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1 of 44 R 221.00 D 0.00 J.A. "Suki" Tsukamoto

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WEST FORK VILLAGE  
(A Common Interest Community)**

Name of Common Interest Community: WEST FORK VILLAGE

Name of Owners Association: WEST FORK VILLAGE OWNERS ASSOCIATION, INC.

Declarant: WEST FORK LLC

Type of Common Interest Community: CONDOMINIUM



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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WEST FORK VILLAGE

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

### RECITALS

A. Declarant is the owner of certain real property located in the City of Greeley, County of Weld, State of Colorado, more particularly described on the attached **Exhibit A** (the "Property").

B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in C.R.S. § 38-33.3-101 *et seq.* (the "Act") on the Property, the name of which is **West Fork Village**.

### ARTICLE 1 - DECLARATION AND SUBMISSION

1.1 *Declaration.* Declarant hereby declares that all property herein or hereafter made subject to this Declaration shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and other provisions of this Declaration which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

### ARTICLE 2 -DEFINITIONS

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

2.1 *Act.* The Colorado Common Interest Ownership Act found in Title 38 of the Colorado Revised Statutes. Any references in the Association Documents to the Act or a section of the Act shall refer to the Act as presently enacted or subsequently amended.

2.2 *Agency.* Any agency or corporation such as Housing and Urban Development, Department of Veteran's Affairs, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association ("FNMA") that purchases or insures commercial mortgages.

2.3 *Annual Assessment.* The Assessment levied pursuant to an annual budget.

2.4 *Articles.* The Articles of Incorporation for West Fork Village Owners Association, Inc., a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.5 *Assessments.* The Annual, Special and Default Assessments levied. Assessments are also referred to as a Common Expense Liability as defined under the Act.

2.6 *Association.* West Fork Village Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

2.7 *Association Documents.* This Declaration, and any supplemental Declaration, the Articles of Incorporation, the Bylaws, the Map and any procedures, rules, regulations or policies adopted under such documents by the Association and any amendments to any of said documents.

2.8 *Auxiliary Garage Building.* A building containing Auxiliary Garage Spaces located on property adjacent to the Project.

2.9 *Auxiliary Garage Space.* Each individual garage space located within an Auxiliary Garage Building located on property adjacent to the Project.

2.10 *Boundaries.* The Boundaries of each Unit created by the Declaration are shown on the Map. Perimeter walls, lowermost floors, and uppermost ceilings shall mark the perimeter boundaries of a Unit.

(a) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

(c) Subject to the provisions hereof, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

2.11 *Bylaws.* The Bylaws adopted by the Association, as amended from time to time.



2.12 *Clerk and Recorder.* The office of the Clerk and Recorder in the County of Weld, Colorado.

2.13 *Common Elements.* All portions of the Project except the Units. The Common Elements are owned by the Owners and consist of General Common Elements and Limited Common Elements.

2.13.1 *General Common Elements* means all tangible physical properties of this Project except Limited Common Elements and the Units and includes the sanitary sewer lines not owned by the City of Greeley.

2.13.2 *Limited Common Elements* means those portions of the Common Elements which are allocated for the exclusive use of one or more Units but fewer than all of the Units.

Each Owner and his or her guests may use the appurtenant Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of any of the other Owners. The Executive Board may adopt Rules and Regulations governing the use of the Common Elements, but such Rules and Regulations shall be uniform and nondiscriminatory. Each Owner, by the acceptance of his or her deed or other instrument of conveyance or assignment and such Owner's guests agree to be bound by any such adopted Rules and Regulations.

2.14 *Common Expenses.*

2.14.1 All expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association;

2.14.2 All other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements;

2.14.3 Insurance premiums; and

2.14.4 All expenses lawfully determined to be common expenses by the Executive Board.

2.14.5 Common Expenses benefitting fewer than all the Units may, in the discretion of the Executive Board, be assessed exclusively against those Units benefitted.

2.15 *County.* The County of Weld, Colorado.

2.16 *Declaration.* This Declaration and the Map, and amendments and supplements to the foregoing.

2.17 *Dwelling Unit.* A place of residence by a single family which may include an individual living alone, or any number of persons living together as a single household who are interrelated by blood, marriage, adoption or other legal custodial relationship; or not more than two

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(2) unrelated adults and any number of persons related to those unrelated adults by blood, adoption, guardianship or legal custodial relationship.

2.18 *Executive Board.* The governing body of the Association. "Executive Board" shall have the same meaning as "Board of Directors."

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

2.20 *First Mortgagee.* Any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

2.21 *Improvements.* All improvements now or hereafter constructed including, without limitation, all exterior lighting, benches, walks, landscaping, sprinkling systems, irrigation ditches, and parking areas within the Project.

2.22 *Manager.* A person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

2.23 *Map.* The Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation schedule of all or a part of the Property subject to this Declaration and any supplements and amendments thereto.

2.24 *Member.* Every person or entity that holds membership in the Association by virtue of the ownership of a Unit.

2.25 *Mortgage.* Any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

2.26 *Mortgagee.* Any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person or entity under such Mortgage.

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

2.28 *Owner.* The owner of record, whether one or more persons or entities, of fee simple title to any Unit.

2.29 *Project.* The common interest community created by this Declaration and as shown on the Map, consisting of the Units and the Common Elements.



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2.30 *Property.* The real property described in **Exhibit A**, together with such additional property as is subsequently subjected to this Declaration in accordance with the provisions set forth herein below.

2.31 *Rules and Regulations.* Rules and regulations may be adopted by the Board of Directors for the management, preservation, safety, control and orderly operation of the Project and governing the use of the Common Elements provided, however, that such Rules and Regulations shall be uniform and nondiscriminatory. Copies of all such Rules and Regulations shall be furnished to Owners prior to the time that they become effective.

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

2.33 *Supplemental Declaration.* An instrument which amends this Declaration.

2.34 *Supplemental Map.* A supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

2.35 *Unit.* A physical portion of the common interest community which is designated for separate ownership or occupancy.

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

### ARTICLE 3 - NAME, UNITS AND ALLOCATION OF INTERESTS

3.1 *Name.* The name of the Project is **West Fork Village**. The Project is a Condominium pursuant to the Act.

3.2 *Existing Property.* The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Greeley, Weld County, Colorado, and is more particularly described on **Exhibit A** attached hereto.

3.3 *Expansion Property.* The real property which is and shall be held, transferred, sold conveyed, and occupied subject to this Declaration may be expanded only as specifically provided in this Declaration and which is more particularly described on **Exhibit B** attached hereto.

3.4 *Number of Units.* The maximum number of Units which may be created in the Project is Three Hundred (300) Units.

3.5 *Identification of Units.* The identification number of each Unit is shown on the Map.

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3.6 *Description of Units.*

3.6.1 Each Unit, the appurtenant interest in the Common Elements and the appurtenant use of Limited Common Elements, shall comprise one Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as a Unit.

3.6.2 Any instrument affecting a Unit may describe it by its Unit number, West Fork Village, City of Greeley, Weld County, Colorado, according to the Map thereof recorded on \_\_\_\_\_, 200\_\_ at Reception No. \_\_\_\_\_, and the Declaration recorded on \_\_\_\_\_, 200\_\_ at Reception No. \_\_\_\_\_, in the records of the Clerk and Recorder of the County of Weld, Colorado, as amended from time to time.

3.7 *Allocation of Interests and Formula for the Allocation of Interests.* The interest allocated to each Unit and the formulas for calculating the Allocation of Interests are as follows:

3.7.1 *Undivided Interest in the Common Elements.* The formula used to establish the allocations of interest is the percentage equivalent to a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units subject to this original Declaration, or subject to this Declaration by supplemental expansion.

3.7.2 *Liability for the Common Expenses.* Common Expenses shall be assessed against the Units on the basis of the same formula used to establish the allocations of interest.

**ARTICLE 4 - MEMBERSHIP AND VOTING RIGHTS;  
ASSOCIATION STRUCTURE AND OPERATIONS**

4.1 *The Association.* The name of the Association is West Fork Village Owners Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

4.2 *Transfer of Membership.* An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit. The Association shall not create a right of first refusal on any Unit and Unit Owners may transfer ownership of their Units free from any such right.

4.3 *Membership.* The Association shall have one (1) class of membership consisting of all Owners. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in the Articles of Incorporation and Bylaws. Each Owner is subject to all the rights and duties assigned to Owners under the Association Documents.

4.4 *Voting.* The Owners of each Unit shall have one (1) vote per Unit owned. The number of votes in the Association is determined on the basis of one (1) vote being allocated to each



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Unit as determined by the total number of Units that have been submitted to this original Declaration or a subsequent amendment of this Declaration and which are shown on the Map.

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

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

4.7 *Association Agreements.* Any agreement for professional management of the Project must provide for termination by either party without cause and without payment of a termination fee or penalty upon ninety (90) days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the declarant control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than thirty (30) days' notice to the other party thereto.

4.8 *Manager.* The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

4.9 *Cooperation with Other Associations.* The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other homeowner association(s) and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other homeowner association(s) and/or any district(s), or to otherwise cooperate with any other homeowner association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Executive Board in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other homeowner association(s) and/or any district(s), as the Executive Board may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into



agreements and otherwise cooperate with any other homeowner association(s) and/or any district(s) to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

4.10 *Auxiliary Garage Buildings.* Declarant intends to construct Auxiliary Garage Buildings on property adjacent to the Project and to create a condominium community for said property. The Westfork Village Owners Association may, but is not obligated to, lease the Auxiliary Garage Buildings. If the Association leases the Auxiliary Garage Buildings, the Association shall then lease individual Auxiliary Garage Spaces to Owners or Tenants of Dwelling Units within the Project or the Expansion Property. No Auxiliary Garage Spaces may be leased to or used by anyone who is not an Owner or Tenant of a Dwelling Unit within the Project or the Expansion Property. The Association may adopt Rules and Regulations regarding the leasing and use of the Auxiliary Garage Spaces. The property on which the Auxiliary Garages are built shall have a permanent non-exclusive easement for ingress and egress on, over and across the streets in the Project.

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

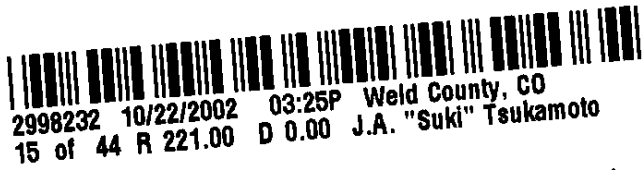
4.12 *Implied Rights and Obligations.* The Association may exercise any right or privilege expressly granted to the Association in the Association Documents by the Act and by the Colorado Revised Nonprofit Corporation Act.

**ARTICLE 5 - POWERS OF THE EXECUTIVE BOARD  
OF THE ASSOCIATION**

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

5.1 Adopt and amend bylaws and rules and regulations;

5.2 Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;



- 5.3 Hire and terminate managing agents and other employees, agents and independent contractors;
- 5.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;
- 5.5 Make contracts and incur liabilities;
- 5.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- 5.7 Cause additional improvements to be made as a part of the Common Elements;
- 5.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if Members entitled to cast at least eighty percent (80%) of the votes agree to that action and if all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;
- 5.9 Grant easements, leases, licenses and concessions through or over the Common Elements;
- 5.10 Annex additional property, pursuant to the terms of this Declaration.
- 5.11 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;
- 5.12 Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;
- 5.13 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;
- 5.14 Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- 5.15 Assign its right to future income, including the right to receive Assessments;
- 5.16 Exercise any other powers conferred by the Declaration or Association Bylaws;
- 5.17 Delegate powers to a master association as provided in C.R.S. § 38-33.3-220. If powers are delegated to a Master Association, the executive board of the master association must be elected pursuant to C.R.S. § 38-33.3-220.



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5.18 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

5.19 Exercise any other powers necessary and proper for the governance and operation of the Association.

**ARTICLE 6 - MECHANIC'S LIENS**

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

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

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

**ARTICLE 7 - EASEMENTS**

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

7.2 *Declarant's Rights Incident to Construction.* Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units or improvements on the Property or other real property owned by Declarant, or other properties



abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

7.3 *Utility Easements.* There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

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

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

## **ARTICLE 8 - MAINTENANCE AND WATER AND SEWER SERVICE**

8.1 *Maintenance by Owners.* It shall be the duty and obligation of each Unit Owner, at such Unit Owner's expense, to maintain, repair and replace all portions of such Owner's Unit. Each Owner shall, at such Owner's expense, be responsible for all maintenance, replacement, repair, and routine care of all glass on the Unit, all exterior doors including garage doors (except painting of the outside surface), all screens on doors, all window units (including glass and screens), all fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit, all interior non-supporting walls, and all interior surfaces of the walls, ceilings and floors. Each Owner shall, be responsible for the cleaning of and removal of snow, leaves, and debris from all patios, decks, courtyards, and balconies which are Limited Common Elements appurtenant to such Owner's Unit. If any such Limited Common Element is appurtenant to two or more Units, the responsibility of the Owners of those Units shall be joint and several.

8.2 *Owner's Failure to Maintain or Repair.* In the event that a Unit (including the allocated Limited Common Element) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with this Declaration.

8.3 *Maintenance by Association.* The Association shall maintain, repair and replace all the Common Elements, except the portions of the limited Common Elements which are required by this Declaration or the Act to be maintained, repaired or replaced by the Unit Owners. The Association shall maintain the Clubhouse and pool including all associated furnishings, fixtures and equipment. The association shall maintain all private streets, private sewer lines, landscaping, parking areas, driveways, sidewalks and the exterior surfaces of the Units. Exterior surfaces shall include gutters, down spouts, exterior surfaces of walls, doors, and roofs. The Association shall provide that all such exterior surfaces are adequately painted, finished and maintained so as to present, at all times, a pleasing and attractive appearance. The need for and time of, as well the nature and type of any painting, refinishing or re-roofing, including the color thereof, shall be within the sole discretion of the Association.

8.3.1 *Snow Removal.* Except as set forth above under Section 8.1, the Association shall be responsible for snow removal from the Common Elements including sidewalks, parking areas, driveways, and private streets. The Association shall have no duty to cause any snow removal except when the amount of accumulated snow justifies the expense of removal as determined by the Executive Board.

8.3.2 *Trash Removal.* The Association shall provide trash service including trash receptacles and trash pickup. No Owner or tenant shall place any hazardous materials in the Association provided trash receptacles. No Owner or tenant may use a different trash pickup service. The Association may adopt rules and regulations concerning the use of the trash receptacles.

8.4 *Association Maintenance as Common Expense.* The cost of maintenance and repair by the Association shall be a Common Expense of all Owners, to be shared by each Unit Owner according to the Allocated Interests for each Unit. Damage to the interior or any part of a Unit resulting from the maintenance, repair or replacement of any of the Common Elements shall also be a Common Expense of all of the Owners. Notwithstanding the foregoing, Common Expenses benefitting fewer than all the Units may, in the discretion of the Executive Board, be assessed exclusively against those Units benefitted.

8.5 *Easement for Maintenance.* Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

8.6 *Association's Right to Grant Owner's Maintenance Area.* The Association reserves the right to grant to the Unit Owners the maintenance responsibility of certain areas on each Unit or Common Elements, and each Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. The Association may also enter into an agreement with an Owner whereby the Owner accepts the maintenance responsibility of certain areas. Said agreement may be terminated at any time by the Association.

8.7 *Common Element Damage.* In the event of damage or destruction of a Common Element, in excess of normal wear and tear, caused by the negligence or tortuous act of an Owner, tenant, guest or invitee, the Owner of the Unit shall be responsible for the expense to repair or rebuild the Common Element to its previous condition.

8.8 *Water and Sewer Service.* The following provisions shall apply to water and sanitary sewer service provided by the City of Greeley:

8.8.1 The water and sewer bill for all of the Units shall be paid by the Association and shall be a Common Expense allocated to the Units according to the allocated interests for each unit.

8.8.2 The costs associated with water and sewer services shall be part of the Annual Assessments but, may in addition, be the subject of Special Assessments, if necessary.

8.8.3 The Association may create a reserve fund to pay the water and sewer bills in a reasonable amount, as determined by the Association.

8.8.4 PURSUANT TO CITY OF GREELY ORDINANCES AND REGULATIONS, NOTICE IS HEREBY GIVEN that water and sanitary sewer utility services to each Unit within the Project are set up to provide service through common water taps and lines of the City of Greeley utility department for two (2) or more Units.

Failure of the Association to pay the entire bill to the City of Greeley for utility service through any such taps and lines will result in service being discontinued to all individual Units in the buildings serviced by such tap and lines and the enforcement of the lien provided for by the ordinances of the City of Greeley against all such individual Units. Dissolution of the Association will make mandatory the installation, at Owner's expense, of individual water, sewer taps, and any other equipment required by the City to each Unit within the buildings.

## ARTICLE 9 - INSURANCE

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

9.1.1 Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association.

9.1.2 The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household.

9.1.3 No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

9.1.4 If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

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

9.2.1 *Insurance on Common Elements.* Property insurance on the Common Elements and also on property that must become Common Elements for broad form covered causes of loss, except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

9.2.2 *Insurance on Units.* The insurance must include the Units but not the finished interior surfaces of the walls, floors, and ceilings of the Units. The insurance need not include improvements and betterments installed by Unit Owners, but if they are covered, any increased charge shall be assessed by the Association to those Owners.

9.2.3 *Commercial General Liability Insurance.* Commercial general liability insurance in a minimum amount of One Million Dollars (\$1,000,000.00) against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Executive Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and board

member. The Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and, in cooperatives, also of all units. The insurance shall cover claims of one or more insured parties against other insured parties.

9.3 *Repair and Replacement.* Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.3.1 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.3.2 There is a vote not to rebuild by (a) eighty percent (80%) of the Owners entitled to vote; and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

9.3.3 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

9.4 *Repair Costs.* The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Unit's Common Expenses Allocated Interests.

9.5 *Insurance Proceeds.* Any loss covered by the property insurance policy must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions set forth above, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the common interest community created by this Declaration is terminated.

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

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

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

9.8 *Common Expenses.* Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property within some but not all of the Units (as required by any Agency including FNMA), the Association reserves the right to charge the Owner of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage. The Association may acquire insurance in addition to that set forth in this Article and the Premiums and expenses connected with acquiring such insurance shall be a Common Expense.

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

9.10 *Other.* An insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit.

## ARTICLE 10 - ASSESSMENTS

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

10.2 *Commencement of Assessments.* Declarant shall maintain all Common Elements and pay all Common Expenses until the first monthly installment of the first annual assessment shall be due; thereafter, all Common Elements and all Common Expenses shall become the sole responsibility of the Association. Declarant shall determine the date on which the first such installment shall commence, but such date shall be the first of the month.

10.3 *Accounting Year; Assessment Period.* The Association shall operate on a calendar accounting year, i.e. January through December, and the Assessment Period shall likewise be the calendar year. The first Assessment Period shall be from the first of the month in which the first monthly installment shall be due through December 31 of that year.

10.4 *Budget.* Within ninety (90) days after the adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or



other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Owners.

10.5 *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to the budget provisions set forth above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, snow removal, trash service, landscaping of the Property, care of grounds within the Common Elements, routine repairs, replacements and renovations within any of the Common Elements, wages, water and sewer charges, and utility charges for the Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed.

Annual Assessments shall be payable in installments as determined by the Executive Board. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

10.6 *Apportionment of Annual Assessments.* The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment, provided, however, that the Association reserves the right to allocate all expenses relating to fewer than all of the Units (such as those expenses attributable to Limited Common Elements and certain insurance premiums) to the Owners of those affected Units only.

10.7 *Special Assessments.* In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units. Any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants

or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

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

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

10.9.1 Assess a late charge for each delinquency in such amount as the Association deems appropriate;

10.9.2 Assess an interest charge from the due date at the yearly rate of eighteen percent (18%), or such other lawful rate as the Executive Board may establish;

10.9.3 Suspend the voting rights of the Owner during any period of delinquency;

10.9.4 Suspend the rights of the Owner, and the Owner's family, guests, lessees and invitees, to use Common Element facilities during any period of delinquency;

10.9.5 Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

10.9.6 Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

10.9.7 Proceed with foreclosure as set forth in more detail below.

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





10.10 *Personal Obligation.* Each Assessment against a Unit is the personal obligation of the person who owned the Unit at the time the Assessment became due. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

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

10.12 *Statement of Status of Assessment Payment.* Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

10.13 *Working Fund of the Association.* The Declarant shall establish an initial working capital fund equal to two-twelfths (2/12) of the estimated Annual Assessments for Common Expenses for each Unit subject to the terms of this Declaration, which amount shall be reimbursed to the Declarant upon the transfer of title to a Unit when that Unit's Owner makes the required working capital contribution set forth in this section. The working capital fund may be used by the Association for emergencies, insurance deductibles in the event of casualty or other loss, capital expenditures for repair or replacement of Common Elements, and such other expenses which do not occur on a regular and on-going basis, as may be determined by a majority of the Executive Board. The initial capital account shall be established and Annual Assessments shall commence for the first phase submitted to the terms of this Declaration upon the conveyance of the first Unit in the first phase of the Project by Declarant to a third-party purchaser. Thereafter, upon the submission of each new phase of the Project to the condominium regime created by this Declaration, Annual Assessments shall begin and the capital account shall be established for all Units added by the new phase. Upon acquisition of record title to a Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to two-twelfths (2/12) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The working capital deposit made by an Owner shall be returned to each Owner including Declarant upon the sale of his Unit, provided that the new purchaser of the Unit has deposited the required working capital deposit with the Association. The working capital fund must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any of its expenses, reserve

contributions, or construction costs, nor to make up any budget deficits during the period of Declarant control.

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

## ARTICLE 11 - DAMAGE OR DESTRUCTION

11.1 *The Role of the Executive Board.* Except as otherwise provided in this Declaration, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association is sometimes referred to as the "Association Insured Property").

11.2 *Estimate of Damages or Destruction.* As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

11.3 *Repair and Reconstruction.* As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction .

11.4 *Funds for Repair and Reconstruction.* The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of

the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

11.5 *Disbursement of Funds for Repair and Reconstruction.* The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in proportion to the relative value of each Unit which shall be based on the square footage of the Unit and in accordance with the Units' Percentage Share of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

## ARTICLE 12 - CONDEMNATION

12.1 *Rights of Owners.* Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

12.2 *Partial Condemnation; Distribution of Award; Reconstruction.* The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed among the Units pro rata based upon the square footage of the Units, first to the Mortgagees and then to the Owners, as their interests appear.

12.3 *Complete Condemnation.* If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the common interest community created by this Declaration shall terminate, provided that the approval is first obtained of fifty one percent



(51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided above regarding disbursement of funds for partial condemnation.

**ARTICLE 13 - ASSOCIATION AS ATTORNEY-IN- FACT**

13.1 Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association upon their damage or destruction as provided above or a complete or partial taking as provided above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

**ARTICLE 14 - RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS**

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

14.1.1 *Reservation of Development Rights.* Declarant reserves the right to exercise all "Development Rights" as defined from time to time in the Act including, without limitation, the right or combination of rights hereby reserved by Declarant, as follows:

- 14.1.1.1 The right to add real estate to the common interest community;
- 14.1.1.2 The right to create Units within the common interest community;
- 14.1.1.3 The right to subdivide Units or convert Units into Common Elements; or
- 14.1.1.4 The right to create Common Elements, including but not limited to, a clubhouse and pool;
- 14.1.1.5 The right to create Limited Common Elements within the common interest community;

14.1.1.6 The right to withdraw real estate from the common interest community.

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

14.1.2.1 The Development Rights may be exercised at any time but not more than seven (7) years after the recording of the initial Declaration in the real estate records of Weld County, Colorado;

14.1.2.2 All Units and Common Elements created pursuant to the Development Rights will be restricted to the same uses and to the same extent as the Units created under this Declaration as initially recorded.

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

14.1.4 *Special Declarant Rights.* Declarant reserves the right to exercise all "Special Declarant Rights" as defined from time to time in the Act including, without limitation, the right or combination of rights, as follows:

14.1.4.1 To complete any improvements indicated on the Map;

14.1.4.2 To maintain sales offices, management offices, signs advertising the Common Interest Community, and model homes; and

14.1.4.3 To use easements through the Common Elements and Units for the purpose of making improvements within the Common Interest Community.

14.2 *Models, Sales Offices and Management Office.* Declarant, its duly authorized agents, representatives and employees may maintain any Unit owned by Declarant as a model unit, sales office or management office, and may post and maintain signs and displays in order to promote sales of Units. Declarant may assign the rights reserved hereunder to any individuals or entities including, but not limited to, contractors, builders and real estate agents for such periods of time and under such conditions as determined by Declarant.

14.3 *Construction: Declarant's Easement.* Declarant reserves the right to perform warranty work, repairs and construction in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and make repairs until completion. All work may be performed by Declarant without the consent or approval of the Executive Board. Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special Declarant rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to a governmental entity.

14.4 *Declarant's Property.* Declarant reserves the right to remove and retain all its property used in the sales, management, construction and maintenance of the property, whether or not they have become fixtures.

14.5 *Limitations on Special Declarant Rights.* Unless terminated earlier by a document executed by Declarant and recorded in the real estate records of Weld County, Colorado, any Reserved Special Declarant Right may be exercised by Declarant. As long as Declarant: (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Units or Common Elements; (c) owns any Unit; (d) owns any security interest in any unit; or (e) seven (7) years have elapsed after recording of this Declaration in the real estate records of Weld County, Colorado. Earlier termination of certain rights may occur by statute.

14.6 *Interference With Special Declarant Rights.* Neither the Association or any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

14.7 *Rights Transferable.* Any Special Declarant rights or other Declarant rights created or reserved under this Declaration may be transferred by an instrument evidencing the transfer recorded in Weld County, Colorado. Such instrument shall be executed by the transferor, Declarant and the transferee.

## ARTICLE 15 - USE RESTRICTIONS

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

15.2 *Dwelling Units.* All Units shall be used exclusively as a single Dwelling Unit.

15.3 *Signs and Advertising.* Other than a monument sign identifying West Fork Village, no sign shall be displayed to the public view except each Building may have a sign to identify the Building, each Unit may have a sign to identify the unit number, and each unit may have one sign of not more than six (6) square feet advertising the property for sale or for rent. All signs must be approved by the Executive Board. This section shall not apply to any signs or other advertising of Declarant or Declarant's agents.

15.4 *Re-Subdivision.* No Unit shall be re-subdivided into more than one Unit.

15.5 *Declarant's Use.* Notwithstanding any provisions contained in this Declaration to the contrary, it shall be permissible and proper for Declarant and Declarant's employees, agents, independent contractors, successors and assigns involved in the development of the Property or construction of Improvements upon the Property to perform such activities and to maintain such facilities upon any portion of the Property as may be reasonably required, necessary, or incidental to

the development of the Property, the construction of Improvements, and sale of Units, including without limiting the generality of the foregoing, a business office, storage areas, construction yards, construction trailers and equipment, signs, model units, and sales offices; provided, however, no such activity shall be performed nor facility maintained on any portion of the Property which unreasonably interferes with any Owner's use and enjoyment of, or access to, his Unit.

15.6 *Antennas and Exterior Equipment.* No antennas, satellite dishes, wiring, ducts, pipes, or other exterior equipment or fixtures of any kind shall be permitted on the Common Elements or the Units without the express written consent of the Executive Board.

15.7 *Window Coverings.* In order to have a uniform appearance for the exterior of the buildings, all window coverings, visible from the exterior of the Units, shall be white or almond, except with the express written consent of the Executive Board. In the event window coverings are included with the first sale of a Unit by the Declarant, said window coverings shall not be removed without the express written consent of the Executive Board.

15.8 *Home Occupations/Businesses.* The conduct of a home occupation or business within a residence shall be permitted provided that the following requirements are met: Home occupations or businesses must be conducted inside the residence and not occupy more than fifteen percent (15%) of the total floor area of the residence. Home occupations or businesses must be conducted only by the residents of said dwelling with no nonresidents employed at the residence. No retail sales shall be conducted at the Unit or in public view. Home occupations or businesses must be conducted within the scope of the zoning ordinances of the City of Greeley. Customers may not come to the Unit to conduct business.

15.9 *Pets.* No animals of any kind shall be raised, bred, kept, or boarded in or on any portion of the Project; unless the animal in each instance is expressly permitted in writing by the Manager, or if there is no Manager, by the Executive Board of the Association. When such written permission is granted, such permission is revocable if the animal creates a nuisance or inconvenience to any residents of the Project as determined by the Executive Board, in the Executive Board's sole and subjective discretion. If the Executive Board determines the animal is a nuisance or inconvenience it shall give written notice to the Owner to correct the problem and, if the problem is not corrected within a reasonable amount of time, the Executive Board may require the animal to be removed from the Project. Animals may not be kept for any commercial purposes. Owners and persons having control of an animal shall, while the animal is within the Project, be responsible for promptly cleaning up any litter, waste, mess, or damage created by the animal and shall be deemed to hold the Association harmless from any claim resulting from any action of the animal and any costs incurred by the Association. Seeing eye dogs and hearing dogs shall be permitted as provided by law.

15.10 *Porches, Patios and Courtyards.* Porches, patios and courtyards may not be enclosed and may not be used for storage. No clothes line, antenna, or satellite dishes may be constructed, installed, or permitted to remain either temporarily or permanently on any porch, patio or courtyard without the written consent of the Executive Board. Only furniture commonly and customarily considered outdoor patio furniture may be used and may remain on a porch, patio or courtyard. The Executive Board may require an Owner to remove any items placed on a porch, patio or courtyard



in violation of this section and may require an Owner to remove any outdoor patio furniture which the Executive Board determines is unsightly.

15.11 *Parking of Vehicles, Storage and Repairs.*

15.11.1 Vehicular parking upon the Common Elements shall be regulated by the Executive Board, subject to interests of record.

15.11.2 The Executive Board may assign individual parking spaces to designated Units. Parking designated as "visitor" or "guest" parking shall not be used by occupants of a Unit. A Common Element parking space not designated for a specific Unit shall be used by the occupants for self-service parking purposes on a first-come/first-serve basis; provided however, that the occupants of a Unit shall only be entitled to park one (1) vehicle on the Common Element parking spaces without the prior written consent of the Executive Board. While any building under construction or completed are owned by Declarant, use of the parking spaces adjacent to that building may be restricted to Declarant's use for construction and sales purposes.

15.11.3 Designated parking spaces (designated as either a part of a Unit, a Limited Common Element, or as a part of Common Elements) are restricted to use as access or as a parking space for vehicles.

15.11.4 The conversion or alteration of garages appurtenant to the Dwelling Units into living areas, storage areas, work shop areas, or any other modification or alteration of the garages which would hinder, preclude or prevent the parking of the number of vehicles for which the garage was originally designed is prohibited, without the written consent of the Association.

15.11.5 Except within a garage, no abandoned or inoperable vehicles of any kind shall be stored or parked in the Project. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, 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 is not properly licensed or which does not have an operable propulsion system installed therein.

15.11.6 Except within a garage, no activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted within the Project.

15.11.7 The following vehicles may not be parked or stored within the Project, unless such parking or storage is within a garage or unless authorized in writing by the Executive Board of the Association: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, trucks over 3/4 ton, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience for loading, delivery of goods or services, or emergency. This restriction shall not



apply to trucks or other commercial vehicles temporarily located with the Project which are necessary for construction or for the maintenance of the Common Elements, Units, or any Improvement located thereon.

15.11.8 Each Owner shall keep any garage door of their Unit closed as frequently as possible, such that the visual effect of open garage doors are avoided and the contents therein are concealed from view from other Units and the streets, all for the purpose of preserving the value and appearance of the Project.

15.11.9 Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

15.11.10 Parking behind or in front of garages, or in alleys or other ways or lanes may be prohibited by the Association.

15.11.11 In the event the Executive Board determines that a vehicle is parked in violation of the restrictions set forth above or any rule or regulation adopted by the Executive Board, the Association shall have the right to remove the vehicle and the owner thereof shall be responsible for all towing and storing charges. In addition, if the owner of the vehicle is an Owner or Occupant of a Unit, the towing and storing charges shall be a Default Assessment. If the owner of the vehicle is an occupant of a Unit, but is not the Owner of a Unit, the Association may proceed to collect the towing and storing charges directly from the Unit Owner without the necessity of taking any action to collect the towing and storing charges from the owner of the vehicle. Unless it is impractical for safety or other reasons, prior to having any vehicle removed, the Executive Board shall place a written notice on the vehicle and may mail a notice to the appropriate Unit Owner.

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

15.12.1 The Association shall have and may exercise the right to control Owner's use and occupancy of their respective Units in order to assure Unit Owners of eligibility of the Project for any Agency. In this regard, the Association may adopt Rules and Regulations with respect to the leasing of Units to non-Owners. From the date this Declaration is recorded, any Owner wishing to lease a Unit shall be subject to the percentage occupancy requirements of the applicable Agency and must first apply for authorization from the Association for any non-Owner residential use (non-Owner commercial use is strictly prohibited). Allowance of an Owner to rent a Unit shall be in accordance with the criteria set forth in the Rules and Regulations and the Association shall have the authority to permit or deny the use or leasing of any Unit within the Project, subject to then-current federal mortgage eligibility requirements promulgated by any Agency. The Owner's failure to provide information to the Association regarding the proposed leasing of the Unit or failure to comply with all terms and conditions of the Rules and Regulations shall result in the non-approval of the lease. Notwithstanding any provision in this Declaration, in no event shall this section prohibit any First Mortgagee who obtains title to a Unit through foreclosure of

a First Mortgage from leasing or otherwise operating such Unit, nor shall this section prohibit the Association from leasing or otherwise operating a Unit owned by it, or any Unit acquired by the Association as a result of foreclosure of its lien for Assessments.

15.12.2 The term "lease", as used herein, shall include any agreement transferring the right to possession and use of a Unit. Owners shall have the right to lease their Units under the following conditions:

15.12.2.1 Short term occupancies and rentals (of less than six (6) months) of Units shall be prohibited.

15.12.2.2 Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the rules and regulations of the Association.

15.12.2.3 All occupancies, leases, and rental agreements of Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

15.12.2.4 All occupancies of Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association.

15.12.3 Except as restricted in this Declaration, and such Rules and Regulations as the Association may promulgate, the right to lease or allow occupancy of a Unit shall not be restricted.

15.13 *Owner Improvements.* No Owner shall undertake any interior improvements within a Unit without first obtaining all required permits. All improvements shall be in conformance with applicable building codes including fire sprinkling. Electrical and mechanical plans shall be first submitted to the Executive Board for its review and approval; approval shall be for the compatibility of the proposed improvements with existing service and shall not be unreasonably withheld. The reasonable cost of any consultant retained by the Association for the purpose of reviewing and evaluating the proposed plans shall be reimbursed by the Owner to the Association. Any upgrade in service piping, wiring or equipment shall be performed by licensed contractors approved by the Association and paid for by the Owner. All electrical and mechanical work shall be performed by licensed and insured contractors. The Owner shall indemnify the Association in a form acceptable to it against any injury, damage or loss occasioned by Owner's undertaking any interior improvement or construction. The Owner shall maintain a policy of general liability insurance naming the Association as additional insured during any period of construction.

15.14 *Owner Repair and Maintenance.* No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any lot, dwelling unit, common area or the improvements located thereon from its natural or improved state existing on the date such property was first subject to this Declaration, shall be made or done without the express written consent of the Executive Board. This section shall not apply to the Declarant or Declarant's agents.

15.15 *Miscellaneous Restrictions.* The following activities and uses shall be prohibited within the Project:

15.15.1 Nothing shall be done or kept in any Unit or within the Common Elements or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body having jurisdiction.

15.15.2 No noxious, destructive, or offensive activity shall be carried on in any Unit or in the Common Elements or any part thereof, nor shall anything be done within the Project which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully using the Project.

15.15.3 No annoying lights, sounds, or odors shall be permitted to emanate from any Unit to any other portion of the Project.

15.15.4 No ashes, trash, rubbish, or other refuse shall be stored or deposited anywhere within the Common Elements, except in areas designated by the Executive Board for such purpose and in the manner required by the Executive Board. The Executive Board may designate specific types of trash disposal containers to be used, in which case no other type of container may be used.

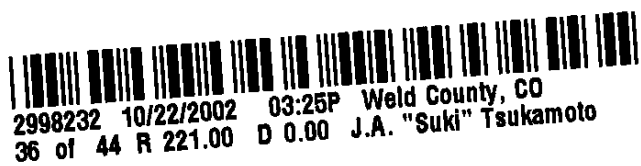
15.15.5 Nothing shall be done in, on or to any portion of the Project which will impair the structural integrity of the improvements located thereon.

15.15.6 Nothing shall be done or kept in any Unit or on any Common Elements or any part thereof which would result in the cancellation of insurance on the Project or any part thereof, or increase the rate of insurance on the Project or any part thereof, over that which the Association or the Owners, but for such activity, would pay.

15.15.7 No structural alterations shall be made to any Unit by an Owner without the written consent of the Executive Board.

15.15.8 No wiring or installation of air conditioning or other machines shall be installed on the exterior of a Condominium or of the Building or be allowed to protrude through the walls, windows or roof of a Condominium or of the Building without the express written consent of the Executive Board.

15.15.9 There shall be no obstruction of any of the Common Elements or any interference with any utilities or vents, including dryer vents from an adjoining Unit.



15.15.10 Except in designated storage areas, nothing shall be kept or stored on any part of the Common Elements, without the written consent of the Executive Board.

15.15.11 Nothing shall be altered on, constructed in, or removed from the Common Elements without the express written consent of the Executive Board.

15.15.12 No condition shall be permitted within any Unit which is visible from the exterior of a Unit and which is inconsistent with the design and integrity of the Project.

## ARTICLE 16 - MORTGAGEE'S RIGHTS

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

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

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

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

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

16.4.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Unit (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, or (d) the



purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 18.2 below;

16.4.2 Any proposed termination of the common interest community;

16.4.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Agency;

16.4.4 Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;

16.4.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

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

## ARTICLE 17 -ANNEXATION OF ADDITIONAL PROPERTY

17.1 *Annexation Without Approval.* Declarant may annex to this Declaration additional property located within the property described on **Exhibit B** until that date which is seven (7) years after the date of recording of this Declaration in the County of Weld, Colorado, without consent of any other Owners, security interest holders, or any other person except the owner of the property to be annexed. Each annexation by Declarant shall be effected, if at all, by recording of a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording in the office of the Clerk and Recorder of Weld County, Colorado, an amendment to this Declaration annexing such property. Said amendment shall describe any common elements within the property being annexed, shall reallocate the allocated interest among all Units, and may include such other provisions as Declarant deems appropriate (including, without limitation, covenants, restrictions or other provisions which will be applicable to such annexed property and which are in addition to or more restrictive than the provisions of this Declaration). All provisions of this Declaration including, but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes, shall apply to annexed property immediately upon recording the amendment to this Declaration annexing the subject property. All improvements to be constructed on the Expansion Property shall be substantially completed prior to the recording of the Supplemental Declaration and Map adding additional Units and the improvements shall be consistent with the Units hereby submitted to the Declaration in structure, type, and quality of construction. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration. In addition, Declarant may amend this Declaration at any time during the seven (7) year period noted above in order to add additional real estate to the community as permitted by



the Act. Each portion of the community which is annexed to this Declaration by annexation of additional land, as provided above, shall be subject to a right of withdrawal by Declarant pursuant to the terms of the Act.

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

**ARTICLE 18 - DURATION OF COVENANTS AND AMENDMENT**

18.1 *Term.* The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

18.2 *Amendment.* This Declaration, or any provision of it, may be amended at any time by Owners holding not less than (a) sixty seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose, (b) at least fifty percent (50%) of the Owners of West Fork Village Units, and (c) provided the First Mortgagee has requested notice in accordance with Section 16.4 above, the approval shall first be obtained of fifty-one percent (51%) of First Mortgagees of Units subject to a First Mortgage (which percentage is measured by votes allocated to such Units) if the amendment to the Association Documents add or delete any material provisions which establish, provide for, govern, or regulate any of the following:

- 18.2.1 Voting;
- 18.2.2 Assessments, Assessment liens or subordination of such liens;
- 18.2.3 Reserves for maintenance of repair and replacement of the Common Elements;
- 18.2.4 Insurance or fidelity bonds;
- 18.2.5 Reallocation of interests in the Common Elements, or rights to use of the Common Elements other than as set forth in Article 17;
- 18.2.6 Responsibility for maintenance and repair of the Project;
- 18.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;
- 18.2.8 Boundaries of any Unit;
- 18.2.9 The interests in the Common Elements;

18.2.10 Convertibility of Units into Common Elements or of Common Elements into Unit;

18.2.11 Imposition of any restrictions on the leasing of Units;

18.2.12 Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;

18.2.13 Establishment of self-management by the Association where professional management has been required by any Agency;

18.2.14 Any provision which is for the express benefit of an Agency or First Mortgagee, regardless of whether the amendment is material;

18.2.15 Hazard or fidelity insurance requirements; and

18.2.16 Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

18.3 *Amendment for Certain Actions.* Notwithstanding anything else contained in this Declaration, except as provided by the Act, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least sixty-seven percent (67%) of eligible First Mortgagees (which percentage is measured by votes allocated to such Units) or sixty-seven percent (67%) of Owners (other than Declarant) of the Units have given their prior written approval, the Association may not:

18.3.1 By act or omission seek to abandon or terminate the condominium regime created hereby;

18.3.2 Reallocate the Allocated Interest or obligation of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the Percentage Share of Ownership of Common Elements other than as set forth in Article 17;

18.3.3 Partition or subdivide any Unit;

18.3.4 Seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements by act or omission other than the grant of easements for public utilities or other public purposes consistent with the intended use of the Common Elements; and

18.3.5 Use hazard insurance proceeds for losses to any part of the Property (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of the Project.

18.4 *Amendment Required by Mortgage Agencies.* Prior to seven (7) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained

in this Declaration which a holder of a first lien security interest, or FHA, VA, FHLMC, GNMAA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County of Weld, State of Colorado of a certificate setting forth the amendment or repeal in full.

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

18.6 *Revocation.* This Declaration shall not be revoked nor shall the condominium common interest community created hereby be terminated (except as provided above regarding total destruction and/or total condemnation), without the consent of all of the Owners evidenced by a written instrument duly recorded with the Clerk and Recorder.

18.7 *Declarant Rights.* Provisions in this Declaration reserving or creating Declarant Rights may not be amended without the consent of Declarant.

## ARTICLE 19 - GENERAL PROVISIONS

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

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

19.3 *Registration of Mailing Address.* Each Owner and each security interest holder, insurer, or guarantor of a security interest, shall register their mailing address with the Association. All notices, demands, or other notices intended to be served upon the Executive Board or the Board of Directors of the Association during the period of Declarant control shall be sent by registered or certified mail, postage prepaid, c/o Chuck Rehmer, 3257 West 20<sup>th</sup> Street, Greeley, CO 80634, unless such address is changed by the Association during the period of Declarant control. Subsequent to the termination of the period of Declarant control, the Association shall notify the Owners of a different address for notices.



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

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

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

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

19.8 *Conflicts Between Documents.* In case of conflict between this Declaration and the Articles of Incorporation and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

**DECLARANT:**

WEST FORK LLC

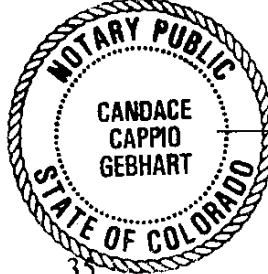
By: Amy W. Smart  
Manager, title

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 17th day of October, 2002, by Amy W. Smart, MANAGER of West Fork LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 23 May 2006



Candace Cappio Gebhart  
Notary Public

2998232 10/22/2002 03:25P Weld County, CO  
42 of 44 R 221.00 D 0.00 J.A. "Suki" Tsukamoto

**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
WEST FORK VILLAGE**

**LEGAL DESCRIPTION OF PROPERTY  
SUBJECT TO THIS DECLARATION**

There is no initial "Property" in the Community. Property may be added by exercise of reserved development rights, as set forth in this Declaration.



2998232 10/22/2002 03:25P Weld County, CO  
43 of 44 R 221.00 D 0.00 J.A. "Suki" Tsukamoto

**EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
WEST FORK VILLAGE**

**UNITS / ALLOCATION OF INTEREST**

There are no initial "Units" in the Project. Units may be added or created by exercise of reserved development rights, as set forth in this Declaration.

2998232 10/22/2002 03:25P Weld County, CO  
44 of 44 R 221.00 D 0.00 J.A. "Suki" Tsukamoto

**EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
WEST FORK VILLAGE**

**PROPERTIES OWNED BY DECLARANT  
WHICH MAY BE ADDED TO THE DECLARATION**

Tract 1, Block 9,  
West T Bone Ranch Subdivision First Filing,  
being within the City of Greeley,  
County of Weld,  
State of Colorado.