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AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
JOHNSON FARM, A SUBDIVISION

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AMENDED AND RESTATED

DECLARATION

OF

COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR JOHNSON FARM, A SUBDIVISION

THIS DECLARATION, made and entered into this 20<sup>th</sup> day of August, 1985, by TULL CONSTRUCTION COMPANY, a Colorado corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Niwot Johnson Farms, Inc. has caused that certain General Declaration of Covenants, Conditions and Restrictions for Johnson Farm, a Subdivision, to be recorded on August 31, 1976 on film 936 as Reception No. 190131 in the real property records of Boulder County, Colorado, as amended by that certain Amendment to General Declaration of Covenants, Conditions and Restrictions for Johnson Farm, a Subdivision, recorded November 5, 1976 on film 944 as Reception No. 196686 in said records;

WHEREAS, ToWin Development Corp. and Niwot Johnson Farms, Inc. have caused the terms and provisions of the foregoing two documents to be superseded and replaced by the terms and conditions of that certain Amended General Declaration of Covenants, Conditions and Restrictions for Johnson Farm, a subdivision, recorded July 1, 1977 on film 968 as Reception No. 230380 in said records;

WHEREAS, Article IX, Section 2 of the aforesaid Amended General Declaration provides that the covenants and restrictions thereof may be amended during the first twenty-five (25) years following recordation by an instrument signed by not less than three-fourths (3/4) of the members of the Johnson Farm Association, Inc. that are subject to said Amended General Declaration;

WHEREAS, Declarant is the owner of at least seventy-five percent (75%) of the Lots within that certain parcel of real property located in the County of Boulder, State of Colorado, which is described as Johnson Farm Subdivision, County of Boulder, State of Colorado; and

WHEREAS, Declarant, by virtue of its ownership of the foregoing property, desires to amend the aforescribed documents in their entirety.

NOW, THEREFORE, Declarant hereby amends all of the aforescribed documents in their entirety and hereby declares

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that all of the properties described above shall be held, sold, and conveyed subject to the following easements, reservations, restrictions, covenants, and conditions which are for the purpose of promoting the common recreation of the owners of the aforesaid properties and which shall run with, the aforesaid properties and be binding on all parties having any right, title, or interest in the above-described properties or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I DEFINITIONS

Section 1. "Architectural Control Committee" shall mean and refer to the committee appointed by Declarant or by the Board of Directors of the Association for the purposes provided herein.

Section 2. "Association" shall mean and refer to Johnson Farm Association, Inc., a Colorado non-profit corporation, its successors and assigns.

Section 3. "Common Area" shall mean and refer to all property (including the improvements thereto) owned by any Subassociation for the common use and enjoyment of the members of such Subassociation.

Section 4. "Declarant" shall mean and refer to Tull Construction Company, a Colorado corporation, its successors and assigns, if such successors and assigns are specifically assigned any of Declarant's rights hereunder by instrument duly recorded in the Boulder County, Colorado, land records.

Section 5. "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Johnson Farm, a Subdivision, as it may be amended from time to time.

Section 6. "First Mortgage" shall mean and refer to any unpaid and outstanding, mortgage, deed of trust or other security instrument encumbering a Lot recorded in the records of the office of the Clerk and Recorder of the County of Boulder, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage", for purposes of Article IV, Section 9 and with respect to notice of termination, subordination or modification of certain insurance policies, to Article VI, Section 1, shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a remote assignee,

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and the land records in the Office of the Clerk and Recorder of the County of Boulder, Colorado, show the said Administrator as having the record title to the Lot.

Section 7. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage (including, for purposes of Article IV, Section 9 and with respect to notice of termination, subordination or modification of certain insurance policies, to Article VI, Section 1, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records in the Office of the Clerk and Recorder of the County of Boulder, Colorado show the said Administrator as having the record title to the Lot), or any successor to the interest of any such person under such First Mortgage.

Section 8. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties or any portion thereof, upon which a Residence has been or is to be constructed with the exception of the Recreational Property, Common Area and public streets and rights-of-way, but together with all appurtenances and improvements now or hereafter thereon. For membership and voting purposes, Lot shall also mean any approved potentiality or density for future construction of Residences within any Block of land within the Properties which has not been replatted into individual lots for such construction, so that each such Block, for voting purposes, shall contain the same number of Lots as the number of future Residences which have been approved by Boulder County.

Section 9. "Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Properties" shall mean and refer to that certain real property described as Johnson Farm Subdivision, County of Boulder, State of Colorado.

Section 12. "Recreational Property" shall mean and refer to all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Recreational Property to be owned by the Association at the time of the commencement of assessments hereunder is described on Exhibit B attached hereto and incorporated herein by this reference.

Section 13. "Residence" shall mean and refer to any townhouse, cluster home, or detached single-family residential dwelling unit constructed upon any Lot.

Section 14. "Subassociation" shall mean and refer to any Colorado non-profit corporation, its successors and assigns, organized and established by Declarant pursuant to or in connection with any Supplemental Declaration. Each Subassociation shall act by and through its board of directors and officers.

Section 15. "Supplemental Declaration" shall mean and refer to each Supplementary Declaration of Covenants, Conditions and Restrictions to which the Properties or any portion thereof is now or may hereafter be subjected by Declarant as each such document may be amended from time to time, provided that each such Supplemental Declaration shall be recorded in the office of the Clerk and Recorder of the County of Boulder, State of Colorado.

ARTICLE II  
PROPERTY RIGHTS IN THE RECREATIONAL PROPERTY

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Recreational Property and the improvements located thereon, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

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

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

(c) The right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of any recreational facilities located on the Recreational Property; and

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(d) The right of the Association as provided in its Articles and Bylaws, to suspend the voting rights and the right to use any recreational facilities located within the Recreational Property of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and

(e) The right of the Association to dedicate or transfer all or any part of the Recreational Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved in writing by two-thirds (2/3) of the votes of each class of membership hereunder, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads, and/or for other purposes consistent with the intended use of the Recreational Property and reasonably necessary or useful for the proper maintenance or operation of the Properties shall not be deemed a transfer within the meaning of this Subsection (e); and

(f) The right of the Association to close or limit the use of the Recreational Property, or portions thereof, while maintaining, repairing and making replacements in the Recreational Property.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Recreational Property and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 4. Payment of Taxes or Insurance by Mortgagees. First Mortgagees shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Recreational Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Recreational Property, and any First Mortgagee making any such payment shall be owed immediate reimbursement therefor from the Association.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot, which is subject to assessment hereunder, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.



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Section 2. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Lots, with the exception of Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be Declarant and shall be entitled to three (3) votes for each Lot which it owns, which is neither leased, nor rented, nor otherwise residentially occupied. Leasing, renting, or allowing entry for residential occupancy shall terminate Declarant's weighted voting advantage in relation to any Lot so leased, rented, or residentially occupied, and shall limit Declarant in relation to any such Lots to the same voting rights as a Class A Member.

Section 3. Termination of Class B Membership. The Class B membership shall cease and be converted to Class A membership, whichever is appropriate, on the happening of the first of the following events:

(a) when the total Class A votes equal the total Class B votes applicable to Lots; or

(b) December 31, 1990; or

(c) on a date certain set forth in written notice from the Declarant to the Secretary of the Association of its intent to terminate its Class B voting rights as of such date; provided, however, that in the event there is more than one Declarant, such notice must be signed by all such Declarants.

#### ARTICLE IV COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot and Residence located

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thereon against which each such assessment is made. The lien may be enforced by foreclosure of the defaulting Owner's Lot and Residence located thereon by the Association in like manner as a mortgage on real property. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Boulder, Colorado. The lien for each unpaid assessment shall attach to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on each Lot for assessments 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 subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation of the residents of the Properties, for the maintenance, repair and replacement of improvements located within or upon publicly dedicated rights-of-way within the Properties, for the improvement, repair, replacement, and maintenance of the Recreational Property and the appurtenances and improvements thereto and thereon, including without limitation, maintenance of landscaping located on the Recreational Property, maintaining, repairing and replacing all improvements and recreational facilities located thereon, and paying all taxes, insurance premiums, professional management fees and utilities costs in connection with the Recreational Property.

Section 3. Maximum Annual Assessment. Until commencement of the second annual assessment period, the maximum annual assessment shall be Five Hundred and No/100dollars (\$500.00) per Lot, subject to the rate of assessment on certain Lots owned by Declarant, as provided in Section 6 of this Article IV.

(a) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment shall be increased effective each annual assessment year in conformance with the rise, if any, of the Consumer Price Index published by the U.S. Department of Labor, Washington, D. C., for All Items and Major Group Figures for All Urban Consumers (1967=100), for the one-year period ending with the preceding month of July. This annual increase in the maximum annual assessment shall occur automatically upon the commencement of each annual assessment year without the necessity of any action being taken with respect thereto by the Association. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Board of Directors of the Association.

(b) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment may be increased above that established by the Consumer Price Index formula, for the next succeeding annual assessment year and at the end of each such annual assessment period, for each succeeding annual assessment year, provided that any such increase shall have the assent of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of such meeting setting forth the purpose therefor.

(c) Subject to the provisions of Section 6 of this Article IV relating to Declarant's obligations to subsidize the Association for shortfalls in assessments, the Board of Directors of the Association may, at any time and from time to time, after consideration of the projected maintenance costs and other financial needs of the Association, and upon written notification to each Owner of the amount of the actual assessment to be levied, fix the actual assessment against each Lot at an amount less than the maximum.

(d) The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(e) The Association shall maintain an adequate reserve fund out of the annual assessments for the maintenance, repair and replacement of those elements of the Recreational Property that must be maintained, repaired or replaced on a periodic basis.

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Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized in this Article IV, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Recreational Property, including fixtures and personal property related thereto, or for the funding of any operating deficit incurred by the Association. Any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. The first such meeting called for such purpose shall require the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Annual and special assessments must be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association; provided, however, that notwithstanding anything to the contrary contained in this Declaration, the rate of annual and special assessments set for the Lots owned by Declarant which are neither leased, nor rented, nor otherwise occupied as a Residence shall be fixed at one-quarter (1/4) of the assessment rate for the other Lots. At such time any Lot owned by Declarant and is leased, rented or residentially occupied, that Lot shall be assessed at the uniform rate of assessment for privately owned Lots. In the event that, prior to the termination of the Class B membership, assessments for annual common expenses, exclusive of those amounts held by the Association for an adequate reserve fund, fail to equal or exceed the actual expenses incurred by the Association during any particular annual assessment period because of such partial Declarant assessment, then Declarant shall pay a sufficient amount, up to the amount of full parity on such assessment, to the Association to meet any such shortfall so long as (a) written notice must be given by the Association within sixty (60) days following the termination of the then current fiscal year of the Association at the time of the termination of the Class B membership, but in no event more than

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one (1) year following the termination of such Class B membership, and (b) Declarant shall have no obligation for any such shortfall caused by expenditures for capital improvements, or by any decrease in assessments, including without limitation, the levying of any assessment in an amount less than the maximum for any common expense assessment period, which amount is established subsequent to the termination of the Class B membership, unless the same has previously been approved in writing by Declarant. In the event there is more than one Declarant, then, subject to the conditions hereinabove stated, each such Declarant shall pay a pro rata share of the amount necessary to meet each such shortfall in Association assessments, up to the amount of full parity on such assessments; such pro rata share to be based on the number of Lots not subject to the full assessment rate described above which are owned by each Declarant and the duration of such payment of assessment at less than the full rate during the applicable annual assessment period.

Section 7. Date of Commencement of Annual Assessments. The initial annual assessment shall commence on such date as determined by the Board of Directors of the Association and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments may be made due and payable in twelve monthly installments per annum, on such dates as determined by the Board of Directors of the Association, provided that the first annual assessment shall be adjusted according to the number of months in the first annual assessment year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment or portion thereof which is not paid when due shall be delinquent. Any assessment or portion thereof which is not paid within ten (10) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum and the Association may assess a monthly late charge thereon in such reasonable amounts as determined from time to time by the Association. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest and late charges on the assessment, as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Recreational Property or abandonment of his Lot.

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Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein, including without limitation any fees, costs, late charges or interest which may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the liens for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of assessments charges which became due prior to any such sale or transfer, or foreclosure, or proceeding in lieu thereof; provided however, that any such delinquent assessment charges, including interest, late charges, costs and reasonable attorneys fees, which are extinguished as provided herein may be reallocated and assessed to all Lots as a common expense. No such sale, transfer, foreclosure, or proceeding in lieu thereof, shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot in question by such First Mortgagee.

#### ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

Section 1. Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until all Lots have been conveyed to the first Owner thereof (other than Declarant), Declarant shall appoint the Architectural Control Committee; and further provided, however, that in the event there is more than one "Declarant," as defined in this Declaration, Tull Construction Company shall appoint the Architectural Control Committee so long as Tull Construction Company owns at least one Lot. A majority of the Committee may designate a representative to act for it.

Section 2. Review by Committee. No structure or any attachment to an existing structure, any building, tennis court, swimming pool, fences, walls, canopies, awnings, roofs, exterior lighting facilities, athletic facility, or other similar improvements or attachments, shall be constructed within the Properties, no alteration of the exterior or structure of any improvement located within the Properties shall be made, and no change in the final grade, nor the installation of or any change in any landscaping, shall be performed, unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of private streets, general plan of

landscaping, fencing, walls, windbreaks and grading plan) shall have been first submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements and property, within the Recreational Property conform to and harmonize with the existing surroundings, Residences, landscaping and structures of the Properties.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after complete submission thereof. In the event that the Architectural Control Committee fails to approve or disapprove said plans and specifications within thirty (30) days after the complete submission thereof, approval shall not be required and this Article shall be deemed to have been fully complied with.

Section 4. Vote. A majority vote of the Architectural Control Committee is required to approve a proposed change or improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 5. Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 6. Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 7. Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article VII hereof, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Article, Article VII hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

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## ARTICLE VI INSURANCE

Section 1. Insurance on Recreational Property. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Recreational Property. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance:

(a) A policy of property insurance covering all insurable improvements located on the Recreational Property, with a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation; and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and/or coverage on personal property owned by the Association. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard all risk endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering all of the Recreational Property, insuring the Association in an amount not less than \$1,000,000 covering bodily injury, including death of persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Recreational Property, legal liability arising out of law suits related to employment contracts of the Association, and protection against liability for non-owned and hired automobile; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.



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(c) A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Association as an obligee;

(2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of person who serve without compensation from any definition of "employee" or similar expression.

(d) If the Recreational Property or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Recreational Property has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Recreational Property in an amount at least equal to the lesser of:

(1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

(e) A policy providing errors and omissions insurance of officers and directors of the Association, in such amounts and containing such provisions as may from time to time be deemed necessary or desirable by the Board of Directors of the Association.

All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of each Lot. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Lot, upon written request. The insurance shall be carried in blanket forms naming the Association, as the insured, as trustee and attorney in fact for all Owners, and each Owner shall be an insured person under such policies with respect

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to liability arising out of any such Owner's membership in the Association.

Section 2. Damage to Recreational Property. In the event of damage to or destruction of all or a portion of the Recreational Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Recreational Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association shall cause such Recreational Property to be promptly repaired and reconstructed, using the insurance proceeds and the proceeds of a special assessment which, notwithstanding the provisions of Article IV, Section 4 to the contrary, may be levied without a vote of the Members. The amount of such assessment shall be equal to the amount by which the cost of repair or reconstruction exceeds the sum of the insurance proceeds available and shall be assessed equally against each Lot. The assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Lot and the improvements thereon, and shall be enforced and collected as provided in Article IV hereof.

Section 3. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

Section 4. Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot and hazard insurance coverage on the improvements constructed on Lots, shall be the responsibility of the Owner thereof.

Section 5. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

## ARTICLE VII RESTRICTIONS

Section 1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, and use of the Recreational Property, in order

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to enhance the value, desirability, and attractiveness of the Properties.

Section 2. Restrictions Imposed. The Declarant hereby declares that the Recreational Property shall be held and shall henceforth be sold, conveyed, used, improved, owned, and hypothecated upon, subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants.

Section 3. Use of Recreational Property.

(a) No use shall be made of the Recreational Property which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Recreational Property.

(b) No Owner shall place any structure whatsoever upon the Recreational Property, except as provided herein, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Recreational Property to all Members.

(c) The use of the Recreational Property shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(d) No use shall ever be made of the Recreational Property which will deny ingress and egress to those Owners having access to a public street or to their Lots only over Recreational Property, and said rights of ingress and egress to all Lots are hereby expressly granted.

Section 4. Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Recreational Property, such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots and development of the Properties, specifically including without limiting the generality of the foregoing, maintaining storage areas, construction yards and equipment, signs, parking areas and lighting facilities. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Recreational Property in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Lot, parking areas, any recreational facilities existing upon the Recreational Property, and to a public right of way.

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Section 5. Household Pets. No animals, livestock, poultry or bees, of any kind, shall be raised, bred, kept or boarded in or on the Recreational Property; provided, however, that the Owners of Lots may take such household pets as are allowed by the Association upon the Recreational Property if such animals are controlled on a leash or similar device, subject to the obligation of each such Owner to immediately remove and dispose of all of such animal's solid bodily wastes and to the rules and regulations of the Association.

Section 6. Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, garage, or outbuilding shall be placed or erected upon the Recreational Property at any time prior to its being fully completed in accordance with approved plans, nor shall any improvements located on the Recreational Property, when completed, be in any manner used until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction or alteration of improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work; provided, however, that such building permits or other documents as may be required shall first be obtained. The work of constructing, altering, or remodeling any improvement on the Recreational Property shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 7. Signs and Advertising. No signs, advertisements, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on the Recreational Property, without the prior written approval of the Association. Notwithstanding the foregoing, reasonable signs, advertisements, or billboards used by the Declarant in connection with its sale or rental of Lots, or otherwise in connection with its development of the Properties, shall be permissible, provided that such use by the Declarant shall not interfere with the Owners' use and enjoyment of the Recreational Property, with their Lot, or with their ingress and egress from a public way to the Recreational Property, or their Lot.

Section 8. Miscellaneous Structures. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon the Recreational Property.

Section 9. Vehicular Parking, Storage and Repairs.

(a) No portion of the Recreational Property, including but not limited to streets, drives, or parking areas, unless specifically designated by the Association therefor, shall

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be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck larger than 3/4 ton, or self-contained motorized recreational vehicle, except as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles upon the Recreational Property which are necessary for the construction of Residences or the maintenance of the Recreational Property, Lots, or any improvements located on the Properties.

(b) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on the Recreational Property. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, housetrailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event 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 (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed on the Recreational Property.

Section 10. Nuisances. No nuisance shall be permitted on the Recreational Property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Recreational Property, or any portion thereof. As used herein, the term "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development of and construction on the Properties. Such activities of the Declarant shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, or with any Owner's ingress and egress to or from his Lot and a public way. The Recreational Property and all portions thereof shall be kept in a clean and sanitary condition, and no rubbish, refuse, litter, junk or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further,

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no immoral, improper, offensive or unlawful use shall be permitted or made of the Properties or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Properties, or any portion thereof, shall be observed by all Owners, including Declarant.

Section 11. Underground Utility Lines. All electric, television, radio, and telephone line installations and connections on the Recreational Property shall be placed underground, except that during the construction of a Residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

Section 12. No Hazardous Activities. No activities shall be conducted on the Recreational Property or within improvements constructed on the Recreational Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Recreational Property and no open fires shall be lighted or permitted on the Recreational Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace, or except such campfires or picnic fires on property designated for such use by the Association.

Section 13. No Annoying Light, Sounds, or Odors. No light shall be emitted from the Recreational Property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from the Recreational Property which is unreasonably loud or annoying; and no odor shall be emitted from the Recreational Property which is noxious or offensive to others. Notwithstanding the foregoing, all owners agree that tennis court lights and parking lot lights shall be permitted on the Recreational Property.

Section 14. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Recreational Property, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup, as provided by the Association. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

Section 15. Rules and Regulations. Rules and regulations concerning and governing use of the Recreational Property, may be adopted, amended and repealed, from time to time by the Board of Directors of the Association, and the Board of Directors may establish and enforce penalties for the infraction thereof, including without limitation the levying and collecting of fines for the violation of any of such rules and regulations or for the

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violation of any provision of this Declaration, the Articles of Incorporation or Bylaws of the Association; provided, however, that copies of such rules and regulations shall be furnished to Owners and shall be uniform and non-discriminatory except to the extent that such rules and regulations concern discretionary rights given to the Association or its Board of Directors in this Declaration, the Articles of Incorporation or Bylaws of the Association.

## ARTICLE VIII EASEMENTS

Section 1. Easement for Encroachments. If any portion of a Residence or other structure upon a Lot encroaches upon another Lot or the Recreational Property, including any future encroachments arising or resulting from the repair or reconstruction of a Residence subsequent to its damage, destruction or condemnation, or if any structure located upon the Recreational Property encroaches upon a Lot, including any future encroachments arising or resulting from the repair or reconstruction of any structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such encroachment.

Section 2. Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Recreational Property and a right to make such use of the Recreational Property, as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

Section 3. Utilities. There is hereby reserved by Declarant and granted to the Association, in accordance with the terms hereinafter set forth, a blanket right to grant easements upon, across, over and under the Recreational Property, for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and master, cable and satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Recreational Property and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone and television wires, circuits, cable, conduits, satellite reception dishes and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the

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Recreational Property, without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon conveyance by Declarant of the last Lot to the first Owner thereof (other than Declarant). The easement provided for in this Section 3 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Recreational Property.

Section 4. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress, and egress over, in, upon, under, and across the Recreational Property, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's construction on the Properties; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot or any recreational facility completed upon the Recreational Property.

Section 5. Easements Deemed Created. All conveyances of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article VIII, even though no specific reference to such easements or to this Article VIII appears in the instrument of such conveyance.

#### ARTICLE IX FIRST MORTGAGEES

Section 1. Member and First Mortgagee Approval. Subject to the provisions of Article X, Sections 7(b) and 7(c) hereof, but notwithstanding anything to the contrary set forth elsewhere in this Declaration, the Association shall not unless it has obtained the prior written consent of at least sixty-seven percent (67%) of each class of Members, and sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each First Mortgage owned):

(1) by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Recreational Property,

(2) fail to maintain full current replacement cost fire and extended insurance coverage on the Recreational Property,



(3) use hazard insurance proceeds for Recreational Property property losses for purposes other than to repair, replace, or reconstruct such property,

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes consistent with the intended use of such property and reasonably necessary or useful for the proper maintenance or operation of the Properties or the Association),

(5) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(6) add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendments to any of such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days of its receipt of such request, shall be deemed to have approved such request, and further provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and finally provided that this subsection (6) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Properties or the improvements thereon;

(A) voting rights;

(B) assessments, assessment liens or subordination of such liens;

(C) reserves for maintenance, repair and replacement of those elements of the Recreational Property which must be maintained, repaired or replaced on a periodic basis;

(D) insurance, including but not limited to fidelity bonds;

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(E) rights to use of the Recreational Property;

(F) responsibility for maintenance and repair of any portion of the Recreational Property;

(G) expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties;

(H) boundaries of any Lot or Residence;

(I) interests in the Recreational Property;

(J) convertibility of Lots or Residences into Recreational Property or of Recreational Property into Lots or Residences;

(K) leasing of Residences;

(L) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Lot;

(M) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or

(7) effectuate any decision to terminate professional management and assume self-management of the Association when professional management has previously been required by any First Mortgagee of a Lot or insurer or guarantor of such a First Mortgage;

(8) terminate the legal status of the Properties as a planned unit development, provided that this subsection (8) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Properties or improvements thereon;

(9) restore or repair the Properties, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Properties and the construction of improvements thereon;

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- (10) terminate the legal status of the Properties after substantial destruction or a substantial taking in condemnation of the Properties.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the First Mortgagee or insurer or guarantor of the First Mortgage and the Residence address of the property which is subject to such First Mortgage, each such First Mortgagee, or insurer or guarantor of such a First Mortgage, shall be entitled to timely written notice of:

(a) any condemnation loss or casualty loss which affects a material portion of the Properties or any Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

(b) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

(c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article IX.

Section 3. Financial Statement. The Association shall provide an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee, or any insurer or guarantor of such a First Mortgage, within a reasonable time after written request therefor by any such party.

#### ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any aggrieved Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Further, the

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Association may, in appropriate circumstances, delegate its enforcement rights to any Subassociation or accept the delegation of any such Subassociation's enforcement rights. Failure by the Association, or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Conflicts of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association and any Supplemental Declaration, Articles of Incorporation or Bylaws of any Subassociation, this Declaration, the Articles of Incorporation or Bylaws of the Association shall control.

Section 4. Annexation. Additional residential property, Recreational Property, may be annexed hereto with the consent of two-thirds (2/3) of each class of Members.

Section 5. Supplemental Declarations. Declarant hereby reserves, until December 31, 1990, without the consent of any Owner or First Mortgagee, the right to submit additional residential property, Common Area and/or other property within the Properties, to additional terms and conditions. Each such submission shall be effected, if at all, by recording a Supplemental Declaration in the office of the Clerk and Recorder of the County of Boulder, Colorado, which document shall provide for submission to this Declaration of the property described in such document. In addition, Declarant hereby reserves, until December 31, 1990, the right to designate any portion of the Properties which it owns as Recreational Property and thus to subject such property to the terms of this Declaration such designation shall be by deed conveying such property to the Association.

Section 6. Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Recreational Property, any material part thereof or any interest therein, any improvement thereon, or any material interest therein, the Association shall give prompt notice thereof, including a description of the part of or interest in the Recreational Property or improvement thereon sought to be so condemned, to all First Mortgagees, all insurers and guarantors of First Mortgages, all Members, and to the Declarant. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any

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negotiations, settlements and agreements with a condemning authority for acquisition of the Recreational Property or part thereof, but the Association shall not enter into any such proceedings, settlement or agreements, pursuant to which the Recreational Property or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein, is relinquished, without giving all First Mortgagees, all Members, and Declarant at least fifteen (15) days prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Recreational Property, the award made for such taking, if such award is sufficient to repair and restore the Recreational Property, shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore the Recreational Property, or if the full amount of such award is not expended to repair and restore the Recreational Property, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Lot receiving one (1) equal share, provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his Lot in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of Lots, Recreational Property, or any combination thereof.

#### Section 7. Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by an instrument approved in writing by not less than fifty-one percent (51%) of the Members of each class. Such amendment shall be effective when duly recorded in the County of Boulder, Colorado.

(b) Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Government National Mortgage Association, the Federal National

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Mortgage Association or the Federal Home Loan Mortgage Corporation, then, subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Class B membership as provided in Article III, Section 3 hereof; and each such amendment must contain thereon the written approval of the Veterans Administration or the Federal Housing Administration of the U.S. Department of Housing and Urban Development.

(c) Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration at any time prior to the termination of the Class B membership, for the purposes of correcting spelling, grammar, dates or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.

(d) In addition to any other consents or approvals required prior to effecting an amendment to this Declaration, any amendment to this Declaration, until such time as Declarant has conveyed all Lots within the Properties to Owners other than Declarant, shall require the prior written approval of the Board of County Commissioners of the County of Boulder or its authorized representatives.

Section 8. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be 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 1300 Plaza Court North, Suite 201, Lafayette, Colorado, 80026, until such address is changed by the Association.

Section 9. FHA/VA Approval. As long as there is a Class B membership, the following actions shall require the prior approval of the Federal Housing Administration of the U.S. Department of Housing and Urban Development or the Veterans Administration if either of such agencies have agreed to insure or guarantee First Mortgages within the Properties: annexation of additional properties, dedication of Recreational Property, and amendment of this Declaration.

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Section 10. Dedication of Recreational Property.  
Declarant in recording this Declaration of Covenants, Conditions and Restrictions has designated certain areas of land as Recreational Property intended for the common use and enjoyment of Owners for recreation and other related activities. The Recreational Property is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the day and year first above written.

"DECLARANT"

TULL CONSTRUCTION COMPANY,  
a Colorado Corporation



*Judith B. Butcher*  
Judith B. Butcher, Secretary

By: *James H. Tull*  
Its: James H. Tull, President

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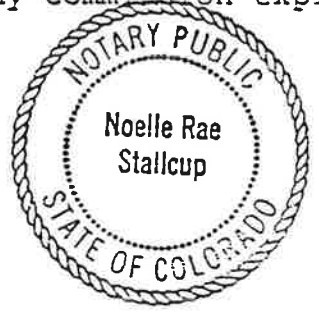
STATE OF COLORADO  
COUNTY OF BOULDER

)  
) ss.  
)

20<sup>th</sup> day of August, 1984 by JAMES H. TULL  
as President and JUDITH B. BUTCHER  
as Secretary of TULL CONSTRUCTION COMPANY, a Colorado  
corporation.

WITNESS my hand and official seal.

My commission expires: February 1, 1988.



Noelle Rae Stallcup  
Notary Public - Noelle Rae Stallcup  
Address: 1345 Plaza Court North  
Lafayette, Colorado 80026



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EXHIBIT A  
TO  
AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
JOHNSON FARM, A SUBDIVISION

Johnson Farm Subdivision  
County of Boulder  
State of Colorado

according to Planfile No. P-5, F-3, No. 37 and Planfile No. P-5,  
F-3, No. 38, recorded with the Boulder County Clerk and Recorder ;  
August 31, 1976 at Film No. 936, Reception No. 190127.

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EXHIBIT B  
TO  
AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
JOHNSON FARM, A SUBDIVISION

Recreational Property:

The following described parcels of real property shall constitute the Recreational Property, as hereinbefore defined: .

Parcel 1:

Outlots A and B  
JOHNSON FARM SUBDIVISION  
County of Boulder,  
State of Colorado

as designated on Planfile No. P-5, F-3, No. 37 and Planfile No. P-5, F-3, No. 38, recorded with the Boulder County Clerk and Recorder August 31, 1976 at Film No. 936, Reception No. 190127.

Parcel 2:

Outlot A,  
JOHNSON FARM SUBDIVISION REPLAT "B"  
County of Boulder,  
State of Colorado

as designated on Planfile No. P-8, F-1, No. 12, recorded with the Boulder County Clerk and Recorder April 16, 1979 at Film No. 1055, Reception No. 332165.

Parcel 3:

Outlot C,  
JOHNSON FARM SUBDIVISION REPLAT "A"  
County of Boulder,  
State of Colorado

as designated on Planfile No. P-6, F-1, No. 19, recorded with the Boulder County Clerk and Recorder July 1, 1977 at Film No. 968, Reception No. 230378.

Parcel 4:

All private open space designated as "Private Open Space"  
JOHNSON FARM SUBDIVISION  
County of Boulder  
State of Colorado

as designated on Planfile No. P-5, F-e, No. 37 and Planfile No. P-5, F-3, No. 38, recorded with the Boulder County Clerk and Recorder August 31, 1976 at Film No. 936, Reception No. 190127.

BYLAWS  
OF  
DRY CREEK HOMEOWNERS ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION

The name of the corporation is DRY CREEK HOMEOWNERS ASSOCIATION, INC., (the "Association"). The mailing address of the corporation is P.O. Box 375, Niwot, CO 80544, but meetings of members and directors may be held at such places within the Niwot area, State of Colorado, as may from time to time be designated by the Board of Directors (the "Board").

ARTICLE II  
PURPOSE

The purpose for which this non-profit Association is formed is to govern the properties, exercise the rights, power and authority, and fulfill the duties of the Association, as provided in certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Johnson Farm, a Subdivision, and certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Blocks 16 and 17, Replat A., Johnson Farm Subdivision, recorded in the office of the Clerk and Recorder of the County of Boulder, Colorado, (the "Declarations"). The terms which are defined in the Declarations shall have the same meanings herein unless otherwise defined. All present or future owners, tenants, future tenants or any other persons who might use in any manner the facilities of the Properties are subject to the regulations set forth in these Bylaws. The mere acquisition or rental of any of the Lots or the mere act of occupancy of any of the residences located on said Lots will signify acceptance of the conditions and regulations set forth in these Bylaws.

ARTICLE III  
MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held at the same month of each year as the month in which the first annual meeting was held, and specific date the time thereof to be designated by the Board of Directors of the Association from time to time.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of the total votes.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by delivery to each Member's residence, or by mailing a copy of such notice, postage prepaid, addressed to the Member's address last appearing on the books of the Association for the purposes of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of the Members and/or proxies, entitled to cast one-quarter (1/4) of the votes shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote at the meeting shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. Unless otherwise specifically provided by the Declaration, the Articles of Incorporation, these Bylaws or by statute, all matters coming before a meeting of Members at which a proper

quorum is in attendance, in person and/or by proxy, shall be decided by the vote of a majority of the votes validly cast at such meeting.

Section 5. Proxies. At all meetings of Members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

#### ARTICLE IV BOARD OF DIRECTORS - SELECTION - TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a board of five (5) directors. Directors shall be members which, in the case of corporate Members, may include the officers and directors of each such corporate Member.

Section 2. Term of Office. At the first annual meeting of the Association, the Member shall elect five directors for a one year term. At the second annual meeting, the Members shall elect three directors for terms of two years, and two directors for terms of one year. The candidates receiving the largest numbers of votes shall be elected for two-year terms. At each annual meeting thereafter, the Members shall elect the same number of directors as there are directors whose terms are expiring at the time of each election for terms of two years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of death, resignation or removal of a director, his successors shall be selected by a majority of the remaining member(s) of the Board, whether or not such remaining member(s) constitute a quorum, and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V NOMINATION AND ELECTION OF OFFICERS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and one or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The person(s) receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors will be held.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities thereon and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and the right of a Member to use recreational facilities upon the Common Area or under the jurisdiction of the Master Association, if any, during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days, for infraction of published rules and regulations;

(c) enter into, make, perform or enforce contracts, licenses and agreements of every kind and description, licenses, leases, easements and/or rights-of-way.

(d) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(e) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) regular meetings.

(f) employ a manager, independent contractor, or such other employees as they deem necessary, and prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested by one-fourth (1/4) of the Members who are entitled to vote thereat;

(b) supervise all officers, agents, and employees of this Association, and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) determine the amount of the maximum annual assessment against each Lot prior to the commencement of each annual assessment period, and give written notice to each Owner of each change in the amount of the actual assessment against his or her Lot;

(2) foreclose the lien against any Lot for which assessments are not paid within ninety (90) days after the due date, or bring an action at law against the Owner(s) personally obligated to pay the same;

(d) issue, or cause an appropriate officer or authorized agent to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge, but in no event less than Fifteen Dollars (\$15.00) may be made by the Board for the issuance of these certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment as to all person(s) who rely thereon in good faith;

(e) procure and maintain insurance, as more fully provided in Article VI of the Declaration;

(f) provide for maintenance and repair of the Common Area; and

(g) notify in writing the First Mortgagee of any Lot, upon written request, when the Owner thereof is in default in the payment of any assessment, or otherwise in default of any obligation under the Declaration, Articles of Incorporation, or these Bylaws and the Board has actual knowledge of such default, and said default has not been cured within sixty (60) days.

#### ARTICLE VIII RIGHTS OF THE ASSOCIATION

This Association may exercise any and all rights or privileges given to it under the Declaration, the Articles of Incorporation or these Bylaws, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied therefrom or reasonably necessary to effectuate any such right or privilege.

#### ARTICLE IX OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, a treasurer, and such other officers as the Board may from time to time be resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless the officer shall sooner resign, or shall be removed or shall otherwise be disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each one of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President: The president shall preside at all meetings of the Board of Directors and Members; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall con-sign or authorize a designated agent to co-sign promissory notes and checks of the Association.

(b) Vice-President: The vice-president shall act in the place and stead of the president in the event of the president's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of the vice-president by the Board.

(c) Secretary: The secretary or a designated agent shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer: The treasurer or a designated agent shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign or authorize a designated agent to sign promissory notes and checks of the Association; shall keep proper books of account; shall cause an annual compilation report of the Association books to be made at the completion of each fiscal year, and at the option of the Board an annual review or audited financial statement may be required; and shall prepare an annual budget to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE X COMMITTEES

The Association shall appoint an Architectural Control Committee, subject to the provisions of the Declaration, and a Nominating Committee as provided in these Bylaws. In addition, the Board of Directors may appoint other committees as it deems appropriate in carrying out its purposes.

## ARTICLE XI BOOKS AND RECORDS

The Association shall make available to Owners, First Mortgagees of Lots, and insurers or guarantors of any such First Mortgage, current copies of the Declaration, Master Declaration, Articles of Incorporation, these Bylaws, the rules and regulations, books, records and financial statements of the Association. "Available" shall mean available for inspection upon request, during normal weekday business hours or under other reasonable circumstances.

## ARTICLE XII ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay assessments to the Association, which assessments are secured by a continuing lien upon the property against which the assessment is made. Any assessment or portion thereof which is not paid when due shall be delinquent. Any assessment or portion thereof which is not paid within ten (10) days after the due date shall bear interest from

the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be assessed by the Association, and the Association may assess a monthly late charge thereon. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessments as above provided, a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action, and may include late charges. No Owner may waive or otherwise escape liability for the assessments provided for in the Declaration by non-use of the Common Area or abandonment of his or her Lot.

#### ARTICLE XIII CORPORATE SEAL

The Association shall have a seal in circular form and within its circumference the words:  
DRY CREEK HOMEOWNERS ASSOCIATION, INC.

#### ARTICLE XIV AMENDMENTS

Subject to Article X and Article XI, Section 7 of the Declaration, these Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

#### ARTICLE XV CONFLICTS OF PROVISIONS

In the case of any conflicts between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the case of any conflict between the Articles of Incorporation and the Declaration, the Declaration shall control. In the case of any conflict between the Master Declaration, Articles of Incorporation or Bylaws of the Master Association and the Declaration, Articles of Incorporation or Bylaws of the Association, the Master Declaration, Articles of Incorporation or Bylaws of the Master Association shall control.

#### ARTICLE XVI INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify every director, officer, agent and employee, and any former director, officer, agent and employee against all loss, costs and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or proceeding to which such person may be made a party by reason of being or having been such a director, officer, agent or employee of the Association, except for matters in which such person shall be finally adjudged liable for gross negligence or fraud. Any such indemnity shall be limited to and may only be paid out of the insurance proceeds provided by an insurer furnishing officers and directors errors and omissions insurance coverage and any other insurance protecting the Association from liability because of the negligent acts of its directors, officers, agents and employees, including insurance covering motor vehicles or public liability, property damage, medical or other similar coverage. It is the intent and purpose of this provision to limit all payments or settlements in indemnification to the actual proceeds of insurance policies. No indemnification shall be provided for acts constituting gross negligence, nor for fraud, nor for more reprehensible conduct. In the event of a settlement, the settlement shall be approved by the insurance carrier and paid for by the insurance carrier out of the insurance proceeds. The foregoing rights shall not be exclusive of the other rights to which such director, officer, agent or employee may be entitled.

#### ARTICLE XVII FISCAL YEAR

The fiscal year of the Association shall begin on January 1 and end on December 31 of each year.



IN WITNESS WHEREOF, we, being all the directors of DRY CREEK HOMEOWNERS ASSOCIATION, INC., have signed below this 14TH day of APRIL, 1992.

DIRECTORS:

Vernon A. Smith  
Robert J. Bailey  
Jerry Trumbo  
Aaron E. Hurling  
John A. Van H

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of DRY CREEK HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation, and

That the foregoing Bylaws constitute the Bylaws of said Association, as duly adopted at a meeting of the Board of Directors, held on 14th day of April, 1992.

Aaron E. Hurling  
Secretary

