roof samples and/or specifications for matching.

(vi) Green Construction.

a. All Dwelling Units will incorporate passive solar design.

b. All Dwelling Units will be energy efficient. They will meet the DOE Model Energy Code as a minimum.

c. No Dwelling Unit will exceed 3,000 square feet (including basement).

(vii) Community Interaction.

a. The more public or social rooms will be located in the front of the Dwelling Units with good visual connection to the central pathway. This will specifically include the kitchen.

b. All Dwelling Units will include a front porch or patio oriented to the central pathway. The minimum size of the front porch or patio will be 100 square feet.

(viii) Dwelling Unit Type. Only Attached Dwelling Units may be constructed on Lots designated as duplex Lots and only single Detached Dwelling Units may be constructed on Lots designated as single Lots.

(ix) Construction Deadlines. All Dwelling Units in Phase A (all Lots except E5 and E6) must have all exterior work completed by 12/31/00. All Dwelling Units in Phase B (Lots E5 and E6) must have all exterior work completed by 12/31/01. Exterior work includes all work related to stucco, roofing, windows, exterior doors, or any other exterior part of the Dwelling Unit.

(b) Wood Burning Appliances.

(i) In order to minimize local air pollution, only wood burning appliances emitting less than 7.0 grams of pollutant per hour will be allowed in Dwelling Units.

(ii) If a wood burning appliance is to be used as the primary heat source within a Dwelling Unit, the wood burning appliance must emit 3.2 grams or less of pollutant per hour. Passive solar heating will not be considered to be a Dwelling Unit's primary heat source.

(iii) Should local air pollution prove to be excessive, restrictions may be placed on the use of wood burning appliances. Restrictions would be considered on various uses in the following order: 1) aesthetics; 2) secondary heat source; 3) primary heat source.

(iv) Coal burning appliances will not be allowed.

#### 6.4 Custom Dwelling Unit Construction.

(a) Custom Dwelling Unit builders will fence off their Lots during construction. Fences will be at least 4 ft tall and constructed of chain link, orange plastic safety barrier fencing, or comparable material. An exception to this fencing requirement may be granted by the Board of Directors if all of the following exist:

(i) There is no risk of children or dogs from the custom Dwelling Unit construction site wandering onto San Juan Community Development Company ("Development Company") construction sites.

(ii) The construction materials of the custom Dwelling Unit will be completely physically separated from those of the Declarant's builder.

(iii) The custom Dwelling Unit construction site poses no risk to the Planned Community.

(b) Custom Dwelling Unit builders may begin construction only after the custom Dwelling Unit construction start date established by the Declarant's builders. Every effort will be made to set that date as early as is reasonably possible.

(c) Custom Dwelling Unit builders may experience occasional construction interruptions due to site development work or other work under the management of the Declarant's builders. Such interruptions will be at the discretion of the Declarant. The Declarant will make every effort to provide advanced notice of interruptions and to coordinate with custom builders.

6.5 Variance. The Committee may elect to allow a variance to the Design Review Guidelines in the following circumstances:

- (a) Material specified in Design Review Guidelines is no longer available. A reasonable match will be allowed.
- (b) Noncompliance with Design Review Guidelines directly impacts no more than three neighbors and written support of a variance is obtained from all neighbors directly impacted.
- (c) The Committee determines that the variance would be in the best interest of the community as a whole and consistent with the Goals of these Design Review Guidelines.

6.6 Enforcement.

- (a) Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect the construction, renovation, expansion or refinishing of any building prior to or after completion; provided that the right of inspection shall terminate thirty days after completion.
- (b) Failure to Comply. If a Member fails to comply with any of the Design Review Guidelines set forth herein, the Board of Directors may elect, but is not obligated, to perform the work required to bring the construction, renovation, etc. into compliance.
- (c) Charge for Costs. The Board of Directors shall have the right to charge the costs of such construction, renovation, etc. to such Owner by an Individual Assessment in accordance with Paragraph 5.4(c) hereof.

6.7 Building Damage. Any building or improvement which has been damaged by fire or other casualty causing it to be unsightly shall be repaired within twelve months from the date of such casualty. All structures, buildings and improvements erected on Lots within the Planned Community shall at all times be kept in good repair.

If an Owner does not either commence repair or reconstruction activities within a reasonable time as provided hereinabove and diligently pursue the same in conformance with plans approved by the Committee, then the Association may, in its reasonable discretion, after providing the Notice and Hearing, enter upon the Lot for the purpose of repairing or reconstructing the Detached Dwelling Unit in conformance with approved plans. The cost related to such repairs and reconstruction shall be levied against the Owner as an Individual Assessment in accordance with Paragraph 5.4(c) hereof.

6.8 Governing Regulations. In addition to these Design Review Guidelines, building design will be regulated by local, county, state and federal regulatory agencies having jurisdiction. The Owner or his or her agent will be responsible to ensure conformance with any applicable regulation, and will check with the appropriate governmental entities to verify that the most recently adopted edition of any applicable regulation is being used.

6.9 No Liability for Committee Action. There shall be no liability imposed on the Design Review Committee, any member of said Committee, any authorized representative of said Committee, the Association, any member of the Board of Directors or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice. In reviewing any matter, the committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

## ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS

7.1 Limitations and Restrictions. All Lots and Common Areas shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant as set forth in this Declaration.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

7.2 Land Use. Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot and Dwelling Unit.

No Improvement as herein defined, shall be erected on any part of the Planned Community which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Committee in accordance with ARTICLE SIX hereof.

7.3 Building Locations, Height Restrictions and Lot Coverage. The Committee shall approve the location, height and square footage of any Improvement placed on any Lot. No Improvement shall exceed the height as set forth in the County's Building Code and shall be built within the Building Envelope as shown on the recorded Plat.

Such approval must be obtained before commencement of any construction or alteration in accordance with ARTICLE SIX hereof.

7.4 Temporary Structures. No temporary house trailer, yurt, tipi, garage or outbuilding shall be placed or erected upon part of the Planned Community except with the prior written approval of the Committee obtained in each instance, except if it is used for six months or less during any two year period. Travel trailers are not included. Trailers or other temporary construction trailers used during construction are allowable until December 31, 2000.

7.5 No Annoying Lights. No light shall be emitted from any portion of the Planned Community which is unreasonably bright or causes unreasonable glare. Lighting will be minimized and directed down.

7.6 No Hazardous Activities. No activity shall be conducted on any portion of the Planned Community which is unsafe or hazardous to any other people or property. The Board of Directors may create open fire rules.

7.7 Utilities. All electric, television, radio and telephone line installations and connections from the Owner's property line to the Dwelling Unit shall be placed underground and have the prior approval of the Committee. All solar collector installations must be within setbacks and bulk planes.

7.8 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on the Planned Community which may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.9 Household Pets. Agriculture and pet ownership that is ecologically responsible and that respects the land, each other, and animals (pets, farm animals and wildlife) is supported and allowed. Agriculture and pet ownership must respect the ability of others to fully enjoy the life of the Planned Community, and to not be unduly affected by the noises, smells and burdens of the agriculture and pets. It is recognized that these questions are complex, and should be approached with tolerance for differing visions of appropriate behavior. Each Owner agrees to act in good conscience in all agriculture and pet ownership practices.

From time to time, specific rules regarding agriculture and pet ownership may be created to ensure that the protection of the land, animals and each Owner's right to peaceful enjoyment of the Planned Community are maintained. Such rules could address total numbers of animals, freedom of animals to roam, etc.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Planned Community or incurred by the Association in cleanup after such pets may be levied against such pet's Owner as an Individual Assessment in accordance with Paragraph 5.4(c) hereof.

Large livestock (horses and cattle, etc.) shall be boarded only on parcels below the irrigation ditch in the pastured area. Such livestock shall be kept confined to said parcels by fencing said parcels or using other appropriate restraints in a safe and humane manner.

7.10 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within the Common Areas, such Owner shall be liable and responsible for the payment of same.

Any portion of such loss or damage not covered by the Association's insurance, together with costs of collection and reasonable attorney's fees, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.4(c) hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.17 shall be made by the Board of Directors and shall be final.

7.11 Lease of a Dwelling Unit. With the exception of a First Mortgagee who has acquired title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Dwelling Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) any such lease or rental agreement must be in compliance with applicable local, state and federal laws.

(b) any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the Rules and Regulations of the Association;

(c) such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them to include, but not be limited to, eviction of the lessee from the Apartment.

(d) the Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

7.12 Fences. Fences enclosing the irrigated pastureland and cross fencing it will have a maximum height of 42" to ease the migration of deer and elk. Those fences that are outside of the irrigated pastureland will be restricted to enclose a maximum of four acres so that wildlife can easily bypass the fenced areas.

7.13 Rules. Every Owner and his or her Guests shall adhere strictly to the Rules as promulgated by the Board of Directors, as amended from time to time.

7.14 Waiver of Summary Abatement. The Declarant and the Association waives the right to use summary abatement or similar means to enforce the restrictions herein contained. Judicial proceedings must be instituted before any items of construction can be altered or demolished.

7.15 Party Walls. Each Owner of an Attached Dwelling Unit shall possess, in fee simple, that portion of the Party Wall, as defined herein, lying within his or her Lot. Each Owner having a Party Wall is hereby granted a mutual reciprocal easement for repair or replacement of said Party Wall. No Owner shall commit or omit any act, the result of which is infringement of the adjoining Owner's rights in the Party Wall absent written agreement between such Owners.

In the event that any portion of any structure, including any Party Wall, shall protrude over an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot nor shall any action be maintained for the removal of or for damage because of such protrusion. The foregoing shall also apply to any replacements of any Party Wall if the same are constructed substantially in conformity with the original Party Wall constructed by Declarant.

If a Party Wall is in need of repair or is destroyed or damaged by any casualty, the Owners of Lots abutting such Party Wall jointly shall repair, restore or reconstruct it substantially to its original form, and they shall contribute in proportion to such Owner's use of such Party Wall to the cost of repair, restoration or reconstruction thereof without the prejudice, however, to the right of any such Owner to call for a larger contribution from any other Owner



under any rules of law regarding liability for negligent or willful acts or omissions.

Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to any contribution from any such Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title; provided however, the right of such Owner to any contribution shall in any event be subordinate to the First Mortgagees of any Lots.

Destruction or damage to the Party Wall shall not cause the termination of any rights of any of the adjoining Owners thereto, and such Owners will retain those rights herein set forth concerning any reconstruction or replacement of a Party Wall.

7.16 Motorized Recreational Vehicles. No person shall operate an off-road motorcycle, snowmobile or other similar motorized vehicle on any part of the Planned Community for recreational purposes.

7.17 Hunting. No hunting with firearms or harassment of wildlife is allowed. Bow hunting is permissible for Owners and Guests under guidelines created by the Board of Directors.

7.18 Sale of Carport Lots. A Carport Lot may be sold by an Owner to any person or entity, provided, however, that the Owner shall not be entitled to sell such Carport Lot to any person or entity other than an Owner.

7.19 Use of Carports and Carport Lots. It was the intent of the Declarant in designing the overall parking plan for the Planned Community that Carports and Carport Lots be used in such a manner so that vehicles could be parked within the Carports. Therefore, any use of Carports or Carport Lots that does not allow a vehicle to be parked within such space is expressly prohibited. The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.4(b) hereof.

## ARTICLE EIGHT: EASEMENTS

8.1 Utility Easements. Easements for utilities over and across the Common Areas shall be those shown upon the Plat of the Planned Community, and such other easements as may be established pursuant to the provisions of this Declaration.

8.2 Easements for the Board of Directors. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

8.3 Recording Data Regarding Easements . Pursuant to § 38-33.3-205(m) of the Act, the recording data for recorded easements and licenses appurtenant thereto, or included in the Planned Community or to which any portion of the Planned Community is or may become subject to are identified on the attached Exhibit D.

8.4 Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Dwelling Unit, or its Lot, an easement for the existence of such encroachment and the maintenance of the same shall and does exist. If any part of a Dwelling Unit including patio, patio fences and window wells encroaches or shall hereafter encroach upon the Common Areas, or upon another Dwelling Unit, the Owner of that Dwelling Unit shall and does have an easement of the existence of such encroachment and for the maintenance of same.

Such easements shall extend for whatever period of time the encroachment shall exist. Such encroachments shall not be considered to be encumbrances either upon the Common Areas or upon a Dwelling Unit. Encroachments referred to herein include unintentional encroachments made by error in original construction of the Dwelling Unit, by the settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Dwelling Units. Owners must exercise due diligence in avoiding such encroachments.

8.5 Snow Storage Easements. In the event of an overabundance of snow, each Lot within the Planned Community is subject to a snow storage easement wherein snow may be temporarily stored during the snow removal process. Every effort will be made not to inconvenience the Owner of the Lot involved. The easement shall exist so long as the snow remains, until it melts or is removed.

8.6 Private Sewer Line Easement. Private septic systems are located on Lots within the Planned Community. The Association is hereby granted an easement for the repair, maintenance and reconstruction of said septic systems. Said easements shall extend for whatever period of time the septic system shall exist.

8.7 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

## ARTICLE NINE: INSURANCE

9.1 Authority to Purchase/General Requirements. All insurance policies relating to the Association and Common Areas within the Planned Community shall be purchased by the Board of Directors. Insurance policies relating to the Attached Dwelling Units within the Planned Community shall be purchased by the Board of Directors pursuant to Paragraph 9.3. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

THE OWNER OF AN OWNER-OCCUPIED ATTACHED DWELLING UNIT MAY WISH TO PURCHASE A CONDOMINIUM UNIT OWNER'S POLICY (HO-6) OR ITS EQUIVALENT FOR ALL OF SUCH OWNER'S PERSONAL PROPERTY, AND HOUSEHOLD GOODS LOCATED WITHIN SUCH OWNER'S ATTACHED DWELLING UNIT. THE POLICY SHALL ALSO INSURE ANY AND ALL IMPROVEMENTS OR BETTERMENTS MADE TO THE ATTACHED DWELLING UNIT'S INTERIOR UNFINISHED SURFACES OF ITS PERIMETER WALLS, FLOORS AND CEILINGS, TOGETHER WITH PROVIDING PERSONAL LIABILITY COVERAGE. AN OWNER, EXCEPT FOR DECLARANT, OF A NON-OWNER-OCCUPIED ATTACHED DWELLING UNIT, SHALL PURCHASE A CONDOMINIUM OWNER'S RENTAL LIABILITY POLICY OR ITS EQUIVALENT.

THE ASSOCIATION WILL NOT PROVIDE SUCH COVERAGES IN ITS MASTER POLICIES.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, Owner or First Mortgagee, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households.
- b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have so cured such defect within forty-five days after such demand;
- c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 9.5 hereof may not be canceled, or sub-

stantially modified by any party (including cancellation for nonpayment of premium) without at least thirty days' prior written notice to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;

- d) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Lot or Dwelling Unit superior to the lien of a First Mortgagee;
- e) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner, if such coverage is available;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names the First Mortgagee in the policy, its successors and assigns, beneficiary.

9.2 Hazard Insurance/Attached Dwelling Units/Common Areas. The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring all of the Carports and Attached Dwelling Units located within the Planned Community, including all insurable improvements located on the Common Areas and real property maintained by the Association

Such insurance shall also include, among other things, all fixtures, installations or additions comprising a part of the individual Attached Dwelling Units within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the Attached Dwelling Units initially installed or replacements thereof made in accordance with the original plans and specifications, or any additions or improvements made by previous Owners.

Such insurance shall at all times represent one hundred percent of the current replacement cost based on the most recent appraisal of each Attached Dwelling Unit and all insurable improvements located on the Common Areas and real property maintained by the Association. The current replacement cost shall not include values for land, foundation, excavation and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for co-insurance. If available, the Master Policy shall be endorsed with a "Guaranteed Replacement Cost Endorsement".

The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent of the current replacement cost as defined above. The Attached Dwelling Units located upon the Planned Community and all insurable improvements located on the Common Areas and real property maintained by the Association, together with any personal property owned by the Association.

Such policies shall also provide:

- a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement) Agreed Amount Endorsement, and Inflation Guard Endorsement, if available.
- b) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

A certificate, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First Mortgagee requesting the same, at least thirty days prior to expiration of then current policy.

The insurance carried by the Association shall name the Association as the owner and beneficiary thereof for the use and benefit of the Association. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The Association shall hold any insurance proceeds received because of damage to the Common Areas in trust for the Association, the Owners and the holders of their Security Interests as their interests may appear. Subject to the provisions of ARTICLE TEN hereof, the proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas. Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Areas have been repaired or restored. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the insurance proceeds.

The Association shall hold any insurance proceeds received because of damage to an Attached Dwelling Unit in trust for the Association, the Owners of the Attached Dwelling Units and the holders of their Security Interests as their interests may appear. Subject to the provisions of ARTICLE TEN hereof, the proceeds shall be disbursed first for the repair or restoration of the damaged Attached Dwelling Units. Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Attached Dwelling Units have been repaired or restored. No Owner of an Attached Dwelling Unit or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the insurance proceeds.

Title to each Attached Dwelling Unit's Lot within the Planned Community is declared and expressly made subject to the terms and conditions hereto, and acceptance by the grantee of a deed or other instrument of conveyance from the Declarant or from any Owner of an Attached Dwelling Unit shall constitute appointment of the attorney-in-fact herein provided. All of the Owners of Attached Dwelling Units constitute and appoint the Board of Directors their true and lawful attorney in their name, place and stead for the purpose of dealing with their Dwelling Units upon its damage or destruction.

As attorney-in-fact, the Board of Directors of the Association shall have full and complete authorization, power and right to make, execute and deliver any contract or any other instrument with respect to the interest of any Owner of an Attached Dwelling Unit which is necessary and appropriate to exercise the powers herein granted.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, Ten Thousand Dollars or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated.

The Board shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Paragraph 5.4(c) hereof.

**9.3 Attached Dwelling Unit Exemption.** Attached Dwelling Units shall be specifically exempted from the insurance required by Paragraph 9.2 for Attached Dwelling Units and the assessments related thereto if the Board receives a written agreement waiving such insurance signed by all Owners of said Attached Dwelling Units within a Building. The written agreement must automatically terminate upon transfer of ownership of any of the Attached Dwelling Units covered in such agreement.

9.4 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including eviction, libel, slander, false arrest and invasion of privacy) and property damage insurance covering all of the Common Areas and other real property maintained by the Association, insuring each officer, director, the Managing Agent and the Association.

Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Areas and other real property maintained by the Association, and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to the Planned Community similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Worker's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance, Severability of Interest Endorsement.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

Absolute liability is not imposed on Owners for damage to Common Areas or Lots within the Planned Community.

9.5 Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force; provided, however, in any event the aggregate amount of such insurance shall not be less than a sum equal to three months' aggregate assessments on all Lots, plus Reserve Funds.

The policy must include a provision that calls for ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each servicer that services a Fannie Mae-owned or securitized mortgage in the Planned Community.

A management agent that handles funds for the Association should be covered by its own fidelity insurance policy which must provide the same coverage required of the Association.

#### 9.6 Additional Insurance.

a) If the area where the Planned Community is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Planned Community shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the Planned Community's current replacement cost or the maximum available.

If the Planned Community at the time of the recording of this Declaration is identified as a Special Flood Hazard Area but becomes reclassified at a later date as such, the Board of Directors shall obtain flood insurance for the Planned Community in accordance with the above. Conversely flood insurance may be discontinued under certain conditions.

b) Adequate Directors and Officers liability insurance, if reasonably available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

c) Worker's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law;

d) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Planned Community.

9.7 Payment of Insurance Premiums. The cost of the insurance obtained by the Association for Attached Dwelling Units in accordance with this Article shall be paid from Association funds and shall be collected from Owners of Attached Dwelling Units as an Insurance Assessment as provided for in Paragraph 5.4(c) hereof and pursuant to Paragraph 9.3.

In the event there are not sufficient funds generated from the Insurance Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.4(c) hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among Owners in accordance with the Owners' Insurance Assessment Liability set forth in Paragraph 1.3(c) hereof.



9.8 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

9.9 Damage to Property. Any portion of the Planned Community that is damaged or destroyed and for which insurance is carried by the Association shall be repaired or reconstructed by the Board of Directors in accordance with ARTICLE TEN hereof.

9.10 Condemnation. The Board of Directors, as their attorney-in-fact, shall represent the Owners of Attached Dwelling Units in any condemnation proceedings or in any negotiations, settlement and agreements with the condemning authorities for the condemnation of any part of an Attached Dwelling Unit.

All compensation, damage or other proceeds therefrom (Condemnation Award) shall be payable to the Association as attorney-in-fact to be held in trust for the use and benefit of the Owners of Attached Dwelling Units and the holders of their Security Interests as their interests may appear. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the Condemnation Award.

Upon the condemnation of an entire Lot on which an Attached Dwelling Unit is located, all of the allocated interests of that Lot or Lots shall be reallocated as if that Lot or Lots did not exist and the Board of Directors shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations without the necessity of the consent thereto or joinder therein by the Owners or First Mortgagees.

## ARTICLE TEN: RESTORATION UPON DAMAGE OR DESTRUCTION

10.1 Duty to Repair and Reconstruct. Any portion of an Attached Dwelling Unit or Common Areas which is covered by insurance carried by the Association that is damaged or destroyed must be repaired or reconstructed promptly by the Board of Directors.

10.2 Plans . Pursuant to Paragraph 10.1, the Attached Dwelling Unit or Common Areas shall be repaired and restored in accordance with the original plans and specifications. Changes are allowed if agreeable to the Owner and consistent with Design Review Guidelines. The Owner must pay any extra costs.

10.3 Repair and Reconstruction by the Association. The Board of Directors, as their attorney-in-fact, shall represent the Owners in all proceedings, negotiations and agreements with the insurance companies for the settlement of any insurance claim for any part of the damaged Common Areas or Attached Dwelling Units.

All insurance proceeds shall be payable to the Association as attorney-in-fact to be held in trust for the use and benefit of the Owners or Owners of the Attached Dwelling Units as the case may be, and the holders of their Security Interests as they may appear. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of insurance proceeds.

If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged Common Areas, the Board of Directors shall levy an Individual Assessment against all Owners in the aggregate amount of such insufficiency pursuant to Paragraph 5.4(c) hereof, and shall proceed to make such repairs or reconstruction. The amount of each Owner's Individual Assessment shall be such Owner's Common Element Assessment Liability determined in accordance with Paragraph 1.3(b) hereof.

If the insurance is carried by the Association and if the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged Attached Dwelling Units, the Board of Directors shall levy an Individual Assessment against Owners of Attached Dwelling Units in the aggregate amount of such insufficiency pursuant to Paragraph 5.4(c) hereof, and shall proceed to make such repairs or reconstruction. The amount of each Owner's Individual Assessment shall be such Owner's Insurance Assessment Liability shall be determined in accordance with Paragraph 1.3(c) hereof.

## ARTICLE ELEVEN: MAINTENANCE

11.1 Maintenance of the Common Areas and Carports. The Association shall provide for the repair, maintenance and/or reconstruction of the Common Areas and the exterior of the Carports. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas safe, attractive, clean, functional and in good repair and may make necessary or desirable alterations or improvements thereon and maintain the exterior of the Carports in good repair.

In the event such repair, maintenance and/or replacement is resulting from the willful neglect or destruction by an Owner or such Owner's Guest, the Board of Directors shall have the right to charge the costs of such repair and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 5.4(c) hereof.

All Dwelling Unit and Lot repair, maintenance and reconstruction shall be the sole responsibility of Owner.

11.2 Septic System. The Association has entered into an agreement with the San Juan Basin Health Department, allowing use by the Owners of Lots within the Planned Community of specially designed sewage/septic systems subject to the duty of such Owners and the Association to properly maintain and repair such sewage systems. A copy of said Agreement is to be recorded after the date of the recording of this Declaration.

11.3 Association Responsibility. The determination of when and the magnitude and the manner of the above described maintenance and repair shall be determined solely at the discretion of the Board of Directors. Access to all of the Lots within the Planned Community to perform the said maintenance, repair and/or replacement by the Board of Directors, its agents and employees shall be made pursuant to the maintenance easement granted in accordance with Paragraph 8.2 hereof.

## ARTICLE TWELVE: EXPANSION

12.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to enlarge the Planned Community in phases upon such terms and conditions as the Declarant deems appropriate, without the necessity of the consent thereto or the joinder therein by the Owners or First Mortgagees, by submitting to the Planned Community from time to time a Supplemental Declaration adding any of the real property described on Exhibit C attached hereto.

If the Planned Community has been or may be approved by the Federal Housing Administration and/or the Veterans Administration, any such addition, expansion or annexation must be according to a General Plan heretofore filed with and approved by the Federal Housing Administration or the Veterans Administration and such addition, expansion or annexation must be supported by the written consent of the Federal Housing Administration or the Veterans Administration, evidence of which may be recorded.

12.2 Supplemental Declarations. Such expansion must be accomplished by the filing for record by the Declarant in the office of the County Clerk and Recorder, a supplement to this Declaration containing a legal description of the new real property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion so long as each subsequent phase is contiguous to the real property already subject to this Declaration.

All future improvements will be consistent with the initial improvements in structure type and quality of construction and must be substantially completed prior to being brought into the Planned Community.

12.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded. For example, "Lot" and "Common Areas" shall mean the Lots and Common Areas described hereinabove plus any additional Lots and Common Areas added by a Supplemental Declaration or Declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Planned Community as expanded with additional references to the Supplemental Declaration.

12.4 Declaration Operative on New Properties. The new real property may be subject to all the terms and conditions of this Declaration as amended or supplemented, by recording by the Declarant in the Office of the County Clerk and Recorder a Supplemental Declaration.

12.5 Interests on Enlargement. An Owner at the time of his or her purchase of a Lot which has been brought into the Planned Community by a Supplemental Declaration shall be a Member of the Association. Such Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as those Owners of the initial property brought into the Planned Community through this original Declaration and shall be subject to the same Assessments. The Assessments for that Phase shall commence for all Owners within that Phase

including the Declarant upon the recording of the Supplemental Declaration and Supplemental Map for that Phase.

Whenever any additional property is brought into the Planned Community, the Common Expense Assessment Liability of each Owner in the Planned Community after such addition will change and will be reallocated by the Declarant in accordance with Paragraph 1.3 hereof.

The Supplemental Declaration recorded at the time of the expansion shall set forth the new percentage of the Common Expense Liability of the existing Lots and the newly added Lots.

12.6 Taxes, Assessments and Other Liens. All taxes and other assessments relating to the real property described in Exhibit C covering any period of time prior to the addition of such property or any portion thereof to the Planned Community must be paid or otherwise provided for by the Declarant to the satisfaction of all First Mortgagees.

Liens arising out of the construction of improvements in later phases shall not extend into prior phases and shall not adversely affect the rights of Owners or the priority of first mortgages and deeds of trust on any Lot constructed in a prior phase.

12.7 Project Treated as a Whole. For all purposes hereof, each of the Phases of the Planned Community after the recording of the Supplemental Declaration submitting each Phase to the Planned Community, shall be treated as a part of the Planned Community developed as a whole from the beginning, except to the extent expressly otherwise provided for herein.

It is the express purpose hereof to provide that from and after the date of the submission of a Phase of the Planned Community in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single undivided Project.

12.8 Cross Easements Agreements. Notwithstanding the above, the Declarant reserves the right (without in any way being bound) to enter into Cross Easements Agreements on an individual basis with the Owners of the real property described on Exhibit C attached hereto ("Grantee"). Said Cross Easements shall grant to Grantee the right of access over the Common Areas owned by the Association and use of the Association facilities upon payment of assessments to the Association. Said assessments shall be determined by the Board of Directors but shall be in proportion to the use granted to the Grantee and not be discriminatory but must be uniformly applied between Grantee's use and the Owners' use of the Common Areas and common facilities.

12.9 Termination of the Right of Expansion. The right of expansion shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such right of expansion shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

ARTICLE THIRTEEN: DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

13.1 Reservation. The Declarant reserves the following Development Rights and Special Declarant Rights ("Declarant Rights") which may be exercised, where applicable, anywhere within the Planned Community:

- (a) To complete the improvements indicated on the Plat;
- (b) To exercise any Declarant Rights reserved herein;
- (c) To maintain business/sales offices, parking spaces, management offices, storage areas, nursery, construction yard, signs, advertising and model Dwelling Units. Construction and sales activities are allowed on both HOA land and Heartwood Outback property;
- (d) To maintain signs and advertising in the Common Areas to advertise the Planned Community;
- (e) To use, and to permit others to use, easements through the Common Areas as may be reasonably necessary for construction within the Planned Community and for the purpose of discharging the Declarant's obligations under the Act and this Declaration;
- (f) To enlarge, without in any way being bound, the Planned Community in phases from time to time, by adding to the Planned Community any of the real property described in Exhibit C attached hereto, in accordance with ARTICLE TWELVE hereof;
- (g) To amend the Declaration and/or the Plat in connection with the exercise of any Declarant Rights.

13.2 Rights Transferable. Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the Rights transferred and recorded in the records of the County Clerk and Recorder. Such instrument shall be executed by the transferor Declarant and the transferee.

13.3 Limitations. The right of the Declarant, or any Successor Declarant, to exercise Development Rights, as fully described in Article 13 of the Declaration, is reinstated and extended for an additional period of twenty years running from the date of this Amendment to THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HEARTWOOD RANCH. Such reinstatement is subject to the modification and condition of certain rights reserved by the Declarant in the Declaration as provided herein.

13.4 Interference with the Declarant Rights. Neither the Association, the Board of Directors nor any Owner may take any action or adopt any rule that will interfere with or diminish Declarant Rights without the prior written consent of the Declarant.

13.5 Use by Declarant. The exercise of the Declarant Rights by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Lot by any Owner nor the access, enjoyment or use of the Common Areas; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

13.6 Models, Sales Offices and Management Offices. Subject to the limitations set forth in Paragraph 13.3 hereof, the Declarant its duly authorized agents, representatives and employees may maintain any Dwelling Unit owned by the Declarant as a model Dwelling Unit, sales, leasing or management office, to include, but not be limited to, a sales trailer.

13.7 Declarant's Easements. The Declarant reserves the right to perform warranty work, and repairs and construction work on Lots and Common Areas, to store materials in secure areas, and to control and have the right of access to work and repair until completion. All work shall be performed by the Declarant without the consent or approval of the Board of Directors.

The Declarant has an easement through the Common Areas as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising of the Declarant Rights, whether arising under the Act or reserved in this Article.

13.8 Participating Builder's Easements. The Participating Builder reserves the right to perform warranty work, and repairs and construction work on Units to store materials in secure areas, and to control and have the right of access to work and repair until completion.

13.9 Signs and Marketing. The Declarant reserves the right for Declarant to post signs and displays on the Common Areas in order to promote sales of Lots. Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

## ARTICLE FOURTEEN: FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Lots within the Planned Community who qualify as an Eligible Mortgagee as defined by Paragraph 1.25 hereof. To the extent applicable, necessary, or proper, the provisions of this ARTICLE FOURTEEN apply to both this Declaration and to the Articles and Bylaws of the Association.

14.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

- (a) any material condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Lot in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;
- (b) any default in the performance by an individual Borrower of any obligation of the Declaration not cured within sixty days;
- (c) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.; and
- (e) any material judgment rendered against the Association.

14.2 Amendment to Documents/Special Approvals.

(a) The consent of Owners to which at least eighty percent of the votes in the Association are allocated and the consent of fifty-one percent of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration or the Articles or Bylaws of the Association. A change to any of the following would be considered material.

- (i) voting rights;
- (ii) increase the Common Expense Assessment annually by more than 25% over the previously levied Common Expense Assessment, change the manner of the assessment liens, or the priority of the assessment liens;
- (iii) reduction in the reserves for maintenance, repair and replacement of the Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) right to use the Common Areas;



- (vi) convertibility of Lots into Common Areas or vice versa;
- (vii) subject to the provisions of ARTICLE TWELVE hereof, expansion or contraction of the Planned Community, or the addition, annexation or withdrawal of property to or from the Planned Community;
- (viii) hazard or fidelity insurance requirements;
- (ix) imposition of any restrictions on the leasing of Lots;
- (x) imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot;
- (xi) restoration or repair of the Planned Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xii) any provision that expressly benefits mortgage holders, insurers or guarantors.

(b) The Association may not take any of the following actions without the consent of Owners to which at least eighty percent of the votes in the Association are allocated and the approval of at least fifty-one percent of the Eligible Mortgagees.

- (i) Reconstruct or repair the Planned Community after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents.
- (ii) Merge or consolidate the Planned Community with any other Planned Community or subject it to a Master Association. Such action shall also require the written approval from the Federal Housing Administration and/or the Veterans Administration if the Planned Community has been or is to be approved by such agencies.
- (iii) Not repair or reconstruct, in the event of substantial destruction, any part of the Common Areas.

(c) Any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least eighty percent of the votes in the Association are allocated, and by fifty-one percent of the Eligible Mortgagees.

(d) Any action to terminate the legal status of the Planned Community for reasons other than substantial destruction or condemnation occurs must be agreed to by Owners to which at least eighty percent of the votes in the Association are allocated, and by sixty-seven percent of the Eligible Mortgagees.

14.3 Special FHLMC Provisions. Except as provided by statute in the case of a condemnation or a substantial loss to the Lots and/or Common Areas, unless at least two-thirds of the Eligible Mortgagees or Owners (other than the Declarant) have given their prior written approval, the Association may not:

- (a) by act or omission seek to abandon or terminate the Planned Community;
- (b) subject to the provisions of ARTICLE TWELVE hereof, change the pro rata interest or obligations of any Lot in order to levy assessments, allocate distribution of hazard insurance proceeds or condemnation awards;
- (c) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas by act or omission.

The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this Paragraph 14.3(c).

- (d) use hazard insurance proceeds for losses to any planned community property for other than the repair, replacement or reconstruction of the planned community property).

14.4 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty days after said Eligible Mortgagee receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

14.5 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

## ARTICLE FIFTEEN: DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION

15.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 15.7 below.

15.2 Amendments by Owners. Except as permitted in Paragraph 16.5 hereof, and except in cases of amendments which may be executed by the Declarant pursuant to ARTICLE TWELVE and Paragraph 15.5 hereof, and except as restricted by Paragraphs 14.2, 14.3 and 15.6 hereof, this Declaration may be amended by a written agreement by Owners to which at least eighty percent of the votes in the Association are allocated; provided, however, except as provided in ARTICLE TWELVE hereof, an amendment may not: (a) decrease or increase Special Declarant Rights; (b) increase the number of Lots; (c) change the use to which a Lot is restricted; or (d) change the Allocated interests of a Lot, except by the unanimous consent of the Owners.

Any such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The Secretary shall further certify that originals of such written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in the Office of the County Clerk and Recorder.

All signatures shall be irrevocable even upon death of an Owner or the conveyance of the Lot, except that if an amendment is not recorded within three years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association. Signatures need not be notarized.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one year from the date of the recording of the said amendment, unless fraud or willful negligence is asserted and proven.

15.3 FHA/VA Approval. If the Planned Community has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, then until the termination of the Period of Declarant Control hereof, the following actions will require the prior approval of

the Federal Housing Administration and/or the Veterans Administration: annexation of additional properties, amendment of this Declaration and the assessment of a Special Assessment.

15.4 Consent of Eligible Mortgagees. Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in ARTICLE FOURTEEN hereof.

15.5 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or Eligible Mortgagees, this Declaration, the Association's Articles of Incorporation or Bylaws, any time within the limitations set forth in Paragraph 13.3 hereof, as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- (b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages.
- (c) To comply with any requirements of the Act.

15.6 Consent of Declarant Required. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment.

The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

15.7 Termination. The Planned Community may be terminated only in accordance with Paragraph 14.2(c) and (d) hereof.

The proceeds of any sale of real estate together with the assets of the Association shall be held by the Association as trustee for Owners and holders of liens upon the Lots as their interests may appear, as more fully set forth in § 38-33.3-218 of the Act.

## ARTICLE SIXTEEN: GENERAL PROVISIONS

16.1 Right of Action. The Association and any aggrieved Owner shall have an appropriate right of action against an Owner for such Owner's failure to comply with this Declaration, the Articles of Incorporation and Bylaws of the Association, the Rules and Regulations of the Association or with decisions of the Board of Directors which are made pursuant thereto. Owners shall have a similar right of action against the Association.

16.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner and their heirs, personal representatives, successors and assigns.

16.3 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

16.4 No Waiver. No provision contained in this Declaration 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.

16.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by 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 or the Association shall be sent by certified mail, postage prepaid, to the Registered Agent for the Association.

16.6 Conflict. The Project Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between the Project Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Project Documents, this Declaration shall control.

16.7 Mergers. The Planned Community may be merged or consolidated with another planned community of the same form of ownership by complying with § 38-33.3-221 of the Act.

16.8 Arbitration/Attorney's Fees. Except for matters requiring injunctive relief and matters concerning the collection of Assessments, all matters regarding the interpretation, application and enforcement of this Declaration shall be resolved by binding arbitration in accordance with the Colorado Arbitration proceeding consistent with the Rules of the American Arbitration Association. The parties to such dispute shall agree upon a single arbitrator who shall be an experienced professional property manager of a homeowners association.

In the event the parties are unable to agree upon an arbitrator within 30 days after written notice, the presiding judge of the County's District Court shall appoint an arbitrator qualified as set forth above upon application of a party. The arbitrator shall be required to follow substantive law in reaching a decision under this Paragraph. Judgment upon the determination of the arbitrator shall be entered and enforced by the County's District Court. The arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.

In any proceeding to enjoin any violation of this Declaration, the party or parties against whom judgment is entered shall pay the attorney's fees and costs of the party or parties for whom judgment is entered.

16.9 Captions. The captions and headings in this Declaration are for Convenience only, and shall not be considered in construing any provision of this Declaration.

16.10 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
BRUCE M. THOMSON

\_\_\_\_\_  
SANDRA K. THOMSON

(NOTARY ACKNOWLEDGMENT IS FOUND ON THE FOLLOWING PAGE)

STATE OF COLORADO            )  
  ) SS.  
COUNTY OF LA PLATA        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by Bruce M. Thomson and Sandra K. Thomson.

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

WITNESS my hand and official seal.

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

**EXHIBIT A  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
HEARTWOOD RANCH**

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**LEGAL DESCRIPTION OF THE REAL PROPERTY  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
HEARTWOOD RANCH  
(FIRST PHASE)**

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Lots A1, A2, A3, A4, A5, A6, A7, A8, A9,  
Lots B1, B2, B3, B4,  
Lot C1,  
Lots D1, D2, D3, D4,  
Lots E1, E2, E3, E4, E5, E6,  
Lots CP1, CP2, CP3, CP4, CP5, CP6, CP7, CP8, CP9, CP10, CP11, CP12,  
CP13, CP14, CP15, CP16, CP17, CP18, CP19, CP20, CP21, CP22, CP23, CP24,  
Lots CF1, CF2, CF3, CF4, CF5, CF6, CF7, CF8, CF9, CF10, CF11, CF12, CF13,  
CF14, CF15, CF16,  
Heartwood Ranch Subdivision, a subdivision of the County of La Plata,  
State of Colorado.



**EXHIBIT B  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
HEARTWOOD RANCH**

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**LEGAL DESCRIPTION OF THE COMMON AREAS  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
HEARTWOOD RANCH  
(FIRST PHASE)**

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A tract of land located in Section 3 and Section 10, Township 34 North, Range 7 West, New Mexico Principal Meridian, in La Plata County, Colorado, being more particularly described as follows:

Beginning at the Southwest Corner of said Section 3;

Thence N 00°05'07" E, 1369.37 feet along the west line of said Section 3;

Thence East, 2663.60 feet to the east line of the Southwest 1/4 of said Section 3;

Thence S 00°08'55" E, 1448.39 feet along the east line of the Southwest 1/4 of said Section 3 to the North 1/4 Corner of said Section 10;

Thence N 88°18'17" W, 154.22 feet to the easterly right-of-way of Heartwood Lane;

Thence S 17°05'00" E, 1297.62 feet along the easterly right-of-way of Heartwood Lane;

Thence along the arc of a curve to the left with a delta angle of 55°01'00" and a radius of 152.43 feet for a distance of 146.37 feet the long chord of which bears S 44°35'30" E, 140.81 feet along the easterly right-of-way of Heartwood Lane;

Thence S 72°06'00" E, 424.96 feet along the easterly right-of-way of Heartwood Lane;

Thence along the arc of a curve to the right with a delta angle of 17°40'11" and a radius of 428.64 feet for a distance of 132.19 feet the long chord of which bears S 63°03'26" E, 131.67 feet along the easterly right-of-way of Heartwood Lane;

Thence S 76°11'36" E, 499.47 feet;

Thence S 00°04'16" W, 996.33 feet;

Thence N 88°16'53" W, 1299.56 feet;

Thence N 00°05'22" E, 423.05 feet;

Thence N 17°35'54" W, 82.66 feet;

Thence N 10°56'20" W, 10.21 feet;

Thence N 01°54'41" W, 10.39 feet;

Thence N 04°17'40" E, 10.20 feet;

Thence N 07°01'48" E, 213.65 feet;

Thence N 00°14'47" E, 526.99 feet;

Thence N 67°11'55" W, 40.10 feet to the Center-North 1/16 Corner of said Section 10;

Thence N 88°17'35" W, 2670.52 feet along the south line of the S1/2NW1/4 of said Section 10 to the North 1/16 Corner common to said Section 10 and Section 9, Township 34 North, Range 7 West, New Mexico Principal Meridian; Thence N 00°04'51" E, 1315.38 feet along the west line of said Section 10 to the point of beginning.

Contains 203.186 acres, more or less. LESS the real property described on Exhibit A.

**EXHIBIT C  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
HEARTWOOD RANCH**

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**LEGAL DESCRIPTION OF THE REAL PROPERTY  
WHICH MAY BE SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
HEARTWOOD RANCH  
IN LATER PHASES**

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A tract of land located in Section 3, Township 34 North, Range 7 West, New Mexico Principal Meridian, in La Plata County, Colorado, being more particularly described as follows:

Beginning at the Center 1/4 Corner of said Section 3;

Thence S 00°08'55" E, 1223.47 feet along the east line of the N1/2SW1/4 of said Section 3;

Thence West, 2663.60 feet to the west line of said Section 3;

Thence N 00°05'07" E, 1274.09 feet along the west line of said Section 3;

Thence N 00°10'47" E, 1312.38 feet along the west line of said Section 3 to the North 1/16 Corner common to said Section 3 and Section 4,

Township 34 North, Range 7 West, New Mexico Principal Meridian;

Thence S 89°18'58" E, 2651.15 feet along the north line of the S1/2NW1/4 of said Section 3 to the Center-North 1/16 Corner of said Section 3;

Thence S 00°08'55" E, 1331.36 feet along the east line of the Northwest 1/4 of said Section 3 to the point of beginning.

Contains 156.848 acres, more or less.

**EXHIBIT D  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
HEARTWOOD RANCH**

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**THE RECORDING DATA FOR RECORDED EASEMENTS AND  
LICENSES WHICH THE PLANNED COMMUNITY  
IS OR MAY BECOME SUBJECT TO:**

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1. Access road as set forth in Affidavit recorded as Reception No. 365381.
2. Pipeline right of way recorded as Reception No. 574821.
3. Right of way for La Plata County Road No. 506.
4. Right of way for the Thompson-Epperson Ditch.
5. Access and utility easements, water and gas line easements, and ditch easements as shown on amended plat of Wildwood Ranch filed as Reception No. 684055 and as further shown on the plat of Wildwood Ranch Amendment No. 2 filed as Reception No. 711981.

All recordings are in the records of the La Plata County, Colorado Clerk and Recorder.

**THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**OF**  
**HEARTWOOD RANCH**

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THIS DOCUMENT WAS DRAFTED BY,  
AND AFTER RECORDING, RETURN TO:  
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