

B2176 P1006

465429
COUNTY OF LARIMER

1982 JUL 19 PM 4:25
STATE OF COLORADO

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
DURANGO

THIS DECLARATION, made this 30th day of March, 1982, by OSPREY ~~REDACTED~~, INC., a Colorado corporation, hereinafter referred to as "Declarant".

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" of this Declaration and desires to create thereon Durango as a residential planned community, such community to have various housing types and open space for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of property values, amenities, and opportunities in said community contributing to the personal and general health, safety, and welfare of residents, and for the maintenance of the land and improvements thereon, and to this end desires to subject the real property described in Exhibit "A" to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth and the intents and requirements of the City of Loveland, the Declarant intends to incorporate under the laws of the State of Colorado the Durango Community Association of Loveland.

NOW, THEREFORE, the Declarant hereby declares that all real property described in Exhibit "A" shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth which covenants shall run with the real property and be binding upon all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of every owner thereof;

AND, FURTHER, the Declarant hereby delegates and assigns to the community association the powers of owning, maintaining, and administering the common area and facilities, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

ARTICLE I

DEFINITIONS

Section 1. "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

Section 2. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended.

1982 JUL 19 PM 4:25
B2176 P1006
465429
COUNTY OF LARIMER
STATE OF COLORADO

Section 3. "Assessment" shall mean and refer to any assessment levied, charged, or assessed against an Owner and/or his Lot in accordance with the provisions of this Declaration.

Section 4. "Association" shall mean and refer to the Durango Community Association of Loveland, a Colorado corporation, not-for-profit, its successors and assigns.

Section 5. "Assessable Unit" shall mean and refer to any Unit within the properties which is subject to assessments and shall include the ownership interests that are created by virtue of Colorado Statutes.

Section 6. "Board" shall mean the Board of Directors of the Association. Any determination or action to be taken or made by the Board under this Declaration may be made or taken by a committee appointed by the Board pursuant to the Bylaws subject to any limitation imposed by Colorado Law and provided that all determinations and action required under Article V shall be made by the Board and not a Committee appointed by it.

Section 7. "Building" shall mean and refer to any structure which has been constructed for the permanent shelter or enclosure of persons and property, which shall include Units as defined in Section 26 and which may or may not be separated by common party walls.

Section 8. "Bylaws" shall mean and refer to the duly adopted Bylaws of the Association, as the same may from time to time be amended.

Section 9. "Common Area" shall mean and refer to all real property owned by the Association and shall include all Improvements which are within the Common Areas including, by way of example but without limitation, all private streets, exterior lighting, benches, and walks owned by the Association. Said areas are intended to be devoted to the common use and enjoyment of Owners (subject to the provisions hereof) and are not dedicated for use by the general public except as indicated on the Subdivision Plat in the Real Estate Records of the Clerk and Recorder of Larimer County, Colorado. The definition of Common Area shall expressly exclude any public streets or alleys as shown on the Subdivision Plat identified above. The Common Area owned by the Association is described in Exhibit "B" attached hereto.

Section 10. "Declarant" shall mean and refer to the group consisting of the following entity: Osprey Homes, Inc., and its successors and assigns; provided, however, that no successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law. The rights and obligations set forth herein of the Declarant as Declarant shall cease when new living unit construction contemplated by any development plan is substantially completed.

Section 11. "Declaration" shall mean and refer to this Declaration as the same may be amended, changed, or modified from time to time.

Section 12. "Federal Mortgage Agencies" shall mean and refer to those Federal Agencies who have an interest in mortgages secured by portions of the properties, such as the Federal Housing Administration, the Veteran's Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporations, or successors to their interest.

Section 13. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration,

supplementary declarations, and the Bylaws of the Association, as initially created and all as may be amended from time to time.

Section 14. "Improvements" shall mean and refer to all improvements now or hereafter constructed including, without limitation, all Buildings, Units owned by the Association, exterior lighting, benches, walks, and private streets.

Section 15. "Institutional Mortgagee" or "First Mortgagee" shall mean and refer to a First Mortgagee which is a federally or state chartered bank, a federal or state savings bank, or savings and loan institution, a real estate investment trust, or any corporation whose primary business is the making, purchasing, or placing of mortgage loans, who shall perfect a first priority security position as to any Lot or Unit and Improvements constructed within the Project.

Section 16. "Lot" shall mean and refer to that portion of the properties shown as such on recorded final subdivision plats of the Project and shall include the Unit(s) built, or to be built, thereon and the private driveway(s) and patio(s) appurtenant thereto. The boundaries of each Lot are subject to Article IV hereof.

Section 17. "Member" shall mean and refer to the Person designated as such pursuant to Article V.

Section 18. "Mortgage" shall mean and refer to a mortgage, deed of trust, or other similar security instrument held or owned by a Mortgagee which encumbers any Lot.

Section 19. "Mortgagee" shall mean and refer only to a Mortgagee under a Mortgage or a beneficiary under a deed of trust or similar security instrument. For the purpose of this Declaration and the Bylaws, no Person shall be deemed a Mortgagee until written notice of such interest has been given to the Association together with the name and address of the Mortgagee.

Section 20. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot or Unit, but excluding those having such interest merely as security for the performance of any obligations, provided, that a purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner upon the issuance of a public trustee's deed or a sheriff's deed for the property. The term Owner shall not include the Owner or Owners of any leasehold estate or interest.

Section 21. "Notice" shall mean and refer to (i) written notice delivered personally or mailed to the last known address of the intended recipient, (ii) notice through a community publication which is delivered to the units, or (iii) notice published at least once a week for two consecutive weeks in a newspaper having general circulation in the City of Loveland, Colorado. "Notice to Mortgagee" shall mean and refer to only written notice delivered personally or mailed to the last known address of the intended recipient and not notice through a community publication or newspaper publication.

Section 22. "Participating Builder" shall mean and refer to a person or entity which acquires a portion of the properties for purpose of improving such portion in accordance with any development plans for resale to third party purchasers.

Section 23. "Person" shall mean an individual, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 24. "Project" shall mean and refer to all the Common Area and Lots as indicated on the Subdivision Plat in the Real Estate Records of Larimer County, Colorado, and all Improvements and Units together with all of the appurtenances thereto.

Section 25. "Single Family" shall mean and refer to a single living unit which includes an individual living alone; or any number of persons living together as a single household who are interrelated by blood, marriage, or adoption; and shall include not more than two (2) adults who are legally unrelated.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. 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 Loveland, County of Larimer, State of Colorado and is more particularly described in Exhibit "A", known as Durango.

Section 2. Merger. In accordance with its Articles of Incorporation, the Properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes or, alternatively, the properties, rights and obligations of an association similar in corporate nature and purposes may by operation of law be added to the Properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided. Such merger or consolidation shall have the assent of seventy-five percent (75%) of the votes of Owners within the Project at the time of the proposed merger and one hundred percent (100%) of the votes of Institutional First Mortgagees with active security interests at the time of the proposed merger.

ARTICLE III

RIGHTS RESERVED BY DECLARANT

Notwithstanding anything to the contrary contained in the Declaration, the Declarant expressly reserves unto itself, its employees, agents, representatives, contractors, and their employees the right to use the Common Areas to facilitate and complete the development of the Project including, without limitation, the use of the Common Area for (i) construction, excavation, grading, landscaping, parking, and/or storage; (ii) the maintenance and operation of a sales office and model units for sales purposes; (iii) the showing to potential purchasers of any unsold Lot, Unit, or Improvement within the Project; (iv) the display of signs to aid in the sale of any unsold Lots and Units; and (v) to operate and maintain all or any portion of Common Area owned by Declarant, as provided in Article IV. All rights reserved to Declarant in this Article shall terminate on December 31, 1985, or at an earlier date by an express statement of termination executed by the Declarant and recorded in the Real Estate Records of the Clerk and Recorder of Larimer County, Colorado.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner, his immediate family and guests, shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to the Lot of such Owner, subject to the following rights:

(a) The Association shall have a non-exclusive right and easement to make such use of Common Area and Improvements thereon as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration. The Association, in its sole discretion, may from time to time grant easements and rights-of-way on, across, under, and over the Common Area to any district or other entity providing water, sewer, gas, electricity, telephone, cable television, or other similar service to the Project or any part thereof. The Common Area within the Project may not be sold or otherwise transferred, conveyed, assigned, abandoned, partitioned, or subdivided or encumbered unless all Institutional Mortgagees shall approve.

(b) The right of the Association to make such reasonable rules and regulations regarding the use of the Common Area and facilities located thereon by the Members and other Persons entitled to such use, including a right to establish reasonable admission and other fees for the use of the Common Area.

(c) All rights reserved to the Declarant, other Owners, and Association in this Declaration.

Section 2. Title, Development, and Conveyance of Common Area. The Declarant shall have the obligation to develop the Common Area and shall, after completion of the Common Area, convey all of the Common Area, together with Improvements thereon, to the Association free and clear of any liens and encumbrances, prior to the conveyance of a Lot to an Owner who is not the Declarant or a Participating Builder.

In addition, the following covenants shall be binding upon the Association and its successors and assigns: "In order to preserve and enhance the property value and amenities of the Durango Community Association of Loveland, the Common Area shall at all times be maintained in good repair and condition and operated in accordance with high standards." The Association shall be responsible for maintenance and operation of only the Common Area conveyed to it.

ARTICLE V

ASSOCIATION STRUCTURE AND FORMAT

Section 1. Organization.

(a) The Association. The Association is a nonprofit, nonstock corporation organized and existing under the laws of Colorado, charged with the duties and vested with the powers prescribed by law and set forth in the founding documents, as such may be amended from time to time, provided no other founding documents than this Declaration shall for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) Institutional Plan. As the operating responsibilities of the Association expand from those related to the existing property to those required by the fully developed

Residential Planned Community of Durango, this Declaration and the governing documents shall guide the controlled and orderly evolution of the Association into a comprehensive community institution with associated membership rights and assessment obligations.

Section 2. Membership.

(a) Basis. Membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Founding Documents.

(b) Member's Rights and Duties. Each member shall have the rights, duties and obligations set forth in the Governing Documents.

(c) Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be any Participating Builder until conveyance of that Lot to a third party purchaser, and all Owners of Lots except the Developer. Class A Members shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Member shall be the Declarant who shall have one hundred twenty-nine (129) votes less the number of Class A votes outstanding at the time a vote is taken.

The Class B Membership and the Class B voting rights shall cease upon the earlier of the following events: when the total number of Class A votes equals the total number of Class B votes or on December 31, 1985.

(d) Exercise of Vote. The vote for any membership, which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for each such membership shall not be counted. In no event shall there be more than one (1) vote per Lot regardless of the number of ownership interests of a Lot.

Any person or entity qualifying as a member of more than one voting class may exercise those votes to which he is entitled for each such class of membership.

Section 3. Board of Directors.

(a) Composition. The number of Directors shall be as provided in the Bylaws. Until December 31, 1985, the Declarant shall have the right to appoint at least three (3) Directors, the remainder shall be selected as provided in this Declaration and the Bylaws. All elected Directors shall be either Class A or Class B Members.

(b) Extent of Power.

(1) The Board of Directors shall have all powers for the conduct of the affairs of the Association which are enabled by law or the Founding Documents which are not specifically reserved to Members, the Declarant, or the Architectural Review Board by said Documents.

(2) The Board of Directors shall exercise its powers in accordance with the Founding Documents.

(c) Powers and Duties. Without limiting the generality thereof, the Board shall have the power and obligation to perform the following duties:

(1) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging or disposal of Common Area and/or Improvements shall be subject to the provisions of Article II and Article IV, respectively.

(2) Rule Making. To establish rules and regulations for the use of property as provided in Article IV and to review, modify, and approve architectural standards adopted by the Architectural Review Board; and

(3) Assessments. To fix, levy, and collect assessments as provided in Article VI; and

(4) Easements. To grant and convey easements to the Common Area as may become necessary and as provided in Article IV; and

(5) Employment of Agents. To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Association. The Board of Directors may delegate any of the powers and duties granted to it by the Articles of Incorporation of the Association or its Bylaws, but notwithstanding such delegation, the Board shall not be relieved of its responsibility by virtue of this Declaration. Any contract of employment entered into with a managing agent must, however, be limited to a term not to exceed one (1) year and must provide that it can be cancelled by the Association or Managing Agent without cause and without payment of a termination fee upon sixty (60) days written notice and with cause and without payment of a termination fee at any time.

(6) Mergers/Consolidations. To participate in mergers and consolidations with other corporations as provided in Article II; and

(7) Appeals. To decide appeals relative to architectural review applications as provided herein; and

(8) Enforcement of Governing Documents. To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, to enforce or effectuate any of the provisions of the Governing Documents, subject to any appeal which may be filed and is pending.

Section 4. The Architectural Review Board.

(a) Composition. The Architectural Review Board shall consist of six (6) Members appointed by the Board of Directors until the Declarant's rights cease as provided herein (Article III). The initial Architectural Review Boards shall be composed of:

(1) A New Construction Committee composed of three (3) Members appointed by the Declarant; and

(2) A Modification and Change Committee composed of Members of the Association appointed by the Board of Directors as provided in the Bylaws.

After the Declarant's rights cease, the Architectural Review Board shall consist of three (3) or more persons who shall be appointed by the Board of Directors as provided in the Bylaws.

(b) Powers and Duties. The Architectural Review Board shall regulate the external design, appearance and location of the Properties and Improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. In furtherance thereof, the Board shall:

(1) Review and approve, modify or disapprove written applications of Owners, which shall be by Registered Notice, and of the Association for improvements or additions to Lots, Units, or Common Areas. In this regard, during the period the Board is composed of the committees described above, the New Construction Committee shall act with respect to initial improvements to the Common Areas and Lots; the Modification and Change Committee shall act with respect to modification and changes to all the Common Area and Lots, including improvements thereon. All applications for modification and change to a Lot which are not in accordance with the original approved plan for such Lot or which do not meet the adopted standards, shall be acted upon with the advice of the Members of the Durango Community Association of Loveland.

(2) Monitor Lots for compliance with architectural standards and approved plans for alteration; and

(3) Adopt architectural standards subject to the confirmation of the Board of Directors; and

(4) Adopt procedures for the exercise of its duties.

(c) Failure to Act. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a correctly filed application within forty-five (45) days, approval will be deemed granted.

(d) Appeal. An applicant may appeal an adverse Board decision to the Board of Directors of the Association who may reverse or modify such decision by a two-thirds (2/3) vote of the Directors.

Section 5. Enforcement of Governing Documents.

(a) The Association or any Member shall have the right to enforce by proceedings at law or in equity, all of the covenants, conditions, restrictions, easements, reservations, liens, and charges now or hereafter imposed by this Declaration, including without limitation, the right to prosecute a proceeding at law or an equity against the person or persons who have violated or are attempting to violate any of these covenants, conditions, restrictions, easements, reservations, liens, charges to join in preventing them from doing so, to cause said violation to be remedied, or recover damages for said violation.

(b) Should any Owner fail to comply with any provisions hereof, and should any such failure of an Owner continue for a period of five (5) days following written notice of

such failure by the Association to such Owner, the Association shall have the right but not the duty to take any one or more of the following actions in order to correct or enforce a covenant violation:

(1) To correct such noncompliance and to charge the cost thereof to said Owner, provided, however, that in the event such costs are not paid to the Association within five (5) days after the Association has furnished a statement thereof to the Owner, the Association shall have the right, not duty, to levy a Restoration Assessment against such Owner and his Lot to cover the cost or correction of such noncompliance. In this regard, the Association shall have the same remedies of the Association hereinabove to collect delinquent Restoration Assessments.

(2) To levy a fine against the Member or Owner. Said fine to be collected in the same manner as Special Assessments.

(3) To suspend or condition the right of said Owner or Member to the use of the Recreational Facilities operated or maintained by the Association.

(4) To suspend the Owner or Member's voting rights as a Member of the Association. Any such suspension of voting rights shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of continuing infraction (including nonpayment of any Assessment after the same becomes delinquent) may be imposed for so long as the violation continues.

(c) In any legal or equitable proceeding for the enforcement or to restrain the violation of these covenants, conditions, restrictions, easements, reservations, liens or charges, or any provision hereof the losing party or parties shall pay the attorneys of the prevailing party or parties as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be accumulative and not exclusive.

(d) The failure of the Association or by any Member to enforce any covenant, condition, easement, lien, or charge herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(e) Nothing herein contained shall be deemed to require that the Declarant shall enforce any covenant, condition, restriction, easement, reservation, lien charge or provision hereof.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. General. The Association shall have the power to levy Assessments against the Lots, and the Owners thereof, and each Owner, and, if more than one (1) Person, all such Persons, jointly and severally, by acceptance of the deed to a Lot, whether or not it shall be expressed in any such deed, shall be deemed to covenant and agree to pay all such Assessments in the manner and for the purposes provided herein. Subject to the

provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including the power and authority to determine where, when, and how Assessments shall be paid to the Association, and each Owner shall comply with such determination.

Section 2. Method of Assessment. All Assessments shall be levied by the Association against Lots and collected and disbursed by the Association. The Board of Directors shall fix the amount of the Assessments as provided hereinafter and set the date or dates such Assessments shall become due.

Section 3. Annual Assessments. Annual Assessments shall consist of the General Assessments.

(a) General Assessments.

(1) Purpose. The General Assessment shall be used exclusively to promote the health, safety, and welfare of the Members and in particular to improve, maintain, and operate the Common Area and facilities, including funding of appropriate reserves for future repair and replacement. To that end, by way of example but not by way of limitation, the costs to be incurred in the General Assessment shall include the following: the administrative costs of operating the Association; management fees; office costs; accounting fees; legal fees; all costs associated with greenbelt maintenance; all costs associated with the maintenance and preservation of the detention pond areas; all costs associated with the installation and maintenance of Improvements within the Common Areas; all costs associated with routine maintenance of pathways and common street maintenance; all costs associated with exterior lighting, if any; all costs associated with the maintenance and operation of common amenities available to all Members of the Association; the cost of maintenance of perimeter boundary fencing, if any; all costs associated with security protection provided to the Association by private agencies, if any; and the costs of insurance premiums for Common Area Improvement, casualty insurance, and general liability insurance; water and sewer charges for the Common Areas; trash collection fees for the Common Area; real estate taxes; and betterment assessments, if any, for the Common Area.

(2) Basis for Assessment. For General Assessment purposes, there shall be three (3) classes of Assessable Units, all of which shall be assessed at a uniform rate within each class:

Class I: All Units which are or have been occupied by a Single Family shall be assessed at one hundred percent (100%) of the General Assessment rate.

Class II: All Units for which a Building Permit has been issued by the City of Loveland but which have never been occupied shall be assessed at twenty-five percent (25%) of the General Assessment rate.

Class III: All Lots which are not otherwise assessable under the Class I and Class II provisions shall be assessed at ten percent (10%) of the General Assessment rate.

(3) Maximum. Until the first day of the fiscal year following commencement of assessments, the maximum Annual General Assessment rate shall be _____.

(4) Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the maximum each year by the greater of:
 (1) a factor of not more than five percent (5%) of the maximum for the current fiscal year or (2) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, or equivalent, as published by the U.S. Labor Department for the Metropolitan Denver area; such increase shall become effective the first day of the next fiscal year.

From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum may be increased above the amount which can be set by the Board with the assent of two-thirds of the votes of the Quorum of Owners.

(c) Date of Commencement of Annual Assessments. The first Annual Assessments provided for herein shall commence on the first day of the month following the conveyance of any Lot to an Owner who is neither a Participating Builder nor the Declarant.

Section 4. Budget Process. To determine the amount required to be raised by General Assessments for any fiscal year, the Board shall prepare an Annual Budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the Budget, the estimated costs and expenses which will be payable, and the estimated income and other funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by the General Assessment to cover such costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a copy of such Budget to any Owner upon request, and upon request to any Mortgagee. Based on such Budget, the Board of Directors shall determine the amount of the Annual General Assessment for such fiscal period as is provided in this Article VI. The total amount of money required to be raised by the General Assessment for such fiscal year shall be the amount as determined by the Board necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in the coming fiscal year, including the payment of debts from prior fiscal years, providing reasonable reserves, and providing a reasonable carryover reserve for the following fiscal year.

Section 5. Supplementary Assessments. In the event that the Board shall determine, at any time or from time to time, that the amount of the Annual Assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more Supplementary Assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each Supplementary Assessment, the Board shall revise the annual budget for such fiscal year provided in Article VI, Section 4, or prepare a new budget, a copy of which shall be furnished to any Owner, or on request, to any Mortgagee. Based on such revised or new budget, the Board may make a Supplementary Assessment for such fiscal year against each Lot the amount of which shall be determined by the Board as provided in Section 4 of this Article.

Section 6. Special Assessments. Special Assessments may be made for the purposes of raising funds for capital improvements

and for any other Association purpose for which Annual Assessments may not or have not been made. Whether to make a Special Assessment and the amount thereof per Lot shall be determined by the Board; provided that no Special Assessment shall be valid unless approved by a majority vote of the Members present and voting in person or by proxy at any Annual Meeting of the Members of the Association or at any Special Meeting thereof called for the purpose of considering such Special Assessment.

Section 7. Restoration Assessment. The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot as provided in Article VII, Section 15. The Restoration Assessment shall be limited to the amount necessary to meet the cost of restoration and the cost of collection thereof against the inactive Owner.

Section 8. Declarant Assessment. The Declarant shall pay an annual Declarant Assessment on the aggregate of all unimproved Lots shown on the Development Plans which Declarant owns but has not conveyed to third party purchasers or Participating Builders. The Declarant Assessment shall be an amount which shall be equal to the Class III General Assessment. The Declarant Assessment shall commence upon conveyance of the first Lot of the Properties to an Owner who is not the Declarant or Participating Builder and shall continue until all Lots in the Durango Project are sold either to Participating Builders or third party purchasers.

Section 9. Time for Payments. The General Assessment for each Lot shall be payable, subject to Section 11 of this Article VI, in twelve (12) equal monthly installments due on the first day of each month unless the Board shall adopt some other payment schedule, but in no event shall the General Assessment be payable in less than quarterly installments. Special and Supplementary Assessments shall be payable as provided in the resolutions authorizing the same. All installments of Annual, Supplementary, and Special Assessments shall be due and payable without notice or demand, and all Assessments shall be paid without any setoff or diminution of any kind. Any Assessment or installment thereof or other amount payable pursuant to this Section or under the Bylaws which is not paid when due shall bear interest from the date due until paid at the maximum rate permitted by law or such lesser rate as the Board shall determine and/or may be subject to a late charge as may be set and uniformly applied by the Board. All payments on account shall be first applied to interest and late charges and then to the Assessment payment first due.

Section 10. Lien for Assessments and Other Amounts. The Association shall have a lien against each Lot and other Improvements thereon to secure payment of any Assessment or other amount due and owing to the Association with respect to that Lot plus interest and/or any late charges as provided in Section 9 of this Article VI, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in any manner for foreclosure of mortgages in the State of Colorado. The obligations being part of the purchase price of each Lot, such lien shall be superior and paramount to any homestead or other exemption provided by law, and each Owner hereby specifically waives his homestead exemption, but only with respect to such lien.

Section 11. Liability of Owners, Purchasers and Mortgagees. The amount of any Assessment payable with respect to any Lot, together with all other sums and amounts referred to in Section 10 of this Article VI, shall be a joint and several personal obligation to the Association of such Owner and binds such Owner's heirs, personal representatives, successors, and assigns. Except as provided below in this Section each party becoming an Owner of a Lot shall be jointly and severally personally liable with the former Owner for all such sums and amounts

which had accrued and were payable at the time of the acquisition of fee simple title to the Lot by such party without prejudice to such party's right to recover from the former Owner any of said sums and amounts paid. All such sums and amounts may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. Notwithstanding the foregoing, Institutional Mortgagees of Lots foreclosed pursuant to any Mortgage the Owner of which is an Institutional Mortgagee shall not be liable for any such Assessment, unless accruing during the period when such Mortgagee or purchaser is the Owner of said Lot, and in addition, the lien for any such Assessments shall be junior to any lien or encumbrance on a Lot taken in good faith and for value perfected by recording in the Office of the Clerk and Recorder of Larimer County, Colorado, prior to the time a notice of failure to pay any such amount is recorded in said office, describing the Lot and naming the Owner thereof.

Section 12. Estoppel Certificate. Upon payment of a reasonable fee and upon written request of any Owner, or First Mortgagee, or any person with any right, title or interest in a Lot or intending to acquire any right, title, or interest in a Lot, the Association shall furnish a written statement setting forth the amount of any Assessments, if any, due or accrued and then unpaid with respect to such Lot and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

Section 13. No Abatement. No diminution or abatement of Assessments shall be allowed or claimed for any reason including, without limitation, from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance, or order of a governmental authority.

Section 14. Rights of First Mortgagees to Pay Assessments, Etc. Any First Mortgagee of a Lot within the Durango Project may jointly or severally pay any tax or other charge which is in default and which may have become a charge or a lien against any common property of the Association, and any First Mortgagee(s) making such payments shall be entitled to immediate reimbursement therefor from the Durango Community Association of Loveland.

Section 15. Effect of Non-Payment of Assessments: Remedies of Association. Any Assessment Installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide notice of such delinquency and may (a) declare the entire balance of such General or Special or Supplementary or Restoration Assessment due and payable in full; (b) charge interest from the due date at a percentage rate not greater than the statutory maximum, such rate to be set by the Board for each Assessment; (c) give notice to the Owner that in the event payment with accrued interest is not paid within thirty (30) days from the date of such notice, then the express contractual lien provided for herein shall be foreclosed; or (d) upon giving notice to the Owner, suspend the right of such Owner to vote or to use the Common Area or Recreational Facilities until the Assessment and accrued interest is paid in full.

Section 16. Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, a charge and lien created herein: (a) All properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (b) all Common Areas; and (c) all properties exempted from taxation by the State or County Government on the terms and to the extent of such legal exemption.

ARTICLE VIIUSES AND OTHER RESTRICTIONS

Section 1. Nuisances. No nuisance shall be permitted to exist or operate upon any property so as to jeopardize property values or to be detrimental to the well being of any other Member of the Association.

Section 2. Restriction on Further Subdivision. No Lot upon which a Unit has been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

Section 3. Single-Family Residence. No Unit shall be used for any other purpose other than as a single-family residence, and no business or commercial activity shall be carried on or within the Project.

Section 4. Common Area Restriction. All use and occupancy of the Common Area shall be subject to and governed by the Rules and Regulations adopted by the Association. No damage or waste shall be committed to the Common Area or Improvements located thereon. No Owner shall change or alter any of the Common Area or any exterior portion of an Improvement of a Lot without the prior written consent of the Association which shall not be unreasonably withheld or delayed.

Section 5. No Imperiling of Insurance. Nothing shall be done or kept in or within the Project which might result in an increase in the premiums with respect to insurance obtained for all or any portion of the Project or which might cause cancellation of such insurance except with the prior written consent of the Association.

Section 6. No Violation of Law. Nothing shall be done or kept in or on any portion of the Project which would be in violation of any Statute, Rule, Ordinance, Regulations, Permit, or validly imposed requirement of any governmental body.

Section 7. Appearance. All parts of the Project shall be kept in a clean, safe, and attractive condition, and no rubbish or refuse, or garbage shall be allowed to accumulate.

Section 8. Restrictions on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the Project (including, without limitation, any Lot) without the prior written consent of the Association, except the Association and such other signs as the Association shall allow.

Section 9. Conditions for Architectural Control. 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, Building, or 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 prior approval of the Architectural Review Board. No building, residence, or other structure, fence, wall, or landscaping in lieu thereof, shall be commenced, erected, maintained, improved, altered, made or done on such property without the prior written approval of the Architectural Review Board.

Section 10. Rules and Regulations. Every Owner, his guests, members of his family, servants and employees shall strictly adhere to the Rules and Regulations adopted from time to

time by the Association. The Board may adopt general rules, including but not limited to, rules to regulate potential problems relating to the use of the property and the well-being of the members, such as keeping of animals, storage, and the use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash, trash containers, maintenance, and removal of vegetation on the properties.

Section 11. Mineral Exploration. No portion of the Project including, without limitation, any area within a Lot shall be used to explore for or to remove any water, soil, hydrocarbons, or other minerals of any kind.

Section 12. Mechanic's Lien. No labor performed or materials furnished for use in connection with any Lot and other Improvements thereon with the consent or at the request of the Owner thereof (Contracting Owner) or his agent, contractor, or subcontractor, shall create any right to file a statement or mechanic's lien against any interest in the Project. Each Owner shall indemnify, defend, and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien for labor performed or for materials furnished at the request of Contracting Owner. Notwithstanding the prior provisions of this Section, the indemnity provisions of this Section 12 shall not apply to any First Mortgagee who comes into possession of a Lot by virtue of a Public Trustee's foreclosure, deed in lieu of foreclosure, or mortgage foreclosure in accordance with Colorado Statutory Law. At the written request of any Owner, the Association shall enforce such indemnity by either requesting the Owner to comply with the bonding provisions of the Colorado Mechanic's Lien Statutes or collecting from the Contracting Owner the amount necessary to discharge any such lien and all costs incidental thereto including attorney's fees and expenses. The Association may collect the same as a Restoration Assessment.

Section 13. Vehicle Parking. No campers or pickups with camper attachments, trailers, boats, self-propelled recreational vehicles of any type, snowmobiles, trucks used for commercial purposes, abandoned, or similar vehicles shall be parked in the Project except inside closed garages or, in the alternative, in a location approved by the Architectural Review Board.

Section 14. Animals Within Project. No animals shall be kept or harbored within the Project except that any Owner may keep a reasonable number of household pets, subject to the Rules and Regulations of the Association. Any such household pet shall be kept either in the interior of any Unit or in the fence enclosed portion of any Lot adjacent to such Unit. Any such pet must be kept at all times on a leash if the pet is taken from the interior of any Unit or fence enclosed portion of any Lot adjacent to such Unit if that pet is within the Project. It shall be the obligation of each Owner owning a pet to control it in accordance with the Rules and Regulations of the Association.

Section 15. Maintenance of Property.

(a) Owner Obligation. To the extent that exterior maintenance is not provided for in this Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon in good order and repair, free of debris, all in a manner and with such frequency as is consistent with reasonable property management.

(b) Failure to Maintain. In the event an Owner of any Lot in the Project or Properties shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association after notice to the Owner and approval by the Board of Directors shall have the right to enter upon said lot to correct drainage and to repair, maintain, and

restore the Lot and the exterior of the Buildings and any other improvements erected thereon. All costs related to such correction, repair, or restoration shall become a Restoration Assessment upon such Lot and, as such, shall be regarded as any other Assessment with respect to lien rights of the Association and remedies provided for herein for non-payment.

Section 16. Board to Determine Violations. Determinations with respect to whether an Owner shall have violated any of the provisions of this Declaration including the provisions of this Article VII shall be made by the Board pursuant to Article V, Section 5, and shall be final, binding, and conclusive upon all parties.

Section 17. Control of Antennas and Receiving Equipment. Exterior television or other radio, receiving or transmitting devices of any type including receiving or transmission equipment for microwave transmissions are expressly prohibited unless approved in writing by the Architectural Review Board of the Association.

Section 18. Trash Receptacles. Storage, collection, and disposal of trash shall be in compliance with rules set by the Architectural Review Board.

Section 19. Trash Burning. Trash, leaves, and other similar materials shall not be burned within the Project.

Section 20. Storage. No tanks for the storage of gas, fuel, oil, or other materials shall be erected, placed, or permitted above or below the surface of the Lot. Any wood pile or storage pile shall be screened and located within the confines of enclosures such as a privacy fence or wall located within a Lot line so as to conceal them from the view of neighboring Units.

Section 21. Solar Homes or Solar Modification. It is probable that Lots within the Project will be locations for solar collector panels to enable the Improvements constructed thereon to utilize solar energy. To encourage the use of such solar energy, the Association is hereby irrevocably appointed attorney-in-fact for the Owners and each of them to grant solar easements over any portion of any Lot located within the Project. Acceptance by any person of any interest in any Lot shall constitute an appointment of the Association as attorney-in-fact as provided above. The Association shall be granted all the powers necessary to grant such easements.

An Owner of a Lot within the Project who wishes to install a solar collector shall submit his plans and specifications describing the same to the Architectural Review Board in accordance with Article X. Upon approval by the Architectural Review Board, the Owner will submit his plans and specifications along with the Architectural Review Board's approval to the Board of Directors of the Association with the request that he be granted a solar easement for his collector. The Board of Directors, after due notice to all Owners of the Lots within the Project which shall be burdened by such solar easement, if granted, and after giving those Lot Owners to be affected an opportunity to be heard at a hearing to be called by the Board of Directors for the express purpose of determining whether or not to grant the easement, may grant the solar easement requested. The Board of Directors may also deny the request for solar easement, and in either case, the Board of Directors shall complete the hearing by preparing and submitting to the requesting Owner and affected Owners a written opinion and the reasons therefor for either the granting of the easement or the denial of the easement.

Should a solar easement be granted, the Owner requesting such solar easement shall be entitled to have his solar collector protected from shade in the same manner as the shade existed on the date the Board of Directors granted the easement, i.e., if no shade existed on his proposed solar collector at the time the easement was granted, his easement would entitle him to no shade, but if shade existed from existing structures or existing landscaping, then the easement would be granted subject to such shade or landscaping planted at such time the easement was granted and would be allowed to grow into the easement without being an encroachment. The original first built structures and deciduous trees, other structures, and landscaping existing at the time the solar easement is granted shall not be considered or deemed to be encroachments for title and other purposes.

Upon approval of the easement, the Board of Directors shall promptly prepare, execute, and record the solar easement reflecting the Lots benefited and burdened. The easement granted will include only that area which is necessary for the operation of the particular solar equipment involved.

Each solar easement is an interest in land and shall run with the land benefited and burdened. Each solar easement shall be recorded and that description shall be deemed definitive. Each solar easement may be enforced by the Owner of any affected Lot, the Board of Directors, the Architectural Review Board, and any affected First Mortgagee by proceeding at law or in equity against any person or persons violating any of the restrictions and limitations of this Article, either to restrain such violation or attempted violation or to recover such damages which may ensue because of such violation or any combination thereof including costs of suit and reasonable attorney's fees.

ARTICLE VIII

INSURANCE

Section 1. Insurance. All insurance, other than title insurance, carried in connection with the Common Area, Lots, Units, Improvements, and Project shall be governed by the provisions of this Article VIII.

Section 2. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado.

To the extent possible, the casualty, property, and liability insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (ii) provide that the insurance cannot be cancelled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; and (iii) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of any First Mortgagees. Any loss falling within the deductible portion of a policy shall be borne by the Association. The cost and expense of all insurance obtained by the Association shall be paid out of Association funds collected by Assessments and otherwise as elsewhere provided in this Declaration.

Section 3. Common Area Casualty Insurance. The Association or its agents shall obtain and maintain at all times the following insurance coverages: (i) all risk coverage or the nearest equivalent available for the full replacement cost of the general Common Area Improvements, and (ii) all risk coverage or the nearest equivalent available for any personal property of the Association. The casualty insurance coverages identified in this paragraph shall be carried in blanket policy form naming the Association as the insured, and shall provide that it cannot be cancelled by either the insured or the insurance company until after at least thirty (30) days' prior written notice is given to the Association and each First Mortgagee. The Association shall furnish a certified copy of such blanket policy and the certificate identifying the interest of the Mortgagor, to any party in interest upon request.

The insurance described in this paragraph shall be inflation coverage insurance, if such insurance is available, which insurance at all times represents one hundred percent (100%) of the replacement value of any and all facilities in the Common Area except land, foundation, excavation, and other items normally excluded hereof. The Association shall, at least every three (3) years, obtain an appraisal for insurance purposes which shall be maintained as a permanent record showing that the insurance in any year represents one hundred percent (100%) of the replacement value of the facilities in the Common Area.

Section 4. Common Area Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive general liability insurance including non-owned and hired automobile liability coverage, owned automobile liability coverage (if there are any owned automobiles), personal injury liability coverage covering liabilities of the Association, its officers, directors, employees, agents, and members arising in connection with ownership, operation, maintenance, occupancy, or use of the Common Area and any other area the Association is required to restore, repair, or maintain pursuant to this Declaration with bodily injury liability limits not less than One Million Dollars (\$1,000,000.00) for each occurrence and property damage liability limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence, and One Million Dollars (\$1,000,000.00) aggregate. Each policy shall include a "severability of interest" endorsement.

Section 5. Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

Section 6. Association Fidelity Insurance. The Association shall also maintain adequate fidelity coverage, if available, to protect against dishonest acts on the part of directors, officers, trustees, and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name the Association as an obligee, (ii) be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association for Annual Assessments only, including reserves, (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and (iv) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least fifteen (15) days' written notice to the First Mortgagees and the Association.

Section 7. Notice Upon Loss. In the event that there shall be any damage or destruction to, or loss to the Common Areas which exceeds Ten Thousand Dollars (\$10,000.00), then

notice of such damage or loss shall be given by the Association to each First Mortgagee of said Unit within ten (10) days after the occurrence of such event.

Section 8. Other Insurance. The Association may obtain such additional insurance coverage against such additional risks as it shall determine to be appropriate.

ARTICLE IX

EASEMENTS

Section 1. Owner's Rights in Lot Subject to the Provisions of this Declaration. Each Owner shall own his Lot in fee simple and have full and complete dominion thereof subject to the provisions of this Declaration.

Section 2. Owner's Easement for Access, Support, and Utilities. Each Owner shall have a non-exclusive easement over the Common Area for access to his Lot provided that access by vehicle shall be only across drives and ways provided for that purpose. Each Owner shall have a non-exclusive easement in and over adjacent Lots for horizontal and lateral support of his Unit which is located on such Lot and over other Owner's Lots as may be required for utility services, including water, sewer, gas, electricity, telephone, television, and other similar service.

Section 3. Easements for Encroachments. If any part of the Common Area encroaches or shall hereinafter encroach upon a Lot, an easement for such encroachment (whether because of reconstruction or otherwise) shall exist in favor of the Association and the Owner of that Lot shall be subject to an easement for such encroachment and for the maintenance of the same by the Association. The encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction, error in the Map, shifting of the earth, or by changes in the position caused by repair or reconstruction of the Project or any part thereof. Any overhang easement is granted to any Owner whose roof, eaves, gutters or similar items overhang the Lot of another Owner or the Common Area.

Section 4. Easements in Lots for Repair, Maintenance, and Emergencies. Some of the Common Area may be conveniently accessible only through a Lot, and in such event, the Association shall have an easement for access through each Lot from time to time during such reasonable hours as may be necessary for maintenance, repair, or replacement of any of the Common Area accessible therefrom or from making emergency repairs therein necessary to prevent damage to the Common Area or to another Lot. To make reasonable repairs or improvements to a Lot conveniently or to reconstruct such Lot in the event of a casualty, it may be desirable to do so through another Owner's Lot, and all Owners hereby grant to all other Owners an easement for such purpose. If any damage shall be done to another's Lot or to the Common Area in exercising the rights granted in this Section 4, such damage shall be restored by the Association or the Owner creating such damage.

Section 5. Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be appurtenant to the Lot of that Owner and all conveyances of and other instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

ARTICLE XARCHITECTURAL REVIEW BOARD

Section 1. Members of the Board. The Architectural Review Board shall consist of two (2) Committees. The Committees shall be the "NEW CONSTRUCTION COMMITTEE" which shall be composed of three (3) members appointed by the Declarant, and a "MODIFICATION AND CHANGE COMMITTEE" composed of three (3) members appointed by the Board of Directors in accordance with the Bylaws of the Association, each of which shall function until the Declarant's rights cease under this Declaration. The remaining provisions of this Article X regarding procedures for submission of items to either the New Construction Committee or the Modification and Change Committee shall apply both during the period of Declarant Control and subsequent to the termination of the Declarant's rights under this Declaration.

Section 2. Review of Plans and Specifications. The Board shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board of Directors including the inspection of construction in progress to assure its conformance to the plans approved by the Board. No construction, alteration, addition, modification, decoration, redecoration, or reconstruction of an improvement in the Project shall be commenced or maintained, until the plans and specifications therefor, showing the nature, kind, shape, height, width, color, materials and location of same shall be submitted to Board and approved in writing by the Board. The Board shall approve plans and specifications submitted for its approval only if it determines that the construction, alterations, and additions contemplated thereby, and in the location as indicated will serve to preserve and enhance the values of the properties in the community and will maintain a harmonious relationship among structures, vegetation, topography and the overall design of the community. The Board may condition its approval of proposals or changes and specifications for any improvements (1) on such changes therein as they deem appropriate, (2) upon the agreement by the person or member (referred to in this Section 2 as "applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the improvement, or (3) upon agreement of the applicant to reimburse the Association for the cost of such maintenance, or all three, and may require submission of additional plans, specifications or other information prior to approving or disapproving the material submitted.

The Board may issue rules, regulations, or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association accompanying each application for approval, or additional reasonable factors which it will take into consideration when reviewing submissions. Said rules and regulations may provide that the amount of such fee shall be uniform, or may be determined in any other reasonable manner, such as by the reasonable costs of construction, alteration, or additions contemplated. Said rules, regulations, or guidelines, may require such detailed plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, and description of samples of exterior materials and colors. Until receipt by the Board of any required plans specifications, the Board may postpone review of any plans submitted for approval. The decision of the Board and the reasons therefor shall be transmitted by the Board to the applicant at the address set forth in the application for approval within thirty (30) days after receipt of the Board of all materials required by the Board. The application, pursuant to this Section 2, shall be deemed approved, unless written disapproval

or request for additional information or materials by the Board shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the Board of all required materials.

Section 3. No Waiver of Future Approval. The approval of the Board to any proposals or plans, specifications, or drawings for any work done or proposed, or in connection with any other material requiring the approval and consent of the Board shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans, specifications, drawings, or other matter, whatever, subsequently or additionally submitted for approval or consent.

Section 4. Promulgation of Rules and Regulations. The Board may issue rules or guidelines setting forth procedures for the submission of plans for approval provided said rules or guidelines are not in conflict with rules and guidelines established by the Board of Directors.

Section 5. Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

(a) The Board or its duly authorized representative may at any time inspect any improvement for which approval of plans is required under this Article X, provided, however, that the Board's right of inspection of improvements for which plans have been submitted and approved shall terminate in sixty (60) days after the work of improvement shall have been completed and the respective Owner shall have given written notice to the Board of such completion. The Board's right to inspection shall not be terminated pursuant to this paragraph in the event plans for work of improvement have not been previously submitted to it by the applicant. If, as a result of such inspection, the Board finds that such improvement was done without obtaining approval of the plans therefor, or was not done in substantial compliance with the plans approved by the Board, the Board shall notify the Owner in writing of failure to comply with Article X within sixty (60) days from the inspection, specifying the particulars of non-compliance. The Board shall have the authority to require the Owner to take such action as may be necessary to remedy the non-compliance.

(b) If upon the expiration of sixty (60) days from the date of such notification the Owner shall fail to remedy such non-compliance, the Board shall notify the Board of Directors of the Association in writing of such failure. Upon notice and hearing as provided in the Bylaws, the Board of Directors shall determine whether there is a non-compliance and, if so, the nature thereof, the estimated cost of correcting, or removing the same. If the Board of Directors determines that a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of notice of the Board of Directors' ruling as given to the Owner. If the Owner does not comply with the ruling within such period, the Board of Directors, at its option, may record a notice of non-compliance in the Office of the Clerk and Recorder of Larimer County, Colorado, and peacefully remove the non-complying improvement or otherwise remedy the non-compliance and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board of Directors shall levy a special assessment against the Owner for reimbursement as provided in this Declaration.

If for any reason the Board fails to notify the Owner of any non-compliance with the previously submitted and approved plans within forty-five (45) days after receipt of written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 6. Nonliability of Architectural Review Board.

Neither the Declarant, the Board, nor any of the duly authorized representatives shall be liable to the Association, or to any Owner or member for any loss, damage, or injury arising out of or in any connection with the performance of the Board's duties hereunder unless due to the willful misconduct or bad faith of the Board. The Board shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition solely on the basis of the criteria set forth in Sections 2 and 4 above. The Board's approval or disapproval shall be based solely on said considerations and the Board shall not be responsible for reviewing nor shall its approval of any plan or design be deemed an approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

ARTICLE XITERMINATION AND AMENDMENT OF DECLARATION

Section 1. Termination. This Declaration shall continue in effect until and unless terminated as in this Section provided. This Declaration may be terminated at any time only upon the approval, in writing, of at least seventy-five percent (75%) of Association members and one hundred percent (100%) of the Institutional Mortgagees.

The termination of this Declaration shall be evidenced by a Certificate of Association executed by its President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Larimer County, Colorado.

This Section concerning termination may not be amended without consent of all Owners and of all Mortgagees required to approve termination of this Declaration, anything to the contrary notwithstanding.

Section 2. Amendments. This Declaration and the Bylaws of the Association may be amended as elsewhere provided in this Declaration and in the following manner:

An amendment to this Declaration may be proposed by a majority of either the Board or the members of the Association, and such amendment shall be considered at either the next Annual Meeting of the Association or at a Special Meeting called for such purpose. Notice of the subject matter of such amendment shall be included in the notice of such meeting. The Directors and members not present at the meeting may express their approval in writing within a period of thirty (30) days from the date of such meeting. Any such amendment must be approved in writing by Declarant, if it shall own any Lots and by members representing the Owners of an aggregate of not less than two-thirds (2/3) of the Lots then included within the Project. Notwithstanding the foregoing provisions of this paragraph, until the First Annual Owners Meeting of Members as set forth in the Bylaws, this Declaration may be amended by action of Declarant or by all of the Directors of the Association.

Nothing herein contained shall authorize any amendment without the prior written approval of seventy-five percent (75%) of the Institutional Mortgagees of record at the time of the proposed amendment.

Section 3. Special Amendments. Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the

Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages or deeds of trust covering Dwelling Units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each Member. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute, and record Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of the first mortgage or deed of trust upon a Dwelling Unit or any warranties made by an Owner or First Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage or deed of trust on such Owner's Dwelling Unit. Any such amendment must have the approval of one hundred percent (100%) of the First Mortgagees. The power coupled with an interest granted by this Section 4 shall terminate at such time as the Declarant has no remaining real property ownership interest in the Project or December 31, 1985, whichever event occurs first.

Section 4. Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed and shall be signed by seventy-five percent of the Institutional Mortgagees of record at the time the amendment is adopted. The amendment shall be effective when said certificate and a copy of such amendment are recorded in the public records of Larimer County, Colorado.

ARTICLE XII

CONDEMNATION

Section 1. Condemnation. If at any time or times all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

(a) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award", shall be payable to the Association.

(b) Complete Taking.

(1) In the event that the Common Areas are taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned equally among the Owners; provided, however, that if a standard different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares, the same standard shall be employed to the extent it is relevant and applicable.

(2) On the basis of the principle set forth in the last preceding paragraph, the Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid

into separate accounts and disbursed as soon as practicable in the following manner: from each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, in the following order:

(i) for the payment of the balance of the lien of a First Mortgage of any Lot Owner;

(ii) for payment of taxes and special assessment liens in favor of any assessing entity;

(iii) for payment of unpaid Association assessments;

(iv) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and

(v) the balance remaining, if any, shall be paid to the Lot Owner.

(c) Partial Taking. In the event that less than the entire Common Area is taken or condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, each Owner shall be entitled to a share in the Condemnation Award to be determined in the following manner: As soon as practicable, the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds and shall apportion in amounts so allocated among the Owners: (i) the total amount allocated to the taking of or injury to the Common Area shall be apportioned equally among the Owners; (ii) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner set forth above.

(d) Notification of Mortgagees. Within ten (10) days after the occurrence of such event, the Association shall notify each First Mortgagee and Institutional Mortgagee of any Lot of the commencement of the condemnation proceedings and shall notify said Mortgagees, in the event of the taking of all or any part of the Common Area, if the value of the Common Area taken exceeds Ten Thousand Dollars (\$10,000.00).

ARTICLE XIII

DAMAGE AND/OR DESTRUCTION TO COMMON AREA IMPROVEMENTS

Section 1. Association as Attorney-in-Fact--Damage and Destruction. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the issue of the total or partial destruction to Common Area Improvements.

Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any subsequent Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place, and stead for the purpose of dealing with the issue of the total or partial destruction of the Common Area Improvements as hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary, shall

have full and complete authorization, right and power to make, execute, and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the Common Area Improvement(s) as used in the succeeding Sections means restoring the Common Area Improvement(s) to substantially the same condition in which it existed prior to the damage. Except as otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, or replacement unless the Owners and all First Mortgagees agree not to rebuild or repair in accordance with the provisions set forth hereinafter.

Assessments by the Association for those purposes stated herein shall not be abated during the period of insurance adjustment and repair and reconstruction.

Section 2. In the event of damage or destruction to the Common Area Improvements to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost thereof, not including land, due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Common Area Improvement(s) shall be applied by the Association as attorney-in-fact, to such reconstruction, and the Common Area Improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair and restoration of the Common Area Improvement(s).

Section 3. If the insurance proceeds are insufficient to repair and reconstruct the Common Area Improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost of the Common Area Improvement(s), not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Unit Owners. Such deficiency assessment shall be a Common Expense and made pro rata according to the number of Units in the Association and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair or restoration of the Common Area Improvement(s) using all of the insurance proceeds and such assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and be enforced and collected as is provided hereinbefore. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

(i) for payment of the balance of the lien of any First Mortgage;

(ii) for payment of taxes and special assessment liens in favor of any assessing entity;

(iii) for payment of unpaid Common Expenses;

(iv) for payment of Junior Mortgages and encumbrances in the order of and to the extent of their priority; and

(v) the balance remaining, if any, shall be paid to the Unit Owner.

Section 4. If the insurance proceeds are insufficient to repair the Common Area Improvement(s), and if such damage is more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost of all the Common Area Improvements, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of a special assessment to be made against all of the Owners and their Units, provided, however, that the Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Units and all of the First Mortgagees of record may agree not to repair or reconstruct the Common Area Improvement(s); and in such event, the Association shall forthwith record a notice setting forth such fact or facts. The insurance settlement proceeds shall be collected by the Association, such proceeds shall be divided by the Association equally, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each such account without contribution from one account to another toward the partial or full payment of the lien of any First Mortgagee encumbering the Unit represented by such separate account. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as provided in Section 3 of this Article.

ARTICLE XIV

MISCELLANEOUS

Section 1. Enforcement and Remedies. Each provision of this Declaration shall be enforceable by the Association or, subject to Section 4 of this Article XIV, any individual Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

Section 2. Protection of First Mortgagees or Institutional Mortgagees. No violation or breach of, or failure to comply with, any provision of this Declaration, and no action to enforce any such provision shall affect, defeat, render invalid, or impair the lien of any First Mortgagee or Institutional Mortgagee taken in good faith and for value and perfected by recording in the Office of the Clerk and Recorder of Larimer County, Colorado, prior to the time of recording in said Office of an instrument describing the Lot and listing the name or names of the Owner thereof and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply, or action to enforce affect, defeat, render invalid or impair the title or interest of any purchaser upon foreclosure of any such Mortgage or delivery of deed in lieu thereof, result in any liability, personal or otherwise, of any First Mortgagee or Institutional Mortgagee except for Assessments coming due after the date of such foreclosure or delivery after the date such First Mortgagee or Institutional Mortgagee receives a deed to the Lot or Unit. Any such purchaser on foreclosure or person accepting a deed in lieu thereof shall, however, take subject to this Declaration; provided, however, that violations, or breach of, or failure to comply with any provision of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, or person, or his

heirs, personal representatives, successors, or assigns. Nothing contained in this Declaration, the Articles of Incorporation, or the Bylaws shall entitle any Owner or any other party to priority over any First Mortgagee or Institutional Mortgagee with respect to any distribution to such Owner of the proceeds of any condemnation or insurance, award, or settlement.

The Association shall also give notice to an Owner of a default in payment of Assessments or other default imposed by the terms and conditions of this Declaration, the Articles of Incorporation, or Bylaws of the Association, and if such default is not cured within sixty (60) days, the Association shall send a copy of such notice to each holder of a Mortgage covering such Lot or Unit if the name and address of such Mortgagee has been previously furnished to the Association.

Section 3. Limited Liability; Indemnification. Neither Declarant, the Association, the Board, nor any Officer, agent or employee of any of the same shall be liable to the Association or any Owner for any action or for any failure to act with respect to any matter, so long as such person or entity was not guilty of fraud or misconduct in taking such action or failing to act.

The Association shall indemnify Declarant, each Member of the Board, any employee or agent of Declarant or the Association against any loss or threat of loss as a result of any claim or legal proceeding relating to the performance or nonperformance of any act concerning the activities of the Association to the fullest extent allowed by law.

The indemnification authorized by this Article XIV, Section 3, shall include payment of (i) reasonable attorney's fees or other expenses incurred in settling any action or proceeding, or threatened action or proceeding, or incurred in any finally adjudicated legal action or proceeding, and (ii) expenses incurred in the removal of any liens affecting any property of the indemnitee. Indemnification shall be made from assets of the Association, and no Owner shall be personally liable for any indemnitee.

This Section shall inure to the benefit of the Declarant, the Association, the Members of the Board, the employees and agents of the Declarant, and the Association, and their respective heirs, executors, administrators, successors, and assigns.

Section 4. Complaints; Procedures. All unresolved disputes and disagreements regarding the interpretation or application of this Declaration and the Bylaws shall be determined by the Board. Any Owner may submit such dispute or disagreement in writing to the Board which it, or a committee thereof, shall act on at its first meeting following the expiration of ten (10) days after the receipt of such complaint, provided no action shall be taken against any Owner without affording him a reasonable opportunity to be heard. The Board may also make interpretations of the Declaration and the Bylaws and the determination of and interpretations by the Board shall in all instances be final, binding, and conclusive.

Section 5. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefits of the Association and each Owner, and the heirs, personal representatives, successors, and assigns of each of them.

Section 6. Additional Protection for Institutional Mortgagees. Unless at least two-thirds (2/3) of the Institutional Mortgagees and two-thirds (2/3) of the Owners of the Lots in the Association have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the common property owned, directly or indirectly, by such Association, it being understood that the granting of easements for public utilities or for other public purposes consistent with the intended use of the common property shall not be deemed a transfer within the meaning of this subparagraph (a);

(b) change the method of determining the obligations, assessments, due, or other charges which may be levied against a Lot Owner or the Common Area;

(c) by act or omission, change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Units, exterior maintenance of the Units, the maintenance of the common property;

(d) fail to maintain fire and extended coverage on the common property or any improvements located thereon on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs);

(e) use hazard insurance proceeds for losses to any improvements on the common property for other than the repair, replacement, or reconstruction of such improvements on the common property.


Section 7. Severability. Invalidity or enforceability of any provision of this Declaration in whole or in part shall not affect the validity of any other part or other provision of this Declaration.


Section 8. Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision of this Declaration.

Section 9. No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

DECLARANT: 

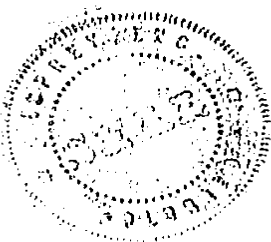
OSPREY , INC.
A Colorado Corporation



President



Secretary



STATE OF COLORADO)
COUNTY OF LARIMER) ss

Witness my hand and official seal.

My Commission expires:



Martha A. Pilgrum
Notary Public