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Carly Koppes - Clerk and Recorder, Weld County, CO

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
CARLSON FARMS FILING NO. 1 AND FILING NO. 2**

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
CARLSON FARMS FILING NO. 1 AND FILING NO. 2**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is effective upon recording.

*RECITALS*

A. The Twin Silos, a Limited Liability Company, recorded that certain Declaration of Covenants, Conditions and Restrictions for Carlson Farms, Filing No. 1 in the real property records of Weld County, Colorado on June 28, 2000, at Reception No. 2777413, as amended and supplemented by the Supplemental Declaration of Covenants, Conditions and Restrictions for Carlson Farms, recorded December 5, 2002 at Reception No. 3012183 in the Office of the Clerk and Recorder for Weld County, State of Colorado (collectively, the "Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Carlson Farms, Filing No. 1 and Filing No. 2("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration.

C. The Original Declaration provides for and allows for this Declaration in Article X, Section 10.2(b), which provides as follows:

Except as otherwise provided in this Declaration or the Act, including Section 6.1, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or replaced at any time and from time to time upon approval of the amendment or repeal by Members of the Association holding at least seventy-five percent (75%) of the voting power of the Association entitled to vote present in person or by proxy at duly constituted meetings of the Members.

D. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), the required approval of Members of the Association holding at least 75% of the voting power of the Association for amendment is now void and replaced with Members holding at least 67% of the voting power of the Association;



E. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

F. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

G. The purposes of the amendments in this Declaration is remove or revise provisions that do not comply with current state law, remove developer "boilerplate" language that is no longer applicable to the Community, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions;

H. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and to further the interests of the residents of the Community and Members of the Association; and

I. Members of the Association holding at least 67% of the voting power of the Association have approved this Declaration, or alternatively, a Court Order entered by the District Court for Weld County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW THEREFORE, the Original Declaration is amended and restated as follows:

## ARTICLE 1

### GENERAL

1.1 Purposes of Declaration. Property which is subject to this Declaration in the manner hereinafter provided shall be referred to as the Community Area. This Declaration is executed (a) in furtherance of a common and general plan for the Community Area; (b) to protect and enhance the quality, value, aesthetic, desirability, and attractiveness of the Community Area; (c) to provide for an Association as a vehicle to hold, maintain, care for, and manage Association Properties, including internal landscaped areas which will benefit all Owners of Sites; (d) to define the duties, powers, and rights of the Association, including, without limitation, performance of certain maintenance obligations with respect to under drain systems, certain offsite drainage, and other facilities and such other matters whether similar or dissimilar which the Association elects to undertake in accordance with the provisions hereof; (e) to define certain duties, powers, and rights of Owners of Sites within the Community Area; and (f) to comply with and effectuate the terms and provisions of the Act.

1.2 Declaration. The Association, for itself, its successors, and assigns, hereby declares that all property which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated,

encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall bind, be a charge upon, and insure to the mutual benefit of (a) all of the property which becomes part of the Community Area and each part or parcel thereof; (b) the Association and its successors and assigns, and (c) all Persons having or acquiring any right, title, or interest in any property which becomes property part of the Community Areas or any part or parcel thereof or any improvement thereon and their heirs, personal representatives, successors, and assigns.

1.3 Covenants Subordinate to Law. These covenants are subordinate to the Town of Johnstown's ordinances, state law, and federal law. If these covenants, conditions, and restrictions conflict with any ordinance, state, or federal law, then that ordinance or law shall prevail.

## ARTICLE 2

### DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

2.1 Act. "Act" shall mean the Colorado common Interest Ownership Act as provided in C.R.S. 38-33.3-101, *et seq.* as the same may be amended from time to time.

2.2 Administrative Functions. "Administrative Functions" shall mean all functions as are necessary and proper under this Declaration and shall include, without limitation, providing management and administration of the Association; providing architectural review services under Article 4 hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors, and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Association Properties; incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other such reasonable and ordinary administration tasks associated with operating the Association.

2.3 Articles of Incorporation. "Articles of Incorporation" shall mean the Articles of Incorporation of the Carlson Farms Homeowners Association, Inc., which are filed in the office of the Secretary of State of Colorado, as the same may be amended from time to time.

2.4 Assessment. "Assessment" shall mean a Common Assessment, Special Assessment, or a Reimbursement Assessment.

2.5 Association. "Association" shall mean the Carlson Farms Homeowners Association, Inc., a Colorado non-profit corporation, its successors and assigns.

2.6 Association Properties. "Association Properties" shall mean all real and personal property, including Improvements and all Common Areas, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care, or maintenance thereof, or for which the Association has a right or duty to maintain, held for the common use and enjoyment of certain of its Members as provided herein and for other purposes as may be permitted by this Declaration.

2.7 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

2.8 Budget. "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration and prepared pursuant to Section 8.12 of this Declaration.

2.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association, which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

2.10 Common Area. "Common Area" shall mean any portions of the Community Area designated as Common Area which are owned or maintained by the Association for the common use and enjoyment of the Owners, including, but not limited to, gardens or other open space, easements for the use and benefit of the Owners as may be provided in the Declaration. Such Common Area may be owned: (a) in undivided interest by certain Owners or (b) separately by individual Owners over which the Association may have an easement for maintenance purposes.

2.11 Common Assessment. "Common Assessment" shall mean the assessment made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, which are to be paid by each Owner to the Association for purposes provided herein and charged to such Owner and to the Site of such Owner.

2.12 Community Area. "Community Area" shall mean the real property which is subject to this Declaration and is described in Exhibit A of this Declaration.

2.13 County. "County" shall mean Weld County, Colorado and any and all other counties in which the Community Area or any portion thereof is located.

2.14 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

2.15 Declarant. "Declarant" shall mean Twin Silos L.L.C., its successors, assigns, and affiliates. A Person shall be deemed to be a "successor and assign" of Twin Silos L.L.C., a Limited Liability Company, as Declarant only if specifically designated in a duly Recorded Instrument as successor or assign of Declarant under this Declaration and shall be deemed a successor as assign of Declarant only as to the particular rights to interest of Declarant under this Declaration which are specifically designated in the written instrument. However, a successor to Twin Silos, L.L.C., a Limited Liability Company, by consolidation or merger shall automatically

be deemed a successor or assign of Twin Silos a Limited Liability Company, as Declarant under this Declaration.

2.16 Design Review Committee. "Design Review Committee" shall mean the Committee provided for in Article 4 of this Declaration.

2.17 Improvement. "Improvement" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures.

2.18 Improvement to Property. "Improvement to Property" shall mean any Improvement, change, alteration, or addition to any property within the Community Area. "Improvement to Property" shall include, but not be limited to those improvements more particularly described in Section 4.2 of this Declaration.

2.19 Leases. "Lease" shall mean and refer to any agreement for the leasing or rental of a Site, and shall specifically include, without limitation, a month-to-month rental.

2.20 Maintenance Funds. "Maintenance Funds" shall mean the accounts into which the Board shall deposit monies paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to Article 8 hereof.

2.21 Member. "Member" shall mean the Person or, if more than one, all Persons collectively who constitute the Owner of a Site.

2.22 Notice and Hearing. "Notice and Hearing" shall mean a written notice and public hearing before an Impartial Decision Maker, as defined in the enforcement and fine policy adopted by the Board of Directors.

2.23 Notice of Completion. "Notice of Completion" shall mean written notice to the Design Review Committee of the completion of any Improvement to Property pursuant to Article 4 of this Declaration.

2.24 Owner. "Owner" shall mean the Person or, if more than one, all Person collectively, who hold fee simple title of Record to a Site, including sellers under executory contracts of sale and excluding buyers thereunder.

2.25 Person. "Person" shall mean a natural person, a corporation, a partnership, or any other entity.

2.26 Planned Community. "Planned Community" shall have the same meaning as set forth in the Act.

2.27 Record or Recorded. "Record or Recorded" shall mean the filing for record of any document in the office of the Clerk and Recorder of Weld County.

2.28 Reimbursement Assessment. "Reimbursement Assessment" shall mean a charge against a particular Owner and his Site for the purpose of reimbursing the Association for expenditures and other costs of the Association incurring any violation, directly attributable to the Owner, of the Declaration or the Rules and Regulations, pursuant to Section 8.20 hereof, together with late charges and interest as provided for herein.

2.29 Rules and Regulations. "Rules and Regulations" shall mean rules and regulations adopted by the Board of Directors.

2.30 Site. "Site" shall mean any lot within the Community Area which is shown upon any Recorded plat map or any other parcel of land which may be sold or conveyed without violation of the provisions of Colorado law pertaining to the subdivision of land. For purposes of conforming the terms and provisions of this Declaration to the terms and conditions of the Act, the term "Site" shall be analogous to the term "Unit," as that term is defined in the Act. "Site" shall not include (a) any property owned by a public body, (b) the Association Properties, or (c) any Common Area as defined herein.

2.31 Special Assessment. "Special Assessment" shall mean a charge against each Owner and his Site representing a portion of the costs of the Association for the purpose of funding major capital repairs, maintenance, replacements, and improvements or for any other purpose authorized by the Board of Directors as provided herein.

### ARTICLE 3

#### GENERAL RESTRICTIONS AND COVENANTS APPLICABLE TO COMMUNITY AREA

All real property within the Community Area shall be held, used, and enjoyed subject to the following limitations and restrictions set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board or Design Review Committee, as applicable, if such strict application would be unreasonably or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Board or Design Review Committee, as applicable.

3.1 Maintenance of Community Area. No property within the Community Area shall be permitted to fall into disrepair, and all property within the Community Area, including any improvements and landscaping thereon, shall be kept and maintained in a clean, attractive, and slightly condition and in good repair. Maintenance, repair, and upkeep of each Site shall be the responsibility of the Association. Violation of this provision by an Owner shall permit the Association, after Notice and Hearing, to enter on the Site of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses for the Association in so doing; provided, however, that there shall be no entry into the interior of an improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

3.2 Property Uses. All Sites shall be used for private residential purposes. No dwelling erected or maintained within the Community Area shall be used or occupied for any purpose other than for a single-family dwelling. No Dwelling erected within the community should be less than 1200 square feet of living area, excluding garage and finished basement area. Notwithstanding the foregoing, business activities associated with the sale of Sites or residences constructed thereon shall be allowed. In addition, in-home businesses or occupations not involving the servicing of customers or employees, other than the Owners, shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any nuisance or any unreasonable, unwarranted, or unlawful use or interference with public rights, including, but not limited to, unreasonable or unwarranted use or interference with public streets, excessive traffic or parking requirements, rights-of-way, sidewalks, or in any other offensive or noxious activities. Owners must have approval in writing from the Town of Johnstown that such business is lawful to operate in Town limits.

3.3 Construction Type. All construction shall be new. No building previously used at another location or any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Site, except as expressly hereinafter provided for temporary buildings.

3.4 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Community Area, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others. No light shall be emitted from any portion of the Community Area which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community Area which would reasonably be found by others to be noxious or offensive.

3.5 Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Community Area which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Design Review Committee.

3.6 No Hazardous Activities. No activity shall be conducted on and no improvement shall be constructed on any property within the Community Area which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property within the Community Area and no open fires shall be lighted or permitted on any property within the Community Area except in a contained barbecue unit while attended and in use for the cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

3.7 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects, and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment except when in actual use. Owners shall paint their residences, sheds or other structures on their Sites as often as necessary to keep such exteriors in good condition, so as not to be unsightly.

3.8 Weeds. All yards and open spaces shall be kept mowed to a maximum height of six (6) inches and kept weed free. In addition, they shall be kept free of brush, trash and other growth which, in the reasonable opinion of the Board, is unsightly or causes undue danger of fire.

3.9 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, or debris of any kind shall be kept, stored, or allowed to accumulate on any Site except within an enclosed structure or appropriately screened from view, and except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up. Trash containers placed outside for pick-up must be removed within 24 hours of pick-up.

3.10 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Site, except that domesticated birds or fish and other small domestic animals permanently confined indoors will be allowed. No other animals, except an aggregate of not more than three domesticated animals (e.g. two cats and one dog), which must be fenced or restrained at all times within a Site, will be permitted within the Community Area; provided that they are not kept, bred, or maintained for any commercial purpose. No animal of any kind shall be permitted which, in the opinion of the Board, makes an unreasonable amount of noise or odor or is a nuisance. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Site except when properly leashed and accompanied by the pet Owner or his or her representative. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet. Pet owners are responsible for cleaning up the waste of their pets and for any excessive noise such as excessive barking within the Community Area. Failure to do so may result in a fine or fines levied against the Owner.

3.11 No Temporary Structures. No tent, shack, temporary structure, or temporary building shall be placed upon any property within the Community Area except with the prior written consent of the Design Review Committee obtained in each instance.

3.12 Restriction on Antennae, Pipes, Utility Lines, and Transmitters. Pipes for water, gas, sewer, drainage, or other purposes, and wires, poles, and other facilities for the transmission or reception of electricity, and utility meters or other utility facilities, shall be kept and maintained, to the extent reasonably possibly, underground or within an enclosed structure.

A "Permitted Antenna" is defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used

to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) another antenna which is expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

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

**3.13 Restrictions on Signs and Advertising.** No sign, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Community Area so as to be evident to public view, except: (a) signs as may be approved in writing by the Design Review Committee, or (b) political signs intended to impact the outcome of an election, which must be displayed in accordance with the Association's Rules and Regulations. A sign advertising a Site for a sale or for lease may be placed on such site; provided, however, that standards relating to dimensions, colors, styles, and location of such signs shall be determined from time to time by the Design Review Committee.

**3.14 Restrictions on Mining and Drilling.** No property within the Community Area shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

**3.15 Maintenance of Drainage.** There shall be no interference with the established drainage pattern over any property within the Community Area, except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternative drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the Design Review Committee. The established drainage pattern may include the drainage pattern (a) from Association Properties over any Site; (b) from any Site over the Association Properties; (c) from any property owned by the County or other Persons over any Site; (d) from any Site over property owned by the County or other Persons; or, (e) from any Site over another Site.

**3.16 Compliance with Insurance Requirements.** Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Community Area which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

**3.17 Compliance with Laws.** Nothing shall be done or kept on any property within the Community Area in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction.



3.18 Further Subdivision of Sites. The Owner of a Site shall not further subdivide that Site.

3.19 Restrictions on Sewage Disposal Systems. No cesspool, septic tank, or other sewage disposal system shall be installed within the Community. Any sewage disposal system installed for property within the Community Area shall be subject to applicable laws, rules, and regulations of any governmental authority having jurisdiction.

3.20 Restrictions on Water Systems. No individual water supply system shall be installed or maintained for any property within the Community Area unless such system is approved in writing by the Design Review Committee and is designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations of any applicable water and sanitation district or other governmental authority having jurisdiction.

a) *Use of Non-Potable Water.* To the extent non-potable water is supplied to any Common Area owned or maintained by the Association, the Association shall use such water for all irrigation needs.

b) *Risks of Non-Potable Water.* Non-Potable Water is not fit for human consumption. Owners should take appropriate precaution to prevent any person from drinking non-potable irrigation water. To the extent such water may be harmful to animals kept by any Owners; Owners should also take appropriate precaution to prevent any animal from drinking the non-potable irrigation water. Neither Declarant nor the Association shall be liable for any claims resulting for the use of the non-potable irrigation water, and by accepting a deed within the community Owner knowingly and voluntarily waives any such claims against the Declarant, its assignees, and the Association.

3.21 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any site, the Owner thereof shall cause the damaged or destroyed improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Site to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

3.22 Storage. No building materials shall be stored on any Site except temporarily during continuous construction of an Improvement.

3.23 Vehicle Repairs. No maintenance, servicing, repair, rebuilding, dismantling, or repainting or servicing of any kind of vehicle, boat, machine, or device may be carried on, except within a garage or other completely enclosed structure which screens the sight and sound of the activity from the street and other Sites. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water.

3.24 Storage of Gasoline and Explosives, Etc. No Site shall be used as storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel for Owner's lawn mower, snow blower, and the like may be maintained on an incidental basis on the Site in an amount not to exceed five (5) gallons.

3.25 Trailers, Campers, and Junk Vehicles. No unregistered or unlicensed vehicle, boat, camper (on or off supporting vehicles), trailer, tractor, towed trailer unit, motorcycle, disabled, junk, or abandoned vehicles, motorhome, mobile home, recreational vehicle, or any other vehicle, the primary purpose of which is recreational or sporting use, or any oversized vehicle or commercial vehicle shall be parked or stored in, on or about any Site or street within the Community Area, except within the attached garage.

The Board may adopt Rules and Regulations further clarifying and defining the types of vehicles permitted or prohibited under this Section, including defining the terms "oversized vehicle", "recreational vehicle" and "abandoned vehicle". A "commercial vehicle" is any vehicle with any of the following characteristics or combination of characteristics, as determined by the Board of Directors: any vehicle with business signage or logos, any vehicle with no passenger seats (i.e. delivery vans), vans with extended side panels, any vehicle with racks or panels designed to carry equipment, any vehicle with material or equipment protruding beyond the front, rear, top or sides of the vehicle (including any vertical extension above the limits of truck sides or van/automobile top, but not including a standard truck box), any vehicle in excess of 7' in height, any vehicle which carries equipment for service work such as ladders, welders, air compressors, winches and tool boxes, and/or any vehicle with commercial vehicle license plate. A commercial vehicle is not limited to but shall include automobiles, vans, trucks and other specialized vehicles. This definition does not include a commercial vehicle which is in the Community for the purpose of providing service to a resident or to the Association.

Any vehicle parked in violation of this Section 3.25 may be towed at the vehicle owner's expense upon completion of notice as provided herein. If the name and address of the vehicle owner is known to the Association or can be reasonably ascertained, a copy of a notice stating that the vehicle may be towed if parked on any Site or street within the Community Area shall be mailed to the registered owner, or posted on the door of the Unit belonging to the owner at the election of the Association, at least thirty (30) days prior to towing said vehicle. Such notice shall also be posted on the vehicle at least forty-eight (48) hours prior to towing. The vehicle owner and responsible unit owner shall be subject to liability for any and all costs and expenses in connection with the towing of the vehicle including but not limited to the cost of towing, storage, vehicle recovery, vehicle damage, or costs and attorney fees, and the Association shall have no responsibility or liability therefore.

3.26 Fences Prohibited. No fences shall be constructed along or adjacent to the boundary or lot line of any Site without the prior approval of the Design Review Committee unless in conformance with standard design specifications previously approved by the Design Review Committee. Privacy fences, security fences, and fences for screening purposes shall also be approved by the Design Review Committee unless in conformance with standard design specifications previously approved by the Design Review Committee.

3.27 Perimeter Fencing. Shall be constructed in accordance with final plat guidelines as approved by Town of Johnstown on the final plat.

3.28 Air Conditioning and Heating Equipment. No heating, air conditioning, air movement (e.g. swamp coolers) or refrigeration equipment shall be placed, allowed, or maintained anywhere other than on the ground in the rear or side yard of any Lot; provided, however, that solar units meeting all governmental guidelines for residential uses may be located on the roof if (a) such solar unit is built into and made an integral part of the roof flashing or the structure of any house constructed on such Site, and (b) if specifically approved by the Design Review Committee in accordance with Article 4 below. Window-mounted air conditioners are expressly prohibited. No wood or pellet burning fireplaces are allowed. Fireplaces must be approved by the Design Review Committee and must be approved by the Town of Johnstown.

3.29. Right to Farm Act. The owners are aware that their property is within the proximity of agricultural uses and that the owner is aware of the Right to Farm Act.

#### ARTICLE 4

##### ARCHITECTURAL APPROVAL

4.1 Approval of Improvements Required. The approval of the Design Review Committee shall be required for any Improvement to Property on any Site, except where prior approval of Improvements to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Review Committee.

4.2 Improvement to Property Defined. "Improvement to Property" requiring approval of the Design Review Committee shall mean and include, without limitation, (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; and (d) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

4.3 Membership of Committee. The Design Review Committee shall consist of at least three (3) members, all of whom shall be appointed by the Board of Directors. Members of the Design Review Committee may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

4.4 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Design Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed

Improvement to Property. The Applicant shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval. Failure to submit plans and obtain written approval by the Design Review Committee prior to commencement of work pursuant to this Section may result in fines after notice of the violations and opportunities for a hearing, and removal of such Improvement, in addition to any other remedies available to the Association under this Declaration and Colorado law.

4.5 Criteria for Approval. The Design Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of surrounding areas of the Community Area as a whole; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Community Area or the enjoyment thereof by Owners; that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association; and that the proposed Improvement to Property does not affect the drainage plan for the Community Area or any portion thereof. The Design Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Review Committee may deem appropriate.

4.6 Design Standards. The Design Review Committee may issue standards or rules ("Design Standards") relating to the procedure, materials to be submitted, fees, and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property including, but not limited to, landscaping and fencing design standards. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. The Design Standards may waive the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

4.7 Design Review Fee. The Design Review Committee may, in the Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Design Review Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner.

4.8 Decision of Committee. Any decision of the Design Review Committee shall be made within thirty (30) days after receipt by the Design Review Committee of all materials required by the Design Review Committee, unless such time period is extended by mutual agreement. The decision shall be in writing and if the decision is not to approve a proposed Improvement to Property, the reasons therefore shall be stated. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee.

4.9 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Design Review Committee within thirty (30) days after the date of receipt by the Design Review Committee of all required materials.

4.10 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the Design Review Committee in connection with the proposed Improvement to Property, and any conditions imposed by the Design Review Committee; provided that within ninety (90) days after the approval of any proposed Improvement or within such longer period as may be approved in writing by the Design Review committee, the Owner shall complete the installation of any landscaping and gardening approved in conjunction with the approval of the proposed Improvements. Failure to complete the proposed Improvement to Property within twelve (12) months after the date of approval or such shorter period as specified in writing by the Design Review Committee or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Design Review Committee, shall constitute noncompliance with the requirements for approval of Improvements to the Property.

4.11 Notice of Completion. Upon Completion of the Improvement to Property, the Applicant shall give written Notice of Completion to the Design Review Committee. Until the date of receipt of such Notice of Completion, the Design Review Committee shall not be deemed to have Notice of Completion of such Improvement to Property.

4.12 Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty (30) days after the Design Review Committee shall have received a Notice of Completion from Applicant.

4.13 Notice of Noncompliance. If, as a result of inspection or otherwise, the Design Review Committee finds that any Improvement to Property has been done without obtaining the approval of the Design Review Committee or was not done in complete conformity with the description and materials furnished to, and any conditions imposed by, the Design Review Committee, or was not completed within twelve (12) months after the date of approval by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance, which notice shall be given, in any event, within thirty (30) days after the Design Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

4.14 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Design Review Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Design Review Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in

compliance if the Improvement to Property was, in fact, completed as of the date of the Notice of Completion.

4.15 Appeal to Board of Directors of Finding Noncompliance. If the Design Review Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Design Review Committee within ten (10) days after receipt of the notice of noncompliance by the Applicant. The Board of Directors shall review the decision of the Design Review Committee pursuant to the criteria set forth in this Article and/or the Design Standards, if any, and determine whether a noncompliance exists. Any decision of the Design Review Committee may be overruled and reversed on appeal by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the Design Review Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

4.16 Correction of Noncompliance. If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement to Property, or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. Such entry shall not be deemed a trespass. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Reimbursement Assessment against the Owner of the Site for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have a law, in equity, or under this Declaration. The Applicant and Owner of the Site shall have no claim for damages or otherwise on account of the entry upon the property and removal of the noncomplying Improvement to Property.

4.17 No Implied Waiver or Estoppel. No action or failure to act by the Design Review Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Design Review Committee or the Board of Directors with respect to any Improvement to a Property. Specifically, the approval of the Design Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposal, plans, specifications, or other material submitted with respect to any other Improvement to Property.

4.18 Committee Power to Grant Variances. The Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area, or placement of structures of similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require as long as they meet the requirements of the Town of Johnstown. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Design Review Committee. If any such variance is granted, no violation of the provisions of the Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance

shall not operate to waive any of the provisions of the Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

4.19 Meetings of Committees. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval to any Improvement to Property and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Design Review Committee shall constitute action of the Design Review Committee.

4.20 Records of Actions. The Design Review Committee shall report in writing to the Board of Directors all final actions of the Design Review Committee, and the Board shall keep a permanent record of such reported action.

4.21 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

4.22 Nonliability of Committee Action. There shall be no liability imposed on the Design Review Committee, any member of the Design Review Committee, any Committee Representative, the Association, or any member of the Board of Directors for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

4.23 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Design Review Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction, provided that, during the course of any construction, nothing is done which will result in a violation of any of the provisions of this Declaration upon completion of construction and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

## ARTICLE 5

## ASSOCIATION PROPERTIES

5.1 Member's Rights of Use and Enjoyment Generally. Unless otherwise provided in the Declaration, all Members may use, or enjoy the benefits of, the Association Properties, as appropriate.

5.2 Right of Association to Regulate Use. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members and the public to further enhance the overall rights of use and enjoyment of all Members.

5.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

5.4 Liability of Owners for Damage by Member. Each Member shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Member or any Person using the Association Properties through such Member and for any violation by such Member or any such Person of this Declaration or any Rule and Regulation adopted by the Association. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration or of such Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or any such violation.

5.5 Association Duties if Damage, Destruction, or Required Improvements. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damages or deconstruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement levy a Special Assessment in accordance with Section 8.19, or if a Member or group of Members responsible therefore, to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or deconstruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, Improvement, and operation of other Association Properties.



5.6 Association Powers in the Event of Condemnation. If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interest of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in the Maintenance Fund as determined by the Board, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for Improvements or additions to or operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

5.7 Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agencies or organizations or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties shall be sold or disposed of and the proceed from the sale or disposition shall be distributed to Members in proportion to the number of Sites owned by such Member in the Community Area.

## ARTICLE 6

### ASSOCIATION OPERATION

6.1 Association. The Association has been formed as a Colorado non-profit corporation under the Colorado Non-Profit Corporations Act. The Association has been organized prior to the date the first Site located in the Community Area is conveyed to a Purchaser, as that term is defined in the Act. The Association shall have the duties, powers, and rights set forth in the Act, the Colorado Non-Profit Corporation Act, this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs. Except as may be provided herein the Articles of Incorporation or the Bylaws, the Board of Directors shall be selected by Owners acting in their capacity as Members of the Association.

6.2 Association Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term, and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

6.3 Membership in Association. Each Owner of a Site within the Community Area shall be a Member of the Association. There shall be one Membership in the Association for each Site within the Community Area. The Person or Persons who constitute the Owner of a Site shall automatically be the holder of the Membership appurtenant to that Site, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Site. Membership in the Association shall not be assignable separate and apart from fee simple title to a Site except that an Owner may assign some or all of his rights as an Owner and as a Member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Declaration.

6.4 Voting Rights of Members. Each Member shall have the right to cast one vote for each Site owned by such Member in accordance with the Bylaws.

6.5 Determination of Member Voting Percentages. Notwithstanding anything to the contrary contained herein, only Members whose voting rights are in good standing under the Association's Bylaws (e.g. voting rights which have not been suspended as provided therein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a requisite percentage of Members of the Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has been met.

## ARTICLE 7

### DUTIES AND POWERS OF ASSOCIATION

7.1 General Duties and Powers of Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the Members, to maintain, improve and enhance the common interests of the Members, to maintain, improve, and enhance Association Properties, and to improve and enhance the attractiveness, aesthetics, and desirability of the Community Area.

7.2 Duty to Manage and Care for Association Properties. The Association shall manage, operate, care for, maintain, and repair all Association Properties and to keep the same in an attractive and desirable condition for the use and enjoyment of the Members.

7.3 Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, property insurance on all insurable Improvements and personal property owned by the Association or that must be owned by the Association in the future, for broad form covered causes of loss, including casualty, fire, and extended coverage insurance with respect to all insurable Improvements and personal property owned by the Association including, if available at reasonable costs, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for

the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations, and other items normally excluded from property policies.

**7.4 Duty to Maintain Liability Insurance.** The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Association Properties and covering public liability for bodily injury and property damage and, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, (a) have limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per person and One Million Dollars (\$1,000,000.00) per occurrence; (b) insure the Board, the Association, the Manager, if any, and their respective employees, agents, and all Persons acting as agents; (c) include the Declarant as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Association Properties; and (e) cover claims of one or more insured parties against other insured properties.

**7.5 General Provisions Respecting Insurance.** Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled or renewed without a replacement policy therefore having been obtained by it, the Association shall promptly cause notice of that fact to be delivered to all Members. The Association may carry any other type of insurance it considers appropriate in amounts it deems appropriate, to insure the interest of the Association. Insurance policies carried pursuant to Sections 7.4 and 7.5 shall provide that (a) each Member is an insured Person under the policy with respect to liability arising out of such Member's interest in the Association Properties or membership in the Association; (b) the insurer waives its right of subrogation under the policy against the Association, each Member, and any Person claiming by, through or under such Member or any other director, agent, or employee of the foregoing; (c) no act or omission by any Member, unless acting within the scope of such Member's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of a Member covering the same risk covered by the policy, the Association's policy shall be the primary insurance. The Association may adopt and establish written nondiscriminatory policies and procedure relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration for all deductibles paid by the Association. Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Directors to ascertain whether coverage under the policies is sufficient in light of the current values of the Association Properties and in light of the possible or potential liabilities of the Association. The aforementioned insurance may be provided under blanket policies covering the Association Properties. In no event shall insurance coverage obtained or maintained by the Association be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees.

7.6 Fidelity Bonds Required. The Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Association. Each such bond shall name the Association as obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Sites plus reserve funds.

7.7 Other Insurances and Bonds. The Association shall obtain other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

7.8 Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as elsewhere provided in this Declaration.

7.9 Duty to Levy and Collect Assessments. The Association may levy and collect Assessments as elsewhere provided in this Declaration.

7.10 Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act.

7.11 Duties with Respect to Design Review Committee Approvals. The Association shall perform functions to assist the Design Review Committee as elsewhere provided in this Declaration.

7.12 Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Association may construct Improvements on property and may demolish existing Improvements.

7.13 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretations and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Sites. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing, or as otherwise determined by the Board of Directors in its discretion, to each member at the address for notices to Members as elsewhere provided in the Declaration or the Bylaws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of the Declaration, the provisions of this Declaration shall prevail.

**7.14 Power to Enforce Declaration and Rules and Regulations.** The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirably to cause such compliance by each member and each Person claiming by, through or under such Member ("Related User"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within the Community Area after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner thereof or the Association, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to ten (10) days following any breach by such Member or a Related User of such Member of this Declaration or the Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues (except for nonpayment of Assessments, in which case suspension of voting rights may be suspended automatically, without Notice and Hearing); (e) by levying and collecting, after Notice and Hearing, a Reimbursement Agreement against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member; and (f) uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member. In the event that the Association fails to enforce the provisions of this Declaration as provided for herein, each Member shall, upon thirty (30) days written notice to the Association, have the power (a) to enforce the provisions hereof by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, by mandatory injunction or otherwise; or (b) to commence or maintain actions and suits to recover damages for breach of any of the provisions of this Declaration.

**7.15 Power to Grant Easements.** The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties, as well as the power to designate portions of the Association Properties as limited common elements for the benefit of specific Site owners.

**7.16 Power to Convey and Dedicate Property to Governmental Agencies.** The Association, with the approval of Members representing at least sixty-seven percent (67%) of the voting power of the Association entitled to vote, shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental, or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate. Further, to the extent that any easement or right-of-way is required under or across any Association Properties which would not impair or hinder the use thereof, the Association shall have the right to grant or convey the same without the consent of the Members.

**7.17 Power to Borrow Money and Mortgage Property.** The Association shall have the power to borrow money and, with the approval of Members representing at least sixty-seven percent (67%) of the voting power of the Association entitled to vote, to encumber Association Properties as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action. An Agreement to convey or subject the Association Properties to a security interest in accordance with this Section and Section 7.16 above shall be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The agreement shall specify a date after which the agreement will be void unless recorded before that date and shall be effective upon Recordation.

**7.18 Power to Engage Employees, Agents, and Consultants.** The Association shall have the power to hire and discharge employees and agents and to retain and pay for management (e.g. Management Company), legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

**7.19 Landscaping.** The Association shall have the power and authority to maintain, repair, and replace the landscaping located on those parcels of real property located adjacent, appurtenant to, or along the perimeter of the Community Area (the "Landscaping Tracts"), including, but not limited to, those parcels of real property more particularly depicted on the Subdivision Plat as Tracts and include the costs and expenses of such landscaping within the determination of Common Assessments as more particularly provided herein. The Association shall have the power and authority to enter into maintenance and repair contracts to maintain, repair, and replace the landscaping and other improvements on the Landscaping Tracts and provided above.

**7.20 Trash Removal Contract.** The Association shall have the power and authority to enter into a trash removal contract, which provides for the exclusive trash removal services for all Sites, located within the Community Area. If the Town of Johnstown ever decides to drop its trash removal policy, the Association shall have the power and authority to pass through and allocate to the Owners of all Sites who are currently occupying completed residences on their Sites a proportionate share of all costs and expenses charged to the Association under the Trash Removal Contract (the "Trash Removal Allocation") and to levy a special assessment for such services in an amount to be determined by the Board. The Association shall have the right to terminate the trash removal services of any Owner of a Site who fails to pay their proportionate share of the Trash Removal Allocation. No Owner shall have the right to separately contract for any trash removal services unless the Association elects not to enter into a contract for such services as contemplated herein.

**7.21 Streets and Perimeter Sidewalk.** The Association shall have the power, but not the obligation, to contract for the removal of snow from the perimeter sidewalks and the streets located within the Community Area in the event that the Town fails to adequately provide for snow removal from such areas.

7.22 Recreational Facilities. The Association shall have the power, but not the obligation, to construct recreational facilities for the Owners of Sites within the Community Area. If the Association so chooses, the costs of such use shall be included as part of the Assessments.

7.23 General Corporate Powers. The Association shall have all of the ordinary powers and rights formed under the Colorado Non-Profit Corporation Act, including, without limitation, entering into partnership and other arrangements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required, or permitted to be done under this Declaration or the Articles of Incorporation or Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation or Bylaws.

7.24 Powers Provided by Law. In addition to the above-referenced powers, the Association shall have full power to take and perform any and all actions which may be lawfully taken by the Association under the Colorado Non-Profit Corporation Act and the Colorado Common Interest Ownership Act.

## ARTICLE 8

### ASSESSMENTS, BUDGETS, AND FUNDS

8.1 Maintenance Funds to be Established. The Association may establish and maintain the following separate Maintenance Funds: (a) an Administrative Functions Operating Fund; and (b) an Administrative Functions Reserve Fund. The Maintenance Funds shall be established as one or more trust savings or trust checking accounts at any financial institution in which deposits are insured by an agency of the federal government. Notwithstanding anything else to the contrary contained herein, in no event shall the Association be required to apply any surplus funds of the Association remaining after payment of or provision for common expenses, or any prepayment of or provision for reserves, against any Member's future Common Assessment.

8.2 Establishment of Other Funds. The Association may establish other funds as and when needed. Nothing herein shall limit, preclude, or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

8.3 Deposit of Common Assessments to Maintenance Funds. Monies received by the Association from Common Assessments shall be deposited in the Maintenance Funds in accordance with the following provisions: (a) there shall be deposited to the Administrative Functions Operating Fund that portion of the Common Assessment which, according to the Association Budget for the year, was budgeted for operating costs and expenses of the Administrative Functions; and (b) there shall be deposited to the Administrative Functions

Reserve Fund that portion of the Common Assessments which were budgeted for the Reserve Fund for Administrative Functions.

8.4 Other Deposits to Maintenance Funds. The Association shall deposit Monies received by the Association from sources other than Common Assessments in the Maintenance Fund determined by the Board of Directors to be most appropriate. For example, the Reimbursement Assessments shall be deposited to the Maintenance Fund from which the costs and expenses were or will be paid which form the basis for the Reimbursement Assessments; and Special Assessments for capital repairs, maintenance, replacements, and Improvements shall be deposited to the Reserve Fund from which such capital costs have been or will be paid. Interest and late charges received on account of delinquent assessments may be allocated among the Maintenance Funds in the same proportion as the delinquent assessments were allocated or, at the discretion of the Board of Directors, may be allocated to any one or more of the Maintenance Funds or other funds.

8.5 Disbursements from Maintenance Funds. All amounts deposited in the Maintenance Funds shall be used solely for the common benefit of all the Members for purposes authorized by this Declaration. Disbursements from particular Maintenance Funds shall be limited to specified purposes as follows: (a) disbursements from the Administrative Functions Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes for which disbursements are to be made from other Maintenance Funds; and (b) disbursements from the Administrative Functions Reserve Fund shall be made solely for purposes of funding those Administrative Functions which cannot be expected to recur on an annual or more frequent bases.

8.6 Authority for Disbursements. The Board shall have the authority to make or to authorize an agent to make disbursements of any monies in the Maintenance Fund.

8.7 Common Assessments. For each calendar year, the Association may levy Common Assessments against Owners of the Sites. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner and the Site of such Owner, as hereinafter provided.

8.8 Apportionment of Common Assessments. For purposes of assessing the Common Assessments, each Site shall coordinate one (1) Unit regardless of the size, value, location or use of such Site. The amount of the Common Assessment for any year, payable by the Owner of such Site, shall be computed by multiplying the total amount to be raised by the Common Assessments for that year, as shown in the Association Budget for that year, by a percentage (rounded to the nearest one-tenth of one percent (0.1%), derived from a fraction, the numerator of which is one (1) and the denominator of which is the total number of Sites in the Community Area as of the first day of that calendar year.

8.9 Funding of Reserve Funds. The Board, in budgeting and levying assessments, shall endeavor, whenever possible, to fund the Administrative Functions Reserve Fund by regularly scheduled payments, included as part of the Common Assessments, rather than by large Special Assessments. Amounts in the Administrative Functions Reserve Fund may be used in the



discretion of the Board of Directors, from time to time, for any purpose for which a Common or Special Assessment may be used.

8.10 Supplemental Common Assessments. Subject to the provision of Section 8.14 hereof, if the estimated sums prove inadequate for any reason, including nonpayment of any Owner's Common Assessment, the Board may, from time to time, levy a Supplemental Common Assessment for any of the Maintenance Funds. Such Supplemental Common Assessment shall be assessed against the Owner of each Site, in the same manner Common Assessments are originally assessed each year by the Board with respect to the particular Maintenance Fund. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

8.11 Annual Budgets. The Board of Directors shall cause to be prepared, at least sixty (60) days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies and deposits into the Administrative Functions and Reserve Funds. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Maintenance Fund, and shall reflect any expected income of the Association for the coming calendar year and any unexpected surplus from the prior year and any existing surplus in any Reserve Fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper Reserve Fund for major capital repairs, replacements, and improvements for Association Properties. Within thirty (30) days after the adoption to any Budget, the Board shall cause a copy of the Budget to be distributed to each Member, shall cause a copy of the Budget to be posted at the principal office of the Association, and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of Members as provided in the Bylaws. Unless at that meeting a majority of the Owners entitled to vote reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event the Budget is rejected, the periodic Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. In the event the Association does not have an address for any Member, such posting shall be deemed delivered to any such Member. At such time as the Association publishes a newsletter for Members, the Budget shall be published in such newsletter. Copies of the Budget shall be made available by the Association to any Members requesting a copy of the same upon payment of the reasonable expense of copying the same.

8.12 No Disbursements to Abate Adjoining Nuisances or Zoning Amendments. Nothing in this Declaration shall be construed so as to permit the Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community Area or to dispute any change to the zoning or assessment of any property adjacent to or outside the boundaries of the Community Area.

**8.13 Supplemental Administrative Functions and Recreation Functions Common Assessments.** Subject to the provisions of Section 8.11 of this Declaration, the Board by majority vote may levy one or more supplemental common assessments during such calendar year, if it determines that the important and essential functions of the Association cannot be funded by such lesser Common Assessments established in the original Budget.

**8.14 Administrative Functions Reserve Fund Deposit.** Each purchaser of a Site from Declarant (other than an Approved Builder) shall deposit within the Association an amount equal one-sixth (1/6) of the Common Assessment for the applicable calendar year which amount shall be held by the Association in the Administrative Functions Reserve Fund.

**8.15 Payment of Assessment.** Except for the Initial Assessment, Common Assessments shall be due and payable in advance to the Association by the assessed Member during the calendar year in one annual installment, on or before January 1 of each calendar year, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Member prior to January 1 of each year.

**8.16 Failure to Fix Assessment.** The failure by the Board of Directors to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Common Assessment of any other Assessment shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or Improvements to Association Properties or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

**8.17 Special Assessments for Capital Expenditures.** In addition to Common Assessments, the Board of Directors may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to construct or reconstruct, repair, or replace capital Improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board of Directors shall not levy Special Assessments without the vote of the Members representing at least two-thirds (2/3) of the Owners of Sites subject to the Special Assessment who are entitled to vote. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified.

**8.18 Reimbursement Assessments.** The Board of Directors may, subject to the provisions hereof, levy an Assessment against any Member if the willful or negligent failure of the Member or a Person claiming through the Member to comply with this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations shall have resulted in the expenditure of funds by the Association to cause such compliance including, but not limited to, court costs and attorneys' fees. Such Assessment shall be known as a Reimbursement

Assessment and shall be levied only after Notice and Hearing. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is owing.

8.19 Late Charges and Interest. If any Common Assessment, Special Assessment, or Reimbursement Assessment, or charge or fee provided for in this Declaration, or any installment thereof is not paid within thirty (30) days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board. Any Assessment or installment of an Assessment which is not paid within thirty (30) days after it is due, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly from the due date.

8.20 Attribution of Payment. If any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority: (a) to the Administrative Functions Reserve Fund until that portion of the Common Assessment has been satisfied; and (b) to the Administrative Functions Operating Fund. In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

8.21 Notice of Default. If any Common Assessment, Special Assessment, or Reimbursement Assessment, or charge or fee provided for in this Declaration, or any installment thereof is not paid within thirty (30) days after its due date, the Board of Directors may mail a Notice of Default ("Notice of Default") to the Owner and to each first Mortgagee of the Site who has requested a copy of the notice. The notice shall specify (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than thirty (30) days from the date the notice is mailed to the Member, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment of the installments of the Assessment for the then current calendar year, if applicable, and the filing and foreclosure of the lien for the default and of any right to bring a court action to assert the non-existence of a default or any other defense of the Member. If the delinquent Assessment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand, if applicable, and may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law in this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

8.22 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner or Member against who the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, or Reimbursement, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

8.23 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge against the defaulting Owner or Member.

8.24 Lien to Enforce Assessments. Pursuant to and in accordance with the Act, the Association shall have a statutory lien on a Site for any Assessment levied against that Site, or fines imposed against its Owner from the time Assessment or fine becomes due. All fees, charges, late charges, attorneys' fees, fines, and interest outstanding from such Owner shall be included in such lien. The lien created hereby and under the Act shall be prior to any declaration of homestead rights Recorded after the time that the Site becomes a part of the Community Area and shall have the priority attached to such lien under the Act and under Colorado law. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado or in any other manner provided under Colorado law.

8.25 Estoppel Certificate. Upon the written request of any Member and any Person with, or intending to acquire, any right, title, or interest in the Site of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and the unpaid with respect to a Site and the Owner thereof, and setting forth the amount of any Assessment levied against such Site which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all Persons for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

8.26 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

8.27 Real Estate Transfer Fee. There may be a transfer fee imposed by the management company, from time to time, in connection with the sale, long-term lease, or other conveyance of any Site other than the first time transfer of a Site from Declarant to an Approved Builder.

8.28 Street Lighting Tariff. All Lots are subject to and bound by Public Service Company tariffs which are not and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules, and regulations therein provided and subject to all future amendments and changes thereto. The Owner or Owners shall pay as billed a portion of the costs of public street lighting in the subdivision according to Public Service Company rates, rules, and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

## ARTICLE 9

## MISCELLANEOUS

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

9.2 Amendment of Declaration by Members. Except as otherwise provided in this Declaration or the Act, any provision, covenants, conditions, restrictions, or equitable servitudes contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by members of the Association holding at least sixty-seven percent (67%) of the voting power of the Association entitled to vote present in person or by proxy at duly constituted meetings of the Members. The approval of any such amendment or repeal shall be evidenced by the certification by the Members to the Board of Directors of the Association of the votes of Members. The amendment or repeal shall be effective upon the recordation of a certificate, executed by the President or Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the Members. Any amendment to the Declaration made hereunder shall be effective only when recorded. All amendment hereto shall be indexed in the grantee's index in the name of the declarant and the association and in the grantor's index in the name of each person executing the amendment.

9.3 Notices. Except as otherwise required by Colorado law, any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, telephone, facsimile or electronic mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Site of such Person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 05:00 P.M. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such Address may be changed from time to time by notice in writing to the Association.

9.4 Persons Entitled to Enforce Declaration. The Association, acting by authority of the Board, and any Member of the Association entitled to vote shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any property within the Community Area and the Owner thereof. The right of enforcement shall include the right to bring action for damages as well as an action to enjoin any violation of any provisions of this Declaration.

9.5 Violations Constitutes a Nuisance. Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief is sought for negative or affirmative action by any Person entitled to enforce the provisions of this Declaration.

9.6 Enforcement of Self-Help. The Association, or its authorized agent, may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration, provided such self-help is preceded by Notice and Hearing as set forth in the Bylaws.

9.7 Violations of Law. Any violations of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Community Area is hereby declared to be a violation of this declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

9.8 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

9.9 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

9.10 Limitation on Liability. The Association, the Board of Directors, the Design Review Committee, Declarant, and any Member, agent, or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

9.11 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

9.12 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

9.13 Colorado Common Interest Ownership Act. In the event that any of the terms and conditions of this Declaration are in conflict or inconsistent with the terms and conditions of the Colorado Common Interest Ownership Act, the terms and conditions of the Act shall control. All terms and provisions contained herein, to the extent possible, shall be construed in accordance with the terms and provisions of the Act.

9.14 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

9.15 Number and Gender. Unless the content requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

9.16 Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

9.17 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association 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 consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property as one plan.

9.18 Disclaimer Regarding Safety. THE ASSOCIATION HEREBY DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY AREA. ANY OWNER OF PROPERTY WITHIN THE COMMUNITY AREA ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, AND IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY AREA.

The undersigned, being the President and the Secretary of Carlson Farms Homeowners Association, Inc., hereby certify that Members holding at least 67% of the voting power of the Association have approved this Amended and Restated Declaration; or alternatively, the Association has obtained approval of this Declaration pursuant to Section 217(7) of the Act.

CARLSON FARM HOMEOWNERS ASSOCIATION, INC.  
a Colorado nonprofit corporation

By: Tiffany Villavicencio  
President

ATTEST:

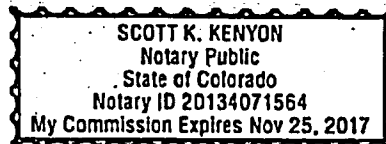
By: Debra L. Langendorfer  
Secretary

STATE OF COLORADO )  
COUNTY OF Weld ) ss.

The foregoing was acknowledged before me this 8 day of May, 2017, by TIFFANY VILLAVICENCIO, as President of Carlson Farms Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: NOV 25 2017



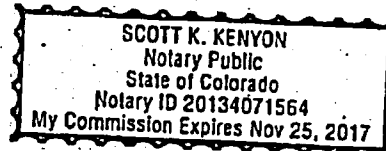
Scott K. Kenyon  
Notary Public

STATE OF COLORADO )  
COUNTY OF Weld ) ss.

The foregoing was acknowledged before me this 8 day of Weld, 2017, by Debra L. Langendorfer, as Secretary of Carlson Farm Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: NOV 25 2017



Scott K. Kenyon  
Notary Public



**Exhibit A**

Carlson Farms, Filing No. 1, pursuant to the recorded Plat for Carlson Farms Filing No. 1 recorded in the real property records of the Clerk and Recorder for Weld County, Colorado on October 19, 1999 at Reception No. 2727493 (See Exhibit A-1)

and

Carlson Farms, Filing No. 2, pursuant to the recorded Plat for Carlson Farms Filing No. 2 recorded in the real property records of the Clerk and Recorder for Weld County, Colorado on September 24, 2001 at Reception No. 2885960 (See Exhibit A-2).

**EXHIBIT A-1**

**CARLSON FARM FILING NO. 1 LEGAL DESCRIPTION**

(See Attached Plat)

PART OF THE S 1/2 OF SECTION 1  
T4N, R88W, 6TH F.M.  
WELD COUNTY, COLORADO



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Belmont Dist. Messrs  
OWNER, 7001 2ND ST. S.E. ALBANY, OREGON 97007

STATE OF COLORADO )

THE FOLLOWING REVISION WAS ACKNOWLEDGED SEPTEMBER 14, 1949

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THE NEW YORK PUBLIC LIBRARY  
ASTOR LENOX TILDEN FOUNDATION  
500 5TH AVENUE  
NEW YORK 17, N.Y.

AND SURVIVOR IN THE STATE OF COLORADO SO NEARLY CERTAIN THAT THE BURNING REMAINS OF THE BODY WERE MADE UNDER MY PERSONAL SUPERVISION AND CONTROL. I FURTHER CERTIFY THAT THE SURVEY AND THIS PLAT COME IN FULL ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO STATE BOARD OF REGISTRATION FOR PROFESSIONAL SURVEYING AND PROFESSIONAL ENGINEERING.

Chil-  
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RECEIVED BY THE BOARD OF TRUSTEES  
OF THE UNIVERSITY OF CALIFORNIA  
AT LOS ANGELES

THIS FIRM IS AUTHORIZED BY THE BOARD OF DIRECTORS OF  
HOLD COUNTY, STATE OF COLORADO.

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Chas. W. Young

STATEMENT OF APPROVAL BY THE PLANNED COUNCILMAN

THIS PLAN IS APPROVED BY THE ALAMEDA COMMISSION OF JUVENILE  
COURTS, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

STREET 44 MAR 193 11<sup>th</sup> DAY OF October

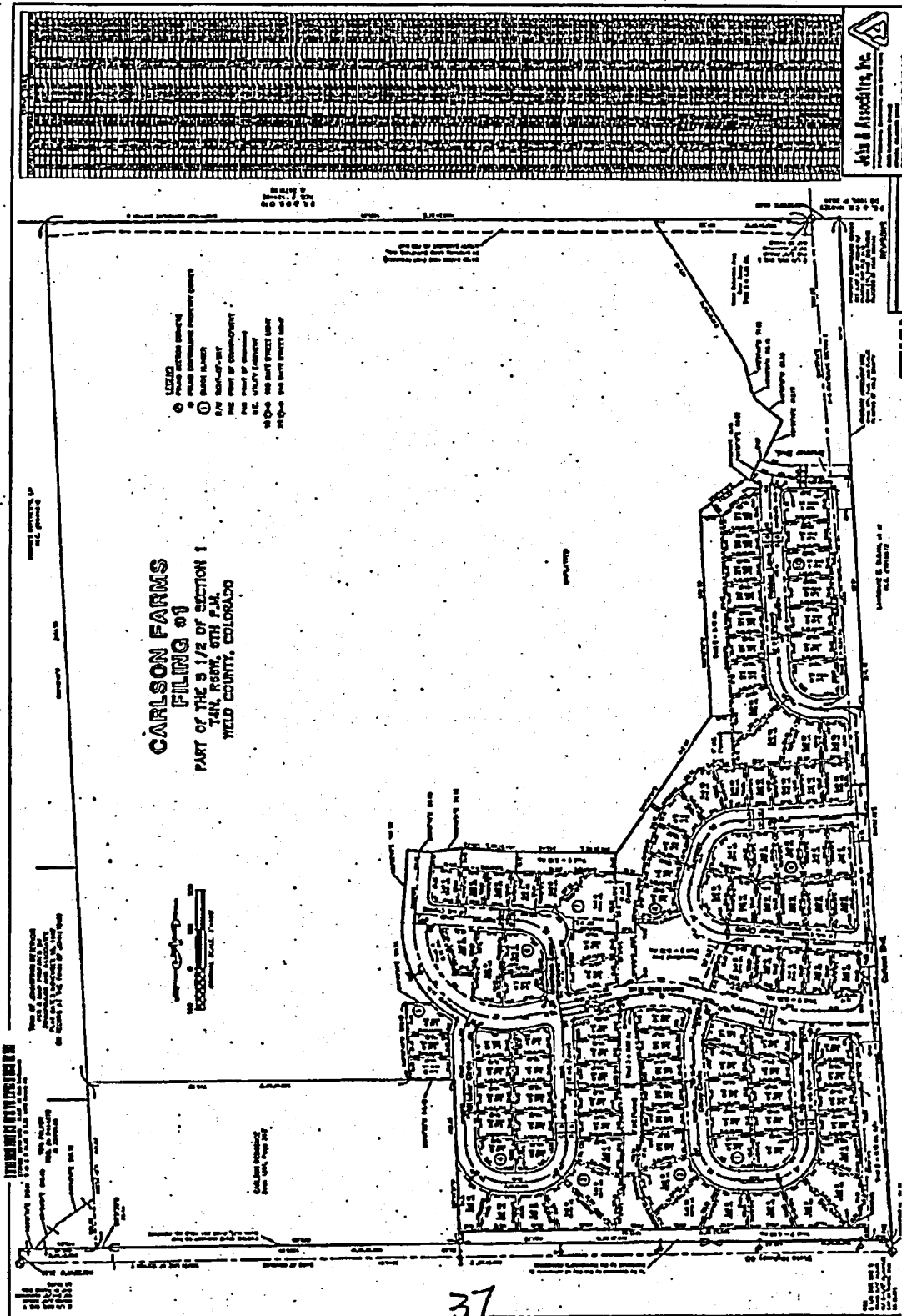
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Chairman of the Planning Commission, Town of Johnston

**•**

**John E. Associates, Inc.**  
Selling and Leasing Heavy Load  
and Specialized Trailers  
and Equipment

## **Summary**

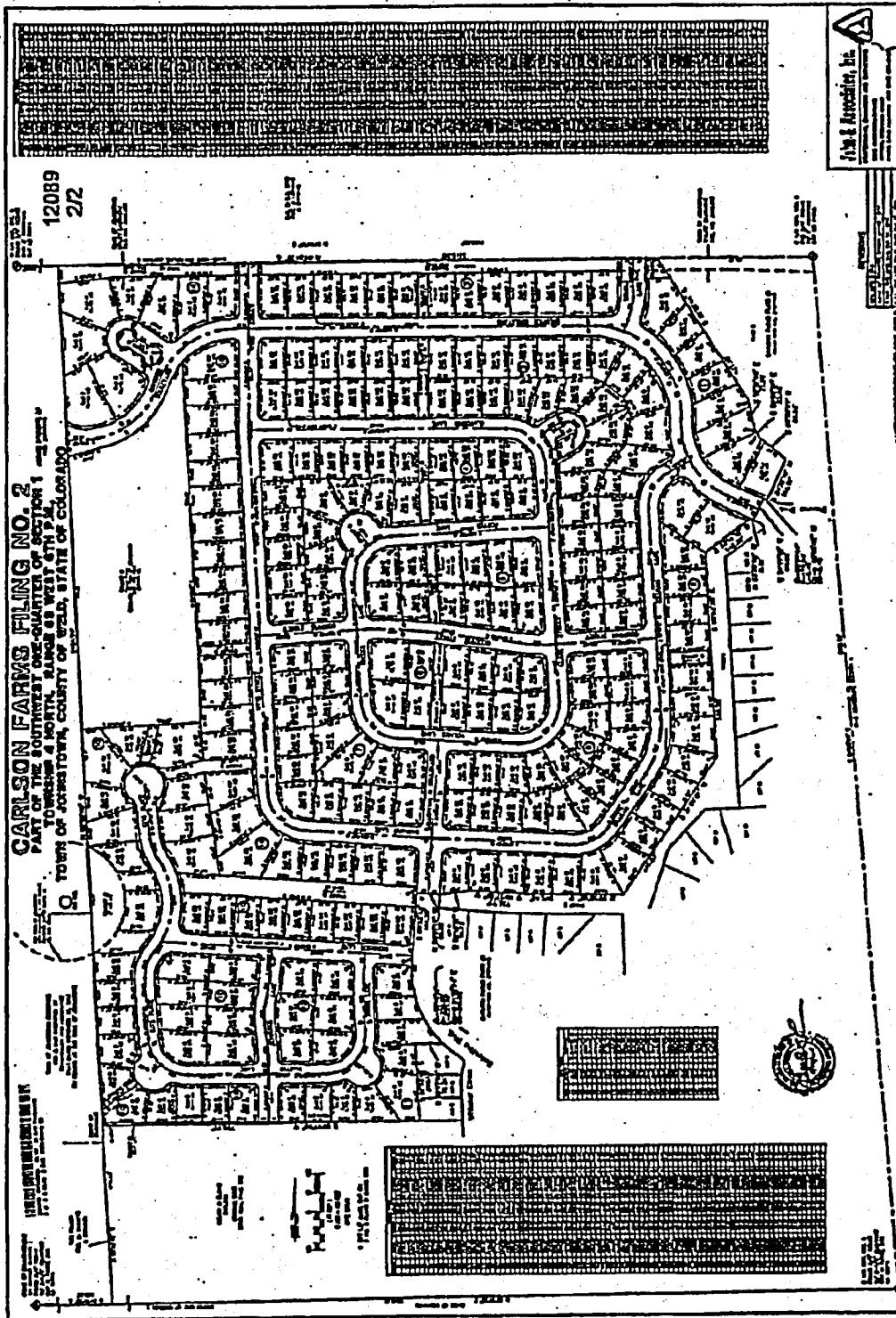


**EXHIBIT A-2**

**CARLSON FARMS FILING 2 LEGAL DESCRIPTION**

(See Attached Plat)

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**EXHIBIT B**

**COURT ORDER APPROVING AMENDED AND RESTATED DECLARATION**

[attached]



<p><b>DISTRICT COURT, WELD COUNTY, STATE OF COLORADO</b></p> <p>Court Address: 901 9th Ave. Greeley, CO 80631</p> <p>Phone Number: (970) 475-2400</p> <hr/> <p><b>Petitioner:</b></p> <p><b>Carlson Farms Homeowners Association, Inc.,</b> a Colorado nonprofit corporation</p>	<p>DATE FILED: May 5, 2017 10:48 AM CASE NUMBER: 2017CV30208</p> <p><b>▲ COURT USE ONLY ▲</b></p> <p>Case Number: 2017CV030208</p> <p>Div.: 4</p>
<p><b>ORDER APPROVING AMENDED AND RESTATED DECLARATION, PURSUANT TO C.R.S. §38-33.3-217(7).</b></p>	

**THIS MATTER** comes before the Court for hearing on May 5, 2017. After reviewing the pleadings filed in the matter and considering the statements of Counsel, the Court makes the following Findings of Fact and Conclusions of Law and Orders:

**Findings of Fact and Conclusions of Law**

1. Carlson Farms Homeowners Association, Inc. ("Association") seeks to amend the Declaration of Covenants, Conditions and Restrictions for Carlson Farms recorded in the real property records of the Weld County, Colorado at Reception No. 2777413, as amended and supplemented by documents of record (collectively, the "Declaration") by means of a proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions for Carlson Farms Filing No. 1 and Filing No. 2 (the "Proposed Amended and Restated Declaration").

2. The Association notified its Owners of the Proposed Amended and Restated Declaration on June 21, 2016, June 28, 2016, October 7, 2016, October 10, 2016, October 18, 2016, October 24, 2016, and February 22, 2017.

3. The Members of the Association discussed the Proposed Amended and Restated Declaration (as submitted to the Court in the Petition filed herein) at meetings of the Association held on November 17, 2016 and March 1, 2017.

4. Based on the foregoing, the Association has complied with the notice and

meeting requirements set forth in Section 38-33.3-217(7)(a)(I) and (II).

5. At least half of the Members required by the Declaration to approve the Proposed Amended and Restated Declaration have voted for the Proposed Amended and Restated Declaration, pursuant to C.R.S. §38-33.3-217(7)(a)(III).

6. Based on the Petition filed in this case, the Association has not obtained the required consent and approval of the Owners, and so, has filed its Petition and caused this matter to come before the Court, as allowed for by state statute.

7. Based on the Certificate of Mailing filed in this case, Notice of the Petition was mailed to all of the Owners within the Association, to the declarant, and to the others indicated in a Certificate of Mailing filed in this case.

8. The notice given is in compliance with the requirements of the applicable state statute.

9. A hearing regarding the petition was held, as referred to above, on May 5, 2017, before this Court.

10. The Association has satisfied all of the requirements of C.R.S. §38-33.3-217(7).

11. Neither 33% or more of the Owners nor 33% nor the declarant have filed written objections with the Court prior to the hearing. Lender approval is not required for the proposed amendment.

12. Neither the Federal Housing Administration nor the Veterans Administration is entitled to vote on the proposed amendment.

13. The Proposed Amended and Restated Declaration presented to the Court does not terminate the Declaration. The preponderance of the evidence and application of plain language of the Declaration indicates that the Proposed Amended and Restated Declaration is an amendment, and not a termination.

14. The Proposed Amended and Restated Declaration presented to the Court does not change the allocated interests of the Owners.

15. The Period of Declarant control has expired and approval of the Declarant is not required.

16. Based upon these Findings of Fact and Conclusions of Law and pursuant to the requirements of C.R.S. §38-33.3-217(7)(e) and (f), it is hereby:

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**ORDERED** that the Proposed Amended and Restated Declaration is approved by this Court and shall be binding upon all Owners in the Carlson Farms community and shall have the same legal effect as if were adopted pursuant to the amendment requirements set forth in the Declaration upon the recording of the Amended and Restated Declaration, with this Order attached, with the Clerk and Records' office for Weld County, Colorado.

**IT IS FURTHER ORDERED** that the Association record a copy of the approved Amended and Restated Declaration together with a copy of this Order with the Clerk and Recorder's office for Weld County, Colorado.

*So Ordered:*  
May 5, 2017

BY THE COURT:

*Todd Taylor*

Todd Taylor  
District Court Judge

