

**AFTER RECORDING RETURN TO:**

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***AMENDED AND RESTATED  
DECLARATION AND AGREEMENT ESTABLISHING  
PROTECTIVE COVENANTS  
FOR BURNING TREE IN COLUMBINE VALLEY***

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**AMENDED AND RESTATED  
DECLARATION AND AGREEMENT ESTABLISHING PROTECTIVE COVENANTS  
FOR BURNING TREE IN COLUMBINE VALLEY**

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by The Burning Tree Homeowners Association, a Colorado nonprofit corporation.

*RECITALS:*

A. On November 21, 1977, the Dayton Financial Corporation submitted the real property described in that certain Declaration and Agreement Establishing Protective Covenants recorded in the real property records of Arapahoe County, Colorado at Reception No. 1685865 in Book 2684 at Page 44, as amended (“Original Declaration”) to its covenants, conditions and restrictions;

B. The Owners within the Burning Tree Community desire to amend and restate the Original Declaration by virtue of this Amended and Restated Declaration and Agreement Establishing Protective Covenants for Burning Tree in Columbine Valley (“Declaration”), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. On May 19, 2004, the District Court for Arapahoe County, Colorado granted the Association’s Petition for Approval of Proposed Amended and Restated Declaration pursuant to the requirements of C.R.S. §38-33.3-217(7). The Court found that the Association filed a petition for approval of the Declaration with the Court which was not objected to by: (i) more than thirty-three percent (33%) of the Owners, (ii) thirty-three percent (33%) of the first mortgagees, (iii) the Declarant, (iv) the Federal Housing Administration (“FHA”), or (v) the Veteran’s Administration (“VA”). The Court also found that the Declaration did not terminate the Original Declaration and that the Declaration did not alter the allocated interests of the Owners within the Association. A copy of this Order is attached and incorporated by reference as Exhibit “A” hereto.

E. Pursuant to C.R.S. §38-33.3-217(7), upon recordation of the Declaration and the Court Order approving the Declaration, the Declaration, as amended, shall be effective as if all of the approval requirements set forth in the Original Declaration were met.

NOW THEREFORE, the Original Declaration is replaced and superceded by the covenants, servitudes, easements and restrictions set forth below:

**ARTICLE 1  
DEFINED TERMS**

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or as set forth below:

(a) Act shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended.

(b) Architectural Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate Improvement, and harmonious additions, alterations and Improvements within the Community.

(c) Assessment shall include all Common Expenses, insurance assessments, utility assessments, and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association shall mean The Burning Tree Homeowners Association, a Colorado nonprofit corporation, and its successors.

(e) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(f) Common Area shall mean all real property owned by the Association for the common use and enjoyment of the Owners, if any.

(g) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(h) Community or Burning Tree Community or Planned Community shall mean the planned community known as "Burning Tree," and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.

(i) Declaration shall mean and refer to this Amended and Restated Declaration and Agreement Establishing Protective Covenants for Burning Tree in Columbine Valley, as amended, recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado.

(j) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any maps and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(k) Improvement(s) shall mean structures installed within or upon a Lot.

(l) Lot shall mean and refer to any plot of land shown upon any recorded Plat of the Property with the exception of Common Areas, if any.

(m) Member shall mean any Owner. The terms “Member” and “Owner” may be used interchangeably.

(n) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(o) Plat or Map shall mean and refer to the plat(s) and/or map(s) of the Property and Improvements that are subject to this Declaration and which are designated in the plat for Burning Tree recorded in the records of the Office of the Clerk and Recorder of Arapahoe County. More than one plat, map or supplement thereto may be recorded, and, if so, then the term “Plat” or “Map” shall collectively mean and refer to all of such plats, maps and supplements thereto.

(p) Property shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(q) Rules and Regulations shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including any amendment to those instruments.

## **ARTICLE 2 NAMES & DESCRIPTION OF REAL ESTATE/EASEMENTS**

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is “Burning Tree.” The name of the Association is the “The Burning Tree Homeowners Association”.

Section 2.2 Property. The Planned Community is located in Arapahoe County, State of Colorado. The Property of the Planned Community is described in the Original Declaration. Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon a recorded Plat and on any recorded Map of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Number of Lots. The number of Lots initially included in the Burning Tree Community is one hundred twenty-two (122).

Section 2.4 Identification of Lots/Lot Descriptions. The identification of each Lot is shown on the plat. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Lot by its identifying Lot number, followed by the name of the Community, with reference to the Plat, any Map and the Declaration. An illustrative description is as follows:

Lot \_\_\_\_, Burning Tree, according to the Amended and Restated Declaration recorded \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_ and the recorded plat, in the records of the Clerk and Recorder, Arapahoe County, State of Colorado.

Reference to the Declaration, Plat and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, Plat or Map, without specific references thereto.

Section 2.5 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right of the Association, to suspend the voting rights and, after notice and the opportunity for a hearing, the right to use of any Common Area and recreational facilities, for a period not to exceed sixty (60) days or during any period of violation of any other provision of the Governing Documents, whichever is greater;
- (c) the right of the Association, upon approval of at least seventy-five percent (75%) of the Owners, to mortgage the Common Area as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners and to convey or sell any portion of the Common Area;
- (d) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or grant of any similar interest affecting any Common Area; and
- (e) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area or alter the use of the Common Area.

Section 2.6 Delegation of Use. Any Owner may delegate their right of enjoyment to any Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot.

Section 2.7 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 allow for their performance of obligations in this Declaration, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any Improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot.

Section 2.8 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon a recorded plat or the Plat or Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document. No streets or roads shall be permitted to connect the interior street system of the Community with Fairway Lane. There shall, however, be an easement connecting Spy Glass Drive to the western extension of Fairway Lane as shown on the Plat. Said easement shall be restricted to use by pedestrians, non-motorized bikes and golf carts.

Section 2.9 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

### **ARTICLE 3 THE ASSOCIATION**

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one (1) vote which shall be cast as a single vote and shall not be subject to fractional voting.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Burning Tree Community as provided in this Declaration so as to protect the value and desirability of the Burning Tree Community and the Lots. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Burning Tree Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Plat, any Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of its final responsibilities.

Section 3.4 Specific Powers. The Association shall have the powers, authority and duties as necessary and proper to manage the business affairs of the Burning Tree Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Assessments for Common Expenses, but only upon the affirmative vote of a majority of those Members present and voting at a duly called meeting of the Association. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area.

Section 3.5 Indemnification. To the full extent permitted by law, each officer, director or committee member of the Association and other volunteer appointed by the Board of Directors shall be indemnified by the Owners and the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and by Colorado law.

Section 3.6 Association Management Agreements. Any agreement for professional management of the Burning Tree Community may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice.

#### **ARTICLE 4 COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES**

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses. Each Lot, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses, insurance Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Lot Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Assessments for Common Expenses and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Lot Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by 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.

Section 4.2 Annual Assessment. The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget shall be submitted to the Lot Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time-to-time. The budget may be vetoed by votes of Owners representing a majority of the votes in the Association. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

Section 4.3 Apportionment of Common Expenses. Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lots in accordance with formula for liability for the Common Expenses as set forth in this Declaration. Assessments for Common Expenses are currently allocated among the Lot Owners equally.

Section 4.4 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 4.5 Lot Specific Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article those amounts expended by the Association for the benefit of any individual Lot and the Owner thereof, including, but not limited to: fines; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his guests, employees, licensees, lessees or invitees; and all other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and which are readily determined to be allocable to a particular Lot. If any extraordinary maintenance, repair or restoration work to areas which the Association maintains is required on fewer than all of the Lots the costs thereof may, at the discretion of the Board, be borne by the Owners of those affected Lots only.

Section 4.6 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within thirty (30) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Lot Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such

overdue Assessments, charges or fees, or other installments thereof, and may also proceed to foreclose its lien against such Lot Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Lot Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Lot Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 4.7 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.8 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Area, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses costs and fees incurred by the Association are not repaid to the Association within seven (7) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Article.

**ARTICLE 5  
COVENANTS AND RESTRICTIONS ON USE,  
ALIENATION AND OCCUPANCY**

Section 5.1 Flexible Application of the Subsequent Covenants and Restrictions. All Property within the Burning Tree Community shall be held, used and enjoyed subject to the following limitations and restrictions. 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 Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules.

Section 5.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may add, delete, modify, create exceptions to, or amend use guidelines and restrictions, or Rules and Regulations, in accordance with this Declaration and established legal principles.
- (c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (d) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (e) All penalties imposed are collectible as Assessments.

Section 5.3 Use/Occupancy. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation. Occupancies may also be subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community as a first class residential Community, as reasonably determined by the Board of Directors of the Association, are prohibited unless approved by the Association and allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

Section 5.4 Leasing and Occupancy. Any Lot Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Lot Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) No Lot shall be occupied or leased except under the terms and conditions set forth in the Declaration and the Rules and Regulations. Each Lot shall be occupied and used by Owners, their guests, occupants or lessees for residential purposes only, except as may be provided by the Declaration.

(b) Owners shall be responsible for the actions and/or violations of their guests and lessees, and the lessee's guests. Owners shall provide a copy of the Declaration and any rules and regulations to each lessee at the time the lease is executed.

(c) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.

(d) All leases must be in writing, for a term of not less than six (6) months and must be signed by all occupants over the age of eighteen (18). No lease may be for less than the entire Lot. Every lease must include the following:

(i) A statement that the lessee has received a copy of the Declaration, the Bylaws and any rules and regulations, that the lease is subordinate to the Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations, and that lessee agrees to comply with same.

(ii) An affirmative covenant of the lessee providing that failure by the lessee or the lessee's guest to comply with the terms of the Lease, the Declaration, the Bylaws, the rules and regulations or Colorado statute shall constitute a default by Lessee under the lease.

(e) Each Owner who leases his Lot shall provide the Association, upon request, a copy of the current lease and tenant information including names of all occupants, vehicle descriptions including license plate numbers, and any other information reasonably requested by the Association or its agents.

(f) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(g) An Owner may be requested by the Board to evict any lessee who has committed more than two (2) violations of any of the provisions of the Declaration or any rules and regulations. Notwithstanding this provision, an Owner shall immediately evict any lessee who commits, or whose guest commits, any act, or series of acts, which endanger the life of any person, or who willfully and substantially endangers any Common Area or other property pursuant to the provisions of Colorado Revised Statute § 13-40-107.5. If an Owner does not enforce the terms of this subsection (g), the Board shall have the authority to do so. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within thirty (30) days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner has delegated and assigned to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Lot.

(h) Notice of violation may be sent to the lessee in addition to the Owner of the Lot. The Owner will be held solely responsible for all fines incurred for violations by lessees.

Section 5.5 Lot Maintenance. Owners are responsible for the maintenance, repair and replacement of the property and Improvements located within their Lot boundaries, including landscaping, exterior lighting, decks, patios and driveways located on the Lots. Each Lot shall have and each Owner shall maintain, repair and replace a front yard lantern light with photocell control connected to the main circuit of the household appliances of the residence on the Lot, and the design, size and height thereof shall be approved by the Architectural Review Committee. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. Owners shall keep all exterior lights on the home and Improvements located on their Lot operating in good working order. The Association, and its agents, shall have the authority, after giving the Owner thirty (30) days written notice, to enter, replace, maintain, repair and clean up the Lots, or Improvements thereon, which do not conform to the provisions of this Section, and to charge and collect from the Owners thereof all reasonable costs related thereto as an Assessment hereunder.

Section 5.6 Landscaping Requirements and Restrictions. The landscaping of each Lot shall be maintained by the Owner in a neat, attractive and well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris.

Section 5.7 Lot, Residence, Garage and Driveway Size Restrictions. No building of any kind whatsoever shall be erected or maintained on any Lot except private, single family dwelling houses which are not to exceed two (2) stories in height except that Lots 1 through 15 inclusive, Block 1, and Lots 1 through 8, inclusive, Block 2, shall be restricted to one (1) story single family dwellings with a maximum height of twenty feet (20') to the ridge line as measured from the front set back of the property line. No structure whatever other than one (1) private single family dwelling together with a private garage for not more than three (3) automobiles, and servant quarters of all masonry and/or frame construction shall be erected, placed or permitted to remain on any of the Lots. Each residence shall have a ground floor area of the main structure, exclusive of garages, porches, or terraces, of at least 2200 square feet in the case of one (1) story structures, and in the case of structures of more than one (1) story, a minimum of 2400 square feet of floor area in the aggregate of all floors exclusive of garages, porches, terraces and basements. A garage shall be required and shall be of size of least 500 square feet of floor space. Any garage shall be attached to and be a part of a single family dwelling erected or placed on any Lot. All garages shall be part of, or attached to the residence and shall have a minimum 25 foot width on the entrance side of the garage. Not more than one (1) residence shall be erected on any of said Lots as shown on the recorded plat. The ridge heights of any residence on any Lot shall not exceed twenty-seven feet (27') in height as measured from the front set back of the property line except as provided in this Declaration for Lots 1 through 15, Block 1, and Lots 1 through 8, Block 2, wherein height shall be restricted to twenty feet (20') to the ridge as measured from the front setback of the property line. In determining the elevation of the front setback line of all Lots in the Community, grading from the street gutter to the front set back line shall not exceed a slope of one (1) foot in ten (10). In cases where the Owner or a contractor raises or lowers elevation of the ground and establishes the finished grade elevations at any exterior property line of an adjoining Lot, said contractor or Owner must erect a retaining wall, at his or her cost, to prevent the dirt from falling or washing down on the adjoining Property. The ground around the exterior of the residence shall be well sloped. A slope of at least twelve inches (12") for the first ten feet (10') is required. For the purpose of this Declaration, all Lots shall be deemed to front on the street or streets on which the Lot or Lots abut, provided, however, when the residence is erected on a corner Lot or plot, the street on which the residence fronts shall be deemed to be the front street. Concrete drives and sidewalks are permissible as long as they cross at substantially right angles and do not exceed twenty-six feet (26') in width.

Section 5.8 Setbacks. No residence or any part thereof, shall be erected or maintained on any Lots, nearer than twenty-five feet (25') from the front plot line, or nearer than twenty feet (20') from any side street plot line, on all corner lots, or nearer than fifteen feet (15') from the front plot line on a cul-de-sac or bubble (subject to Committee approval), or nearer than twenty-five feet (25') from the rear plot line, except for the following Lots: 14, 16, 25, 26, and 36, Block 1; Lot 8, Block 2; Lot 1, Block 3; Lots 1, 6, 9 and 16, Block 4; Lots 1, 5, 6 and 9, Block 5; Lots 1, 2, 12, and 13, Block 6; Lots 1 and 3, Block 7; and such Lots shall have a fifteen foot (15') rear set back from the rear plot line. No residence or any part thereof may be erected nearer than ten feet (10') from the interior side line or lines of any plot except that chimneys and eaves may extend four feet (4') and bay windows may extend two feet (2') nearer said plot lines. Uncovered but not covered or enclosed porches, and terraces may extend beyond the building limit line toward the street or streets on which such Lot fronts, not more than five feet (5'). A basement stairwell may extend not more than four feet (4')

beyond the side or rear of the building. Except for a protective railing, such stairwell may not extend more than six inches (6") above ground. If any dispute arises as to what constitutes a front, rear or side line, the decision of the Architectural Review Committee shall be final. Whenever possible the entrance to garages shall be from the side lot lines.

Section 5.9 No Subdivision of Lots. No Lot shall be re-subdivided into smaller Lots, nor conveyed or encumbered in any less than the full dimension as originally conveyed by the Owner(s). Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for public utilities, in which event, the remaining portion of the Lot shall, for the purpose of this provision, be treated as a whole Lot

Section 5.10 Fence Restrictions. No fence, wall, or hedge shall be constructed or maintained closer to the front property line or any side property line or any side street property line than the building. No fence, wall or hedge shall be constructed or maintained closer to the rear property line than ten feet (10') less than the rear property line set back, as set forth in this Declaration. Fences may be installed pursuant to the Rules and Regulations or design guidelines and with written approval of the Architectural Review Committee. A six foot (6') high privacy fence in compliance with the Rules and Regulations or design guidelines shall be permitted. No fencing on a Lot may exceed fifty (50) linear feet. The Association shall have the authority to install and maintain fencing on the Common Area.

Section 5.11 Restrictions on Animals and Pets. Pets, including cats, dogs, birds, reptiles, or other household animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored on a Lot, *if* the animal is not a nuisance to other Owners or occupants; provided, not more than two (2) dogs and two (2) cats shall be permitted on a Lot. No Owner or resident shall maintain any animal which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If an animal is deemed a nuisance, the Owner or person having control of the animal shall be given a written notice to correct the problem. If not corrected, that Owner, upon a second written notice, will be required to remove the animal from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Animals may not be kept for any commercial purposes. Animals are not permitted in the recreational areas (enclosed pool and tennis court areas). When on other Common Area, animals must be on a leash and under the control of the Owner of the animal. Feces left by animals upon the Common Area, on any Lot or in any dwelling must be removed promptly by the owner of the animal or the person responsible for the animal. Owners shall hold the Association harmless from any claim resulting from any action of their animals.

Section 5.12 Antennae. Exterior television, satellite or other antenna are allowed only to the extent expressly permitted under applicable federal statutes or regulations ("Permitted Antennas"). Permitted Antennas shall be installed in the least conspicuous location available on the Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

Section 5.13 Tanks. No tanks of any kind, except for small portable tanks associated with an outdoor gas grill, either elevated or buried, shall be erected, placed or permitted upon any Lot without the prior written approval of the Board of Directors.

Section 5.14 Nuisances. No nuisance shall be permitted within the Burning Tree Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Burning Tree Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Burning Tree Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Burning Tree Community or a portion thereof shall be observed.

Section 5.15 Vehicular Parking, Storage, and Repairs.

(a) Vehicular parking upon any Common Area shall be regulated by the Board of Directors.

(b) The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, is adequately screened from view from other Lots and Common Area, as determined by the Board, or unless authorized in writing by the Board of Directors of the Association: oversized vehicles, commercial vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to 72 hours) for loading, delivery of goods or services, or emergency. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any Improvement located thereon.

(c) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Board of Directors of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages; provided, however, minor repairs that can be completed within twenty-four (24) hours may be performed on the Lot.

Section 5.16 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association. The Association shall be responsible to maintain, repair, replace and improve any Common Area and any Improvements located thereon, including, but not limited to the green space areas defined as Tracts A and B, 1st, 2nd and 3rd Filings of the Plat.

Section 5.17 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Burning Tree Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Burning Tree Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Burning Tree Community except with the prior written approval of the Board of Directors.

Section 5.18 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any Property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Community and no open fires shall be lighted or permitted on any Property within the Community except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers. There shall be no exterior fires, except for conventional barbecues and fires in outdoor fireplaces. No Owner or Owners shall permit any condition on his Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 5.19 Restrictions on Clotheslines and Storage. No clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted in the Burning Tree Community unless the same, in each instance, is adequately screened from view, as determined by the Board, or unless the same is expressly permitted in writing by the Board of Directors of the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 5.20 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Burning Tree Community except for such sign or signs as may be approved in writing by the Board of Directors or as permitted in other provisions of this Article or the Rules and Regulations of the Association. One (1) professionally lettered "For Sale" or "For Rent" sign not to exceed eight (8) square feet per Lot shall be allowed.

Section 5.21 Outbuildings. An "outbuilding" as the word is used herein, is intended to mean an enclosed covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, trailers, mobile homes, tents, shacks, barns, or detached garages, shall be allowed on any Lot.

Section 5.22 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. If trash removal is a service ever offered by the Association to Owners, then the Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners and the cost of such service shall become part of the Assessment against the Lot.

Section 5.23 Restriction on Mining and Drilling. No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

## **ARTICLE 6 ARCHITECTURAL REVIEW**

Section 6.1 Required Approval. No structures, including residences, accessory buildings, tennis courts, swimming pools, antennas, flag poles, fences, walls, exterior lighting, landscaping, or any other Improvement shall be constructed erected or installed on a Lot, nor shall any alteration or change to the exterior of the Improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including roofing, paint, awnings, patios, decks, or shutters) be commenced within the Burning Tree Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee ("Committee") as outlined in the Rules and Regulations or design guidelines of the

Association. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

Section 6.2 Architectural Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth herein. The approval or consent of the Architectural Review Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Architectural Review Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 6.3 Establishment of the Architectural Review Committee. The Architectural Review Committee shall consist of a minimum of three (3) members appointed by the Board of Directors.

Section 6.4 Architectural Guidelines. The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

Section 6.5 Reply and Communication. The Committee shall reply to all submittal of plans made in accordance herewith in writing within thirty (30) days after receipt. In the event the Architectural Review Committee fails to take any action on submitted plans and specifications within thirty (30) days after the Committee has received the plans and specifications, approval shall be deemed to be granted. All communications and submittals shall be addressed to the Committee at such address as the chairman of the Committee shall hereafter designate in writing addressed and mailed to the Owners.

Section 6.6 Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Area nor deviate substantially from the general intent and purpose of this Declaration.

Section 6.7 Right to Appeal. An Owner may appeal any decision of the Architectural Review Committee to the Board of Directors. The Board of Directors shall review the decision of the Architectural Review Committee pursuant to the criteria set forth in Section 6.1 above and the architectural guidelines. Any decision of the Architectural Review Committee may be overruled and reversed by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Architectural Review Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 6.8 Waivers. The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 6.9 Liability. The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

Section 6.10 Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party upon request.

Section 6.11 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## **ARTICLE 7 INSURANCE/CONDEMNATION**

Section 7.1 Insurance on the Lots. Each Owner shall obtain adequate hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to their Lot, the other property of that Owner, and any injuries occurring to the persons while on a Lot. The Association shall have no liability for the failure of any Owner to maintain insurance.

Section 7.2 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 7.3 Hazard Insurance on Common Area. The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any Improvements, installed or made to any Common Area and the other property of the Association.

Section 7.4 Association Liability Insurance. The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 7.5 Association Fidelity Insurance. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 7.6 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 7.7 Officers' and Directors' Personal Liability Insurance. The Association shall obtain officers' and directors' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 7.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the Owners, holders of first lien security interests and the Association.

(b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least ten (10) days prior to the expiration of the then-current policies.

(c) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(d) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any Improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.

(e) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 7.9 Other Association Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 7.10 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 7.11 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association.

Section 7.12 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 7.13 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 7.14 Duty to Repair. Any portion of the Burning Tree Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 7.15 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 7.16 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

Section 7.17 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered a special Assessment as discussed in this Declaration and shall not require any vote of the Owners.

Section 7.18 Damage to or Destruction of Dwellings on Lots. In the event of damage to or destruction of structures on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

**ARTICLE 8**  
**GENERAL PROVISIONS**

Section 8.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);

(ii) suspending the right to vote;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 8.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 8.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 8.4 Amendment of Declaration by Owners. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least a majority of all votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Arapahoe County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 8.5 Amendment of Declaration by the Association. The Association shall have the authority to amend, revise, remove, repeal or add any provision to this Declaration, without Owner or mortgagee approval, in order to conform with any applicable state, city or federal law

Section 8.6 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-Owners and non-occupants will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or occupants. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures taken.

Section 8.7 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 8.8 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 8.9 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 8.10 Challenge to this Amendment. All challenges to the validity of this amendment or any future amendments must be made within one (1) year after the date of recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 8.11 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 8.12 Conflict of Provisions. In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.



**EXHIBIT A**  
**COURT ORDER**

[attached]