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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ROXBOROUGH VILLAGE SUBDIVISION FILING NUMBER 12-A

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**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ROXBOROUGH VILLAGE SUBDIVISION FILING NUMBER 12-A**

This Declaration of Covenants, Conditions and Restrictions for Roxborough Village Subdivision Filing Number 12-A (this "Declaration") made as of February 13, 1995, by Roxborough Acquisition Corp., a Nebraska corporation ("Declarant").

RECITALS

A. Declarant is the owner of the "Property" (as defined below), which is located in the County of Douglas, State of Colorado. The real property initially subjected to this Declaration is described on the attached Exhibit A and is depicted on the plat of Roxborough Village Subdivision Filing Number 12-A attached hereto as Exhibit D (the "Plat").

B. The Property is a part of a planned development district commonly known as "Roxborough Village." Declarant desires to establish certain easements, covenants, conditions and restrictions to provide for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of property located within such planned development district. Further, Declarant now desires to create a planned community and to establish certain mutually beneficial easements, covenants, restrictions and equitable servitudes for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of such planned community under a general plan for the purpose of enhancing and perfecting the value, desirability and attractiveness of such planned community.

C. Soils surveys have revealed the existence of Pierre Shale on the Property. Pierre Shale is a clay soil condition that has been linked to ground heave in the southwestern metropolitan area of Denver, Colorado. In accordance with currently accepted engineering technology, mitigation measures including additional drainage facilities, grading, backfill and landscaping restrictions have been taken with respect to those lots identified as most potentially subject to the effects of Pierre Shale. For further information regarding the mitigation measures undertaken for the Pierre Shale, please see the February 18, 1994 "Geotechnical Engineering Report Roxborough Subdivision Filing 12 Village Circle West @ Buckeye Street" prepared by Empire Laboratories, Inc.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property is a planned community within the meaning of the Colorado Common Interest Ownership Act and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following covenants, conditions, restrictions and equitable servitudes in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property and to enhance the value, desirability and attractiveness of the Property. This Declaration shall (i) run with the land at law and as an equitable servitude; (ii) bind all Persons having or acquiring any interest in the Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by Declarant and its successors in interest and assigns, each "Owner" (as defined below) and his or her heirs, successors in interest and assigns; and the "Association" (as defined below) and its successors in interest.

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**ARTICLE 1
DEFINITIONS**

1.1 **Definitions.** Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings specified below.

1.1.1 "Act" means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes ("C.R.S.") §§ 38-33.3-101 et seq., as amended.

1.1.2 "Additional Lands" includes the real property described in **Exhibit B**, together with additional real property that is contiguous to the real property described on **Exhibit A** and that does not exceed 10% of the total area of the Property.

1.1.3 "Annual Budget" means the Association's budget for costs and expenses, as described in Section 4.6, as required or permitted under this Declaration and which the Board must present to the Association each year for approval.

1.1.4 "Architectural Review Committee" or "Committee" means the committee described in Section 5.1 of this Declaration.

1.1.5 "Articles" means the Articles of Incorporation of Roxborough Village First Homeowners' Association, a Colorado nonprofit corporation presently formed or to be formed by Declarant, which have been or will be filed in the office of the Secretary of State of the State of Colorado, as amended from time to time.

1.1.6 "Assessments" means the Regular Assessments and Special Assessments.

1.1.7 "Association" means the Roxborough Village First Homeowners' Association, a Colorado nonprofit corporation as described in Article 4 of this Declaration, and its successors.

1.1.8 "Board of Directors" or "Board" means the board of directors of the Association.

1.1.9 "Bylaws" means the Bylaws of the Association which may be adopted by the Board, as such Bylaws may be amended from time to time.

1.1.10 "Common Area" means any portion of the Property together with all improvements thereon and personal property owned by the Association for the primary benefit of all Members and the Property as a whole; provided, however, that the Common Area does not include the "Pierre Shale Drainage Facilities" (as defined below). The Declarant establishes the Common Area by conveying such property to the Association.

1.1.11 "Declarant" means the Roxborough Acquisition Corp., a Nebraska corporation. The term Declarant shall also include one or more successors in interest or assigns of the Property or of any Special Declarant Rights, provided that the then existing Declarant designates such successor in interest as a "Declarant" in a Recorded writing.

1.1.12 "Declaration" means this instrument as it may be amended from time to time.

1.1.13 "Design Guidelines" means the Rules promulgated by the Board that permit the construction, alteration or removal of the Improvements specified by such Rules and that set forth the terms and conditions on which an Owner may construct, alter or remove such Improvements.

1.1.14 "Developer" means a Person, other than Declarant, that purchases or owns a portion of the Property for purposes of subdivision, development or resale.

1.1.15 "Development Guide" means the Roxborough Village Planned Development District Development Guide, as amended from time to time, which is Recorded at Reception Number 8712166, in Book 0716 at Page 0347 and which sets forth the land use and development standards for the Property.

1.1.16 "Development Period" means the period of time during which Declarant may exercise Development Rights and Special Declarant Rights. The Development Period shall commence upon the recording of this Declaration and shall terminate 10 years later unless reinstated or extended by agreement between Declarant and the Association.

1.1.17 "Development Rights" means the rights reserved by Declarant in this Declaration to (i) add real estate to the Property and make such real estate subject to this Declaration; (ii) create Lots or Common Area within the Property; (iii) further subdivide Lots or convert Lots into Common Area and (iv) withdraw land from the Property. Declarant may exercise such rights from time to time with respect to any portion of the Property described in Exhibit A with no assurances made regarding the extent to, or the order in which, such rights are exercised.

1.1.18 "Director" means a member of the Board of Directors.

1.1.19 "First Mortgage" means any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering the Property or a portion thereof that is Recorded and that has priority of record over all other Recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments, mechanic's liens and the Association's lien for Assessments).

1.1.20 "First Mortgagee" means any Person named as a mortgagee or beneficiary under any First Mortgage, or any successor in interest of any such Person under such First Mortgage.

1.1.21 "Improvement" means every structure and all appurtenances thereto of every type and kind including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, poles, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers, and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone, or other utilities, as well as those construction activities necessary to build these items.

1.1.22 "Landscaping Plan" means those documents attached hereto as Exhibit C which govern the type and placement of any plantings or landscaping materials on any Lot.

1.1.23 "Lot" means and refers to any plot of land designated as a lot and shown upon any Recorded subdivision plat of the Property, or any portion thereof, including all appurtenances

and improvements now or hereafter located thereon. The term "Lot" does not include the Common Area and public streets. The term "Lot" is synonymous with the term "Unit" as defined in the Act. The total number of Lots planned for the Property, including Additional Lands by Declarant in its sole discretion shall not exceed 230 Lots.

1.1.24 "Member" means any Person who is a member of the Association pursuant to Section 4.2.

1.1.25 "Membership" means the right, solely incident to being an Owner, to belong to the Association.

1.1.26 "Owner" means a Person or Persons (including Declarant or any Developer) who is the owner of fee simple title of Record to a Lot from time to time. The term "Owner" shall not include (i) a contract purchaser except a contract vendee under an installment land sales contract; (ii) the vendor under an installment sales contract, or (iii) a Person holding an interest in a Lot merely as security for the performance of an obligation, unless and until such a security holder becomes an owner in fee simple of a Lot.

1.1.27 "Period of Declarant Control" means that period commencing upon recordation of this Declaration and terminating no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant, or two years after the last conveyance of a Lot by Declarant in the ordinary course of business, or two years after any right to add new units was last exercised. Notwithstanding the foregoing, Declarant may voluntarily: (i) terminate the Period of Declarant Control by a written recordable instrument, which election shall be in the sole discretion of Declarant; or (ii) surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, Declarant may require for the duration of the Period of Declarant Control that specified actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

1.1.28 "Person" means a natural individual or any entity with the legal right to hold title to real property.

1.1.29 "Pierre Shale Drainage Facilities" means those facilities, and associated easements, installed on the Property for the purpose of mitigating the effects of Pierre Shale and which the Declarant has conveyed, or will convey at some future time, to the Association in a written, Recorded instrument. The term "Pierre Shale Drainage Facilities" does not include any other facilities installed to mitigate the effects of Pierre Shale not owned by the Association.

1.1.30 "Plans and Specifications" means any and all documents and other materials designed to guide or control the construction of an Improvement including, but not limited to, those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on building products and construction techniques, samples of exterior colors or materials, plans for utility services, and all other documentation or information relevant to the particular Improvement.

1.1.31 "Property" means initially all of the real property described on the attached Exhibit A along with any and all Improvements now in place or hereafter constructed thereon. Property shall also include any portion of the Additional Lands that are annexed to the Property from time to time and all Improvements in place when annexed or thereafter constructed thereon.

1.1.32 "Records" means the official real property records of Douglas County, Colorado. The phrase "to Record" means to file for recording in the Records. The phrases "of Record" and "Recorded" mean having been recorded in the Records.

1.1.33 "Regular Assessments" means those Assessments levied by the Association pursuant to Section 4.7.1

1.1.34 "Residence" means a single-family home constructed on a Lot and Improvements, sidewalks, grounds, and landscaped areas on such Lot.

1.1.35 "Restrictions" means (i) this Declaration as amended from time to time; (ii) the Articles and Bylaws from time to time in effect; and (iii) the Rules from time to time in effect.

1.1.36 "Rules" means the rules adopted by the Board pursuant to Section 4.9.7, as amended from time to time.

1.1.37 "Special Declarant Rights" means the rights hereby reserved for the benefit of Declarant to perform the acts specified in parts 2 and 3 of the Act and Article 9 of this Declaration.

1.1.38 "Special Assessments" means those Assessments levied by the Association pursuant to Section 4.7.2.

ARTICLE 2 DEVELOPMENT OF THE PROPERTY/ANNEXATION

2.1 Subdivision and Development by Declarant. Declarant has subdivided the Property into Lots for single-family residential development. Declarant intends to develop some or all of such areas and, at Declarant's option, to designate areas as Common Area or for other purposes for the benefit of the Property. Declarant contemplates that the Property will be developed pursuant to the Plat and in conformance with the Development Guide, as they may be amended or modified from time to time, as a unified planned development community in which the development of, and restrictions upon, each portion thereof will benefit each other portion and the whole.

2.2 Withdrawal. Declarant reserves the right during the Period of Declarant Control to withdraw all, or a portion of, the Property from this planned community. This right to withdraw shall apply separately, in accordance with C.R.S. § 38-33.3-210(4)(a), to the real property or any portion thereof described in Exhibits A and B. The effect of withdrawal is to terminate the effect of the Restrictions on the withdrawn lands.

2.3 Annexation. Additional lands may be annexed to the Property and subjected to the Declaration from time to time with the consent of 75% of the votes in the Association and, during the Period of Declarant Control, with the consent of Declarant. Notwithstanding the foregoing, up to and including 10 years from the date of recording of this Declaration, Declarant may annex into the Property any portion of, or all of, the Additional Lands without the consent of the individual Owners and without the consent of any First Mortgagees. Each annexation shall be effected by recording an amendment to this Declaration entitled "Declaration of Annexation" in the Records. The Declaration of Annexation must comply with C.R.S. §§ 38-33.3-209 and 38-33.3-210 and must contain: (i) a reference to this Declaration, which reference shall state the recording information related to this Declaration; (ii) a statement that the provisions of this Declaration shall apply to the annexed land as set forth herein; (iii) an

adequate legal description of the annexed land; (iv) an amendment to the Plat or, if such an amendment is not necessary, a new certification of the Plat in accordance with C.R.S. § 38-33.3-209; (vii) a statement indicating ownership of the annexed land and consent of the owner to annexation; and (vi) during the Period of Declarant Control, Declarant's written consent upon such terms as are acceptable to Declarant in its sole discretion if the added land is not then owned by Declarant.

2.3.1 Upon the recording of a Declaration of Annexation in the Records, the portion of the Additional Lands described in the Declaration of Annexation shall become part of the Property and the covenants, conditions, and restrictions contained in this Declaration shall apply to the annexed land in the same manner as if it had been originally subject to this Declaration; and thereafter, the rights, privileges, duties and liabilities of the Persons subject to this Declaration shall be the same with respect to the annexed land as with respect to the lands originally covered by this Declaration.

2.3.2 Improvements constructed on any Additional Lands annexed by Declarant shall be consistent, in terms of quality of construction, with Improvements constructed on the Property prior to such annexation and shall comply with the terms of the Development Guide. Portions of the annexed lands shall not constitute Common Area unless specifically so designated in the course of development or in the Declaration of Annexation.

2.4 Conveyance and Acceptance of Common Area. Prior to transferring ownership of the first Lot in the Property to an Owner other than Declarant, Declarant shall convey the Common Area contained in the Property to the Association. Prior to transferring ownership of the first Lot in any annexed lands to an Owner other than Declarant, Declarant shall convey the Common Area contained in the annexed lands to the Association. Declarant expressly reserves the right in the course of development of the Property to convey to the Association, and the Association shall accept, certain areas such as open spaces and drainage ways which for any reason are not intended to be developed or other property or facilities which are deemed by Declarant to be most suitable as Common Area of the Association.

ARTICLE 3 GENERAL RESTRICTIONS/PERMITTED USES

3.1 Design Guidelines. All Improvements must conform to the standards set forth in the Development Guide, and after the Board adopts Design Guidelines, all Improvements thereafter constructed on the Property shall also conform to the standards set forth in the Design Guidelines.

3.2 General Restrictions. All of the Property shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.2.1 Residential and Common Area. Lots shall be improved and used solely for residential use for single-family homes in a manner consistent with the provisions of the Development Guide and the Restrictions. The Common Area may be improved and used for the primary benefit of the Owners and occupants of Lots subject to the Restrictions. In addition, Declarant or the Board (except during the period of Declarant Control) may permit, in its sole and absolute discretion, other Improvements and uses within any specific residential area consistent with the Development Guide.

3.2.2 Improvements and Use. Except as provided in Section 3.2.1, no Lot shall be improved or used except as a part of a Residence. Each Residence shall be designed to accommodate

no more than a single family and occasional guests. Each Residence may include such other improvements, as are necessarily or customarily incident to a single-family Residence.

3.2.3 Residence Alterations. Unless and until the Board promulgates Design Guidelines permitting the following improvements and setting forth the terms and conditions under which they may be allowed, no Person shall erect, modify, repair, replace, paint or maintain any of the following on the Property:

(a) any exterior radio or television antenna, satellite dish, or aerial or other reception/receiver or transmission device;

(b) facilities for hanging, drying or airing clothing or household fabrics;

(c) any entryways, fence, fence pillars or walls;

(d) any sign of any kind to the public view, provided, however, an owner may display a sign no larger than three feet by two feet on or from a Lot advertising such Lot (whether or not improved) for sale or lease; or

(e) tents or shacks or other temporary buildings, improvements or structures.

3.2.3.1 All fences bordering open space areas must be open fences.

3.2.4 Rentals. No commune or similar type living arrangements shall be permitted anywhere on the Property. Nothing in this Declaration, however, shall prevent the rental of any Residence by the Owner thereof for residential purposes, on either a short or long-term basis, subject to all the provisions of the Restrictions. Any lease by an Owner to another Person shall include a provision that the tenant under such lease shall comply with the Restrictions. Notwithstanding the inclusion of such provision, the Owner shall remain the responsible party for any acts committed by such Owner's tenant, or such tenant's guests, in violation of the Restrictions.

3.2.5 Unightly Objects. No unsightly object shall be permitted to remain on any Lot or any other portion of the Property if it is visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, mobile homes, recreational vehicles, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment and garden and maintenance equipment shall be kept at all times (except when in actual use) fully screened from view. Further, no repair or maintenance work shall be done on any of the foregoing or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure. Refuse, recyclable materials, garbage and trash shall be kept at all times in covered containers and any such containers shall be kept fully screened from view. Service areas, storage areas and compost piles shall be appropriately screened from view. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view; provided, however, that normal household waste or recyclable materials in covered containers can be set out up to 24 hours before a scheduled garbage or recycling pick-up.

3.2.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any part of the Property and no odors shall be permitted to arise therefrom so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any portion of the Property or to its occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than devices used exclusively for security and emergency purposes) shall be located, used or placed on the Property unless the Board promulgates Design Guidelines allowing such devices.

3.2.7 No Further Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest less than the whole Lot be conveyed by the Owner thereof, without the prior written approval of the Board; provided, however, that Declarant may further divide and subdivide any Lot or other property owned by Declarant and convey any easement or other interest less than the whole, all without the approval of the Board. Further, nothing contained in this Section 3.2.7 shall be deemed to require the approval of the Board for the transfer or sale of any Lot, including Improvements thereon, to more than one Person to be held by them as tenants in common or joint tenants, or for the granting of any mortgage on any Lot, or for the sale or transfer of any Lot pursuant to the terms of any mortgage or by way of a deed in lieu of foreclosure thereof. No Owner shall have the right to partition or seek partition of the Common Area or any Lot.

3.2.8 Drainage. There shall be no interference with the established drainage patterns over any land within the Property unless adequate provision is made for proper drainage and approved by the Board. In the event of any such interference which has not been approved by the Board, the Developer or the Owner interfering with the established drainage patterns shall be liable for any damage resulting from such interference.

3.2.9 Insurance Rates. Nothing shall be done or kept on or at the Property which will increase the rate of insurance on any policy or policies held by the Association without the approval of the Board. Nothing shall be done or kept on or at the Property which would result in the cancellation of any insurance policy held by the Association or which would violate any law.

3.2.10 No Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property which are, or might be, unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except within a contained barbecue unit while attended and in use for cooking purposes or within a safe, interior fireplace.

3.2.11 No Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, however, that Declarant or the Association may, by appropriate written permit, grant, license or easement agreement, allow the drilling of wells and the installation of infiltration galleries for the extraction of water.

3.2.12 Vehicles. In addition to the provisions of Section 3.2.5, the use and storage of all vehicles including, but not limited to, gliders, trucks, automobiles, graders, boats, tractors, pickups, mobile homes, trailers, buses, campers, recreational vehicles, bicycles, motorcycles, motor scooters, wagons, sleighs and snowmobiles, shall be subject to Rules which may prohibit or limit the use thereof within specified parts of the Property, and which may also provide parking and storage requirements.

No commercial vehicles, tractors, mobile homes, trailers, campers, camper trailers, boats or boat trailers may be parked on the Property for more than twenty-four (24) consecutive hours, except with the prior written consent of the Board. No tractor-trailer trucks shall be permitted on the Property except as reasonably necessary for Association purposes permitted under the Restrictions, or for the delivery or removal of personal property to and from Residences, or as required for construction activities as allowed in Section 3.2.13.

3.2.13 Construction Activities. In the case of any Board approved construction by an Owner or the Association or its servants and agents, the Board may grant a temporary waiver of any provision in the Restrictions; provided that such waiver shall be limited to a reasonable period for such construction. Such waiver shall be in recordable form, but need not be Recorded. Specifically, no such construction activities shall constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities so long as such construction (i) is pursued to completion with reasonable diligence; (ii) is in compliance with applicable federal, state and local laws and ordinances and any governmental rules and regulations adopted pursuant thereto; and (iii) conforms to usual construction practices in the area. No construction activities shall be carried on in such a way as to create a health hazard.

3.2.14 Animals. No animals, livestock, poultry or bees of any kind shall be raised, bred, kept or boarded in or on the Property; provided, however, that no more than two dogs, cats, or other domestic animals which are bona fide household pets, or any combination of the foregoing not to exceed two household pets may be kept on each Lot, so long as such pet(s) is/are (i) not kept for any commercial purpose; (ii) kept under control at all times; and (iii) not kept in such number or in such manner as to violate any federal, state or local laws or ordinances or so as to create a nuisance. Notwithstanding anything to the contrary contained in the foregoing, the Board shall have, and is hereby granted, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or as to create a nuisance, or that any Owner is otherwise in violation of this Section 3.2.14 and to take such action or actions as it deems necessary to correct any such violation including the imposition of fines. It is expressly understood that any Owner's right to keep household pets is coupled with a responsibility for such Owner's pet(s) and accordingly, each Owner of a household pet is financially responsible and liable for any damage caused by such pet.

3.2.15 Violation of Restrictions. If any Developer or Owner or their respective family, guests, licensees, lessees, invitees, agents or employees violates these Restrictions, the Board may invoke any one or more of the following remedies: (i) impose a fine upon such Developer or Owner for each violation, in accordance with Association Rules; (ii) cause the violation to be cured and charge the cost thereof to such Developer or Owner; and (iii) obtain equitable relief against the continuance of such violation; and (iv) obtain legal relief for any damages caused to the Association by such violation. Before invoking any remedy under (i) or (ii), the Board shall give such Developer or Owner 24 hours written notice except that the Board may immediately suspend the right to use any portion of the Common Area by any Developer or Owner and their respective family, agents, employees, guests, licensees, lessees, and invitees without notice for any period during which any Assessment owed by such Developer or Owner is past due and unpaid.

3.2.16 Waste. No Owner or his or her respective family, agents, employees, guests, licensees, lessees, invitees, agents or employees may damage, deface or commit waste upon any portion or all of the Common Area or Pierre Shale Drainage Facilities.

3.3 Exemption of Declarant. Notwithstanding anything in this Declaration to the contrary, during the Period of Declarant Control neither Declarant nor any of Declarant's activities shall in any way be subject to the control of, or under the jurisdiction of, the Board or the Architectural Review Committee, if created. Without limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant or its agents, employees or assigns or any Developer to (i) excavate and grade; (ii) construct and alter drainage patterns and facilities; (iii) construct any and all other types of Improvements; (iv) maintain no more than 5 model homes and 5 construction, sales and leasing offices and similar facilities of a size and in the locations determined by Declarant from time to time; and (v) post signs incidental to construction, sales and leasing, on the Common Area and Lots owned by Declarant.

3.4 Landscaping Restrictions. Due to the existence of Pierre Shale on the Property, all landscaping or planting of any type on any Lot must strictly conform to the Landscaping Plan set forth in Exhibit C. The Association shall strictly enforce the Landscaping Plan.

3.5 Exemption for Casualty Loss. In the event that any of the Residences or the Common Area suffer a casualty loss, such that reconstruction is necessary, this Declaration shall not prevent or limit the right of Declarant or the Association, their officers, agents, employees and assigns to (i) excavate and grade; (ii) construct and alter drainage patterns and facilities; or (iii) construct any and all other types of Improvements.

ARTICLE 4 ASSOCIATION

4.1 Organization. The Association is a non-profit Colorado corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law and the Act, and set forth in its Articles and Bylaws and in this Declaration. Neither the Articles, Bylaws nor any Rules promulgated by the Board shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between the Declaration and the Articles, Bylaws or Rules, this Declaration shall control.

4.2 Membership and Voting.

4.2.1 Generally. Every Person who is an Owner (including Declarant) shall be a Member of the Association and shall remain a Member for so long as that Person continues to be an Owner; except that when the Association owns any Lot, the Association shall not be a Member. The Association shall have only one class of Members. Each Member shall be entitled to one vote for each Lot owned by such Member; except that the Association shall not be entitled to a vote for any Lot owned by the Association. Each Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. Except as expressly provided in this Article 4, no other voting rights are created by this Declaration. No change in the Membership of a Person shall be effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the change.

4.2.2 Multiple Owners. When an Owner consists of more than one Person, while each such Person shall be a Member of the Association, only one of such co-Owners shall be entitled to exercise the single vote to which the Lot is entitled. Such co-Owners must designate one co-Owner to exercise the single vote in a written instrument delivered to the Secretary of the Association not later than five (5) days prior to a meeting of the Association. Such written instrument shall remain in full force

