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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
OF FOUNTAIN MESA VILLAGE**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FOUNTAIN MESA VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 3rd day of FEB, 2006, by CHEYENNE MOUNTAIN DEVELOPMENT COMPANY, LLC, a Colorado limited liability company, TERRA COTTA INVESTMENTS, LLC, a Colorado limited liability company, and JRJ LAND, LLC, a Colorado limited liability company (collectively, "Declarant").

BACKGROUND AND PURPOSE

A. Declarant owns real property in the City of Fountain ("City"), El Paso County, Colorado, which is described in Exhibit A attached hereto and incorporated by reference (the "Property" or "Fountain Mesa Village").

B. This Declaration is executed and recorded (a) in furtherance of a common and general plan for the Property; (b) to protect and enhance the quality, value, desirability and attractiveness of the Property; (c) to provide for design review and covenant enforcement within the Property; and (d) to define duties, powers and rights of Declarant, the Association, and the owners of Lots within the Property.

C. Fountain Mesa Village is a "common interest community," as defined in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.* (the "Act"). As provided in Section 38-33.3-116, C.R.S., Fountain Mesa Village is only subject to Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107 of the Act, by virtue of the limitations on Assessments contained in Section 5.06 of this Declaration. Except as stated in this paragraph, the Act shall not apply to this Declaration, the Association, or the Property.

D. Declarant intends that at such time as a special improvement maintenance district for the Property (the "District") is created under applicable City ordinances, and upon the Association's conveyance of all or a portion of the Common Area to the City, and the City's acceptance of such conveyance, the Association will no longer own or be responsible for the maintenance of the Common Area so conveyed. Until that time, the Association will own and be responsible for maintaining the Common Area.

DECLARATION

Declarant, for itself and its grantees, successors and assigns, does hereby impose and establish upon the Property, and all of the Property shall hereafter be subject to, all of the following restrictions, covenants, easements and conditions; all of which shall be deemed to run with the land and shall inure to the benefit of and be binding upon Declarant, its grantees, successors and assigns, and all parties having or acquiring any right, title or interest in or to the Property or any part thereof.

ARTICLE 1 DEFINITIONS

The following words and phrases, when used in this Declaration, shall have the meanings specified in this Article 1.

1.01 "Accessory building" shall mean any detached garage, building or structure used for storage or for any other purpose that is located on a Lot.

1.02 "Applicant" shall mean any Person, other than Declarant, desiring to build, erect or install any Improvement on a Lot or on any portion of the Property who submits plans for the Improvement to the DRC.

1.03 "Assessment" shall have the meaning set forth in Article 5.

1.04 "Association" shall mean the Fountain Mesa Village Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

1.05 "Association Documents" shall mean this Declaration, the Association's Bylaws and Articles of Incorporation, the recorded plats of the Property, and any Rules and Regulations, as they may be amended from time to time.

1.06 "Board" shall mean the Board of Directors of the Association.

1.07 "Builder" shall mean any Person other than Declarant that purchases one or more Lots for the purpose of constructing a Residence for later sale to consumers.

1.08 "City" shall mean the City of Fountain, El Paso County, Colorado.

1.09 "Common Area" shall mean all real and personal property, together with any and all Improvements now or hereafter owned by the Association or which the Association hereafter maintains, holds or uses for the common use and enjoyment of all of the Owners, subject to any Rules and Regulations. The Common Area shall include, without limitation, Tracts A, B, C and D, Creek Terrace at Mesa Village, and Tract A, Tuscan Ridge at Mesa Village Filing No. 2, and all other property that may be conveyed to the Association by Declarant or other Person with Declarant's permission. All or a portion of the Common Area may be conveyed to the City and thereafter, the District and not the Association shall be responsible for owning and maintaining the Common Area conveyed.

1.10 "Declarant" shall mean, collectively, Cheyenne Mountain Development Company, LLC, a Colorado limited liability company ("CMDC"), Terra Cotta Investments, LLC, a Colorado limited liability company, and JRJ Land, LLC, a Colorado limited liability company, their successors and assigns. A Person shall be deemed a successor or assign of Declarant only if specifically designated in a recorded instrument as a successor or assign of Declarant under this Declaration, and only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the recorded instrument. Notwithstanding the foregoing, a successor to CMDC, Terra Cotta Investments, LLC or JRJ Land, LLC by consolidation or merger shall automatically be deemed a successor or assign of CMDC, Terra Cotta Investments, LLC or JRJ Land, LLC as Declarant under this Declaration without the requirement of recording an instrument.

1.11 "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Fountain Mesa Village.

1.12 Design Guidelines shall mean the architectural, construction, structural and/or aesthetic criteria, rules or standards, if any, established by the Board from time to time that will apply to Improvements within all or specified portions of the Property.

1.13 "Design Review Committee" ("DRC") shall have the meaning set forth in Article 3.

1.14 "District" shall mean the special improvement maintenance district established under applicable City ordinances responsible for the maintenance of all or a portion of the Common Area after the Common Area is conveyed to the City.

1.15 "Improvement" shall mean anything that alters the previously existing exterior appearance of any land, including but not limited to Residences, buildings, outbuildings, patios, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), or other utilities.

1.16 "Lot" shall mean a parcel of land designated as a Lot in a recorded plat of the Property, together with all associated appurtenances and Improvements associated therewith, now existing or subsequently created.

1.17 "Notice and Hearing" shall have the meaning set forth in Section 4.06 herein.

1.18 "Owner" shall mean the record titleholder, excluding Declarant and the Association, but including Builders, whether one or more Persons, of fee simple title to a Lot.

1.19 "Period of Declarant Control" shall mean until Declarant no longer owns any real property within the Property, or such earlier date as may be designated by Declarant pursuant to a recorded instrument terminating the Period of Declarant Control.

1.20 "Person" shall mean a natural individual, trust or legal entity.

1.21 "Property" shall mean the real property described on Exhibit A attached hereto and all real property that Declarant may make subject to the Declaration in the future pursuant to a recorded document, but excluding any real property that Declarant may withdraw from this Declaration.

1.22 "Residence" shall mean an Improvement on a Lot that is intended or used for residential occupancy.

1.23 "Rules and Regulations" shall mean those rules and regulations, if any, adopted by the Board as provided in Section 4.05 (d) of this Declaration, as the same may be amended from time to time.

1.24 "Site Assessment" shall have the meaning set forth in Section 5.16.

ARTICLE 2 **LIVING ENVIRONMENT STANDARDS**

2.01. Land Use, Building Type and Occupancy. All of the Property shall be used for single-family residential purposes only. No more than one Residence may be permitted on any Lot. Garages shall be used only for the storage of motor vehicles and accessories, and shall not be converted to living space without the prior approval of the DRC. This restriction shall not prohibit the use of a residential-type structure as a construction and/or sales office by a Builder

upon Declarant's approval or by an Applicant upon DRC approval.

2.02. Design Review. No Improvement shall be commenced, erected, placed or maintained on any Lot without the prior approval of the DRC as provided in Article 3.

2.03 Minimum Setbacks. No building shall be located on any Lot nearer to the front lot line or nearer to the side street line than any minimum building setback lines which may be shown on a recorded plat or overall development plan (ODP) of the Property. Five (5) foot side yards shall be the minimum requirement for other permitted Accessory Buildings located thirty-five (35) feet or more from the front building setback line. For the purpose of this Section 2.03, eaves, fireplaces, steps and open porches may encroach into a setback area, but this shall not be construed to permit eaves, fireplaces, steps, porches or any other portion of a building on a Lot to encroach upon another Lot.

2.04. Easements and Utilities Rights of Way. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats of the Property. Within these easements, no structure, planting or other material shall be placed or permitted to remain which damages or interferes with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements.

When installing Improvements on a Lot, an Owner is responsible for locating all water, sewer, gas, electrical, cable television and other utility lines and easements. An Owner must not construct any Improvements over utilities easements without the consent of the utility involved and an Owner will be responsible for any damage to utility lines caused by their work. An Owner should request the location of underground utility lines and easements through a utility line location center.

2.05. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon to cause annoyance, embarrassment, discomfort, or a nuisance in the neighborhood. No offensive or hazardous activity shall be permitted on any Lot or in any Residence. No annoying lights, sounds or odors shall be permitted to come from any portion of a Lot.

2.06. Vehicles.

(a) Parking. A boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes, any towed trailer unit, motorcycle, all terrain vehicle, recreational vehicle or non-pickup truck shall not be parked on any street or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the DRC. An exception to this restriction will be made for an emergency motor vehicle used by an Owner who is a bona fide member of a volunteer fire department or is an employee of an emergency service provider, provided that the vehicle: i) has a gross weight rating of 10,000 pounds or less; ii) bears an official emblem of the emergency services provider; and iii) does not obstruct emergency access or interfere with the reasonable needs of other Owners. Passenger vehicles owned, leased, rented or used by Owners or any other Person used as primary transportation on a day-to-day basis shall not be parked on any street within the Property for longer than two weeks without being moved.

(b) Vehicle Repairs. The maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine, apparatus, trailer, equipment or device may not be carried on except within a completely enclosed Improvement which

screens the sight and sound of the activity from adjoining streets and from neighboring property.

(c) Abandoned or Inoperable Vehicles and Equipment. Any type of stripped down, partially wrecked or abandoned or other similar vehicle which has not been driven under its own propulsion for a period of two weeks or longer, or a machine, apparatus, equipment or device, or any sizeable part thereof, shall not be permitted to be placed anywhere within the Property except within a completely enclosed Improvement.

2.07. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, excavation or other out-building will be permitted on any Lot, except as may be determined to be necessary during construction and authorized by the DRC prior to installation.

2.08. Accessory Buildings. All Accessory Buildings shall be of the same colors, siding and roofing materials as the Residence constructed on the Lot and shall harmonize in appearance with such residence. An Accessory Building shall not exceed eleven (11) feet in height and shall not contain more than one hundred twenty (120) square feet. Accessory Buildings must be approved in advance of construction by the DRC.

2.09. Maintenance Equipment. All maintenance equipment shall be stored on a Lot in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets.

2.10. Weeds and Insects. All Lots and yards are to be kept free of weeds and harmful insects.

2.11. Clotheslines, Dog Runs and Storage. Outdoor clotheslines, dog runs, service yards, wood piles or storage areas shall be located or adequately screened so as not to be visible from neighboring properties or any adjacent street.

2.12. Satellite Dishes and Antennas. Except as provided below in this Section, no aerial, antenna or other device for reception of radio, television, microwave device or other electronic signals may be maintained on the roof of any Improvement, nor shall such structure be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for structures, other than FCC Structures (defined below) must be approved by the DRC prior to installation. An FCC Structure is defined by the Federal Communications Commission as an antenna that is: (i) A "dish" antenna that is one meter (39.37") or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite; (ii) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; or (iii) An antenna that is designed to receive local television broadcast signals on a mast less than 12 feet above the roofline as defined. An FCC structure may be installed on a Lot without prior Committee approval, subject to the following conditions:

(a) To the extent feasible, the satellite dish/antennae should be placed in the rear or side yard in such a manner that it is screened from adjacent street(s) and neighboring properties. Rooftop mounting that is visible from adjacent street(s) is discouraged.

(b) The satellite dish/antennae should be installed at the lowest possible placement, utilizing ground level siting (unless a signal is not attainable).

(c) The satellite dish/antennae should be painted to match the surrounding environment or screened with a reasonable amount of plantings to minimize its visual impact to surrounding areas.

2.13. Solar Energy Devices. All solar energy devices installed on a Lot must be designed by a licensed professional and approved in advance by the DRC. Plans for solar energy devices submitted to the DRC must bear the architect's stamp. All solar energy devices must comply with any requirements imposed by the City or other applicable governmental authority.

2.14. Fences. No fence may be erected on any Lot or the Property unless the fence is constructed of wood or vinyl material and does not exceed six (6) feet in height. Use of any other fencing material must be approved in advance by the DRC. No fencing shall be allowed in the minimum building setback areas in front or on the side of a Residence without prior approval by the DRC. An Owner shall be responsible, at the Owner's expense, for the maintenance and repair of all fences on the Owner's Lot. An Owner must obtain prior DRC approval for the installation of a fence at any location other than on the perimeter of a Lot.

2.15. Signs. One (1) temporary sign advertising the real property for sale or rent, or for a garage sale, which is no more than six square feet in size, may be installed on a Lot. Trade signs identifying a contractor performing work such as landscaping, painting, remodeling, or similar work may only be displayed while such work is in progress on a Lot and must be removed upon completion of the work. No Owner or Person may post signs upon any portion of the Common Area.

2.16. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot. An aggregate number of not more than three cats or dogs (which must be restrained or fenced at all times) may be kept on a Lot. Domesticated birds or fish and other small domestic animals permanently confined indoors will be allowed in reasonable number, as determined by the Board. 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 otherwise a nuisance. No animals may be kept, bred or maintained on a Lot for any commercial purpose. The Owner of a Lot upon which an animal is kept is responsible for payment of any and all damage caused to the property of others, including Common Areas. Owners are responsible for cleaning up after their pets on any portion of the Property.

2.17. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish or other unsightly materials. Trash, garbage, ashes, rubbish, grass and shrub clippings, building materials, scrap materials or other waste may not be kept on a Lot except in sanitary containers that are adequately screened from neighboring properties and adjacent streets.

2.18. Home Occupation. Except as may be required by Declarant or a Builder in pursuit of construction activities within the Property, Lots shall be used for residential use only including uses which are customarily incident to such residential use, and may not be used at any time for business, commercial or professional purposes. However, an Owner may conduct business activities within a Residence in accordance with applicable City ordinances and further provided that all of the following conditions are met:

- (a) the business conducted is clearly secondary to the residential use of the Residence and is conducted entirely within the Residence;
- (b) the existence or operation of the business is not detectable from outside of the Residence by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;
- (c) the business does not result in an undue volume of traffic or parking within the Property;
- (d) the business conforms to all applicable zoning requirements and is lawful in nature; and
- (e) the business conforms to any Rules and Regulations that may be adopted by the Board from time to time.

2.19. Landscaping. Unless limited by a governmental regulation or ordinance implemented after this Declaration is recorded, which governmental regulation or ordinance is thereafter acknowledged in writing by the DRC, the front yard of a Lot may not contain less than forty percent (40%) living material. Front yards must be maintained in an attractive and well-groomed manner. For purposes of computing the 40% living material requirement, the front yard shall not include the driveway and sidewalk adjacent to the front yard. It is the intent of the DRC to limit the extensive use of gravel, rock or paving as part of the landscaping on a Lot.

2.20. Changes or Alterations. No change in the color or other exterior appearance of a Residence, or an alteration of fences, other structures, landscaping or any other previously approved Improvement may be made until the proposed change has been approved by the DRC.

2.21. Soils, Grading and Maintenance. The soils within the State of Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of any Improvement if the Improvement and the Lot containing it are not properly maintained. Each Owner should take special care to insure and maintain water drainage away from the Residence and not to interfere with the drainage patterns established by the grading plan for the Property and the finished Lot grading set by a Builder. Lot drainage patterns cannot be directed to adjacent Lots, but must be maintained within the boundaries of the Lot generating the drainage and then to adjacent streets or drainage easements.

ARTICLE 3 DESIGN REVIEW

3.01. Design Review and Approval. The Design Review Committee ("DRC") is hereby formed to carry out the administration and enforcement of the design review provisions of this Declaration. Declarant shall act as the DRC until such time as Declarant: i) no longer owns property within the Property; ii) a Residence has been completed on every Lot in the Property and sold to an Owner other than a Builder; or iii) such earlier time as Declarant assigns its rights to a successor, to include the Association. Upon assignment to the Association, the Association, through its Board, shall act as the DRC and shall have the design review, approval and enforcement functions set forth in this Declaration. The Board may delegate in writing its design review, approval and enforcement functions to a committee appointed by the Board.

3.02 Approval Procedure. Any Applicant desiring to build or install any Improvement, or to alter, remove, add to or change any previously approved or existing Improvement on any Lot or other portion of the Property shall submit two sets of plans to the DRC. The plans must show the shape, dimensions, materials, floor plans, location, exterior elevations, alterations, grading, drainage and color scheme for the Improvement. Incomplete submittals will be returned to the Applicant without review. The Applicant must provide an address where the DRC's written decision may be mailed. The DRC may charge reasonable fees to cover expenses for the professional review of plans, if required.

The Applicant should submit the plans on a date sufficiently far in advance of commencement of construction to allow the DRC to complete its review of the plans within the time limits set forth in this Section 3.02. Following the submittal of plans, the DRC shall have thirty (30) days in which to provide its written decision to the Applicant, which decision may be: i) approval; ii) approval subject to certain conditions, or iii) disapproval. If necessary, the DRC may have an additional twenty (20) days for review of the plans as long as notice of such extension is provided to the Applicant within the original 30-day review period. If the DRC fails to give written notice of its decision to the Applicant within the time limit specified above, approval of the plans shall be deemed granted and specific written approval by the DRC will not be required. The DRC will return one set of plans to the Applicant and retain the other set of plans, along with a written record of its decision, for a period of two (2) years from the date of the DRC's written decision. If there is no written decision by the DRC, the DRC will retain the plans for a period of thirteen (13) months after the Applicant's submittal of the plans to the DRC. Thereafter, the DRC may dispose of such plans. Plan approval will automatically expire one (1) year after approval if construction is not commenced within the one-year period. If approval has expired, the Applicant must submit a new request to the DRC for approval.

3.03 Approval Standards. In approving or disapproving plans, the DRC shall have the right to take into consideration the specific requirements and provisions of this Declaration; the use and suitability of the proposed Improvement; the materials with which the Improvement is to be built; the quality of workmanship; the topography, size and shape of the Lot upon which the Improvement will be installed, the harmony of the external appearance of the Improvement with its surroundings; and the degree, if any, to which the proposed Improvement will result in an unreasonable interference with views or cause intrusions of sound, light or other effect on neighboring Lots or other portions of the Property. Approvals shall not be unreasonably withheld from any application properly submitted to the DRC. A majority of the DRC members attending a meeting at which the plans are reviewed shall constitute a quorum, and a majority vote of the quorum of the DRC members present shall constitute action of the DRC.

3.04 Variances. The DRC shall have the authority to grant for a Lot a variance from any covenant set forth in this Declaration that is within the authority of the DRC. Such variance will only be made upon the DRC's finding of exceptional and extraordinary circumstances where literal enforcement of the covenant will create a material hardship to the Applicant, and that such a variance is not contrary to the interests of the Property, the Association or other Lot Owners. A variance may also be granted to comply with governmental ordinances, rules, policies or laws that currently exist or may exist in the future. A variance may be made subject to terms and conditions approved by the DRC. If a variance is denied, the Applicant may not bring another application for a similar variance for the same Lot for a period of one (1) year after submittal of the original request.

3.05. No Liability. Neither the Declarant, the Association, the DRC, nor any of its members, employees or agents, shall be liable in damages to any person or entity submitting plans for approval or requesting a variance, nor to any Owner of a Lot or any other portion of the

Property, by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval, or failure to approve or disapprove any plans or variances. Approval by the DRC shall not mean that plans are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Applicant to comply with all codes, ordinances and regulations. Any Applicant submitting any plans to the DRC agrees and covenants that the Applicant will not bring any action or suit to recover damages against Declarant, the Association, the DRC or its members, individually or collectively, or their advisers, employees or agents. It is the intent of this Declaration that the DRC shall be recognized as a nonprofit organization for purposes of C.R.S. §13-21-115.5, §13-21-115.7 and §13-21-116 (and any successor statutes), and that individuals serving on the DRC shall, to the fullest extent permitted by such statutes, be protected from personal liability.

ARTICLE 4 FOUNTAIN MESA VILLAGE HOMEOWNERS ASSOCIATION, INC.

Fountain Mesa Village Homeowners Association, Inc. is a Colorado nonprofit corporation organized to promote the common interests of the Owners. The Association shall have the power to do anything that may be necessary or desirable to further the common interests of the Owners, to review and approve plans for Improvements, to maintain the Common Area which the Association is obligated to maintain pursuant to this Declaration, to administer and enforce the covenants contained in this Declaration, and to improve and enhance the attractiveness and desirability of Fountain Mesa Village.

4.01 Association Structure. The Association shall have the duties, powers and rights set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws. In case of conflict between this Declaration and the Articles and Bylaws, the Declaration shall control, and in case of conflict between the Articles and Bylaws, the Articles shall control.

4.02 Board of Directors. The Association shall be managed by its Board of Directors, which shall consist of not less than one (1) nor more than five (5) Persons. All members of the Board shall be either representatives of Declarant or Owners. Declarant reserves the right to appoint and remove officers and members of the Board during the Period of Declarant Control. The terms and qualification of the members of the Board shall be fixed in the Bylaws. The Board may, by resolution, delegate portions of its authority to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized committee, officer, agent or employee thereof without a vote of Owners, except as otherwise specifically provided in this Declaration or required by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon the Association and all Owners and other Persons.

4.03 Membership in the Association. Each Owner of a Lot shall be a member of the Association. Membership shall automatically pass with fee simple title to the Lot and is not severable from the Lot. Declarant shall hold one (1) membership interest in the Association for each Lot owned by Declarant. Membership in the Association is not assignable separate and apart from fee simple title to a Lot, except that an Owner may assign some or all of the Owner's rights as an Owner and as an Association member to a contract purchaser or tenant, and may arrange for such person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any contract

purchaser or tenant shall be extinguished automatically upon termination of the sales contract or tenancy. All rights and privileges of Association membership shall be subject to the Association Documents.

4.04 Voting Rights of Owners.

- (a) Entitlement. There shall be one (1) vote for each Lot.
- (b) Joint or Common Ownership. If a Lot is owned by more than one Person, the vote to which such Lot is entitled shall also be held jointly or in common in the same manner as title to the Lot. The one vote for such Lot shall be cast, if at all, as an undivided unit, and neither fractional votes nor split votes will be allowed. If the common or joint Owners are unable to agree among themselves as to how their vote shall be cast as an undivided unit, they will lose their right to cast their vote on the matter in question. If only one of the joint or common Owners is present at an Association meeting where a vote may be cast, that Owner shall be entitled to cast the vote belonging to the joint or common Owners, unless another joint or common Owner shall have delivered to the secretary of the Association prior to the meeting a written statement to the effect that the Owner wishing to cast the vote has not been authorized to do so by the other joint or common Owner or Owners.
- (c) Proxies. Declarant and any Owner may give a dated, revocable written proxy to any person authorizing the latter to cast a vote on any matter or a particular matter. Such written proxy shall be executed by the Declarant, Owner or a duly authorized attorney-in-fact. A proxy may be revoked by giving notice to the Board or by the physical presence of Declarant or the Owner at the meeting. Proxies shall expire no later than eleven (11) months after the date of the proxy.

4.05 General Duties and Powers of the Association.

(a) Acceptance of Property and Facilities Transferred by Declarant. The Association shall accept title to any real or personal property, including the Common Area, transferred to the Association by Declarant or by any Person with Declarant's permission, together with the responsibility to perform any and all associated Association functions, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. No representation, express or implied, is made that the Declarant will transfer property to the Association, except as specifically provided in this Declaration.

(b) Acquisition of Property and Improvements. The Association may acquire real or personal property or interests in such property for the common benefit of Owners.

(c) Management and Care of the Common Area and Other Property. Until the Association is no longer responsible for maintenance of the Common Area, the Association shall maintain, operate and repair all Common Area and keep the same in a condition as may be necessary or desirable. In connection therewith, the Association may construct or reconstruct Improvements on the Property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Property, whether or not owned by the Association, in any circumstance where such maintenance is required pursuant to a plat, ordinance or other governmental obligation affecting some or all of the Property.

(d) Adoption of Rules and Regulations and Design Guidelines. The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and related matters, the operation of the Association, the repair and maintenance of the Common Area, and the use of any other property within Fountain Mesa Village, including Lots. The Board may adopt Design Guidelines for the use of the DRC and Owners to assist in the design review process and approval of Improvements located within the Property. Any Rules and Regulations and Design Guidelines shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Written notice of the proposed adoption, amendment or repeal of all or a portion of the Rules and Regulations and Design Guidelines shall be provided to all Owners by the Association, and copies of the currently effective Rules and Regulations and Design Guidelines shall be made available to each Owner upon request and payment of any copying cost. Rules and Regulations and Design Guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration. If there is a conflict between the Rules and Regulations or the Design Guidelines and the provisions of this Declaration, the Declaration shall prevail.

(e) Power to Employ Managers, Consultants, and Employees. The Association shall have the power to hire consultants or contractors, and delegate to them the performance of any functions for which the Association has responsibility under this Declaration, including, without limitation, the repair, maintenance and improvement of the Common Area, review and approval of plans and covenant enforcement. Notwithstanding such delegation, the Association and the Board shall remain ultimately responsible for the performance and exercise of such functions.

(f) Enforcement of Association Documents. The Association shall have the power to enforce the provisions of the Association Documents and shall take such action as the Board deems necessary to cause compliance by each Owner and other Persons. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the Association Documents by any one or more of the following means: (a) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of the Association Documents, by mandatory injunction or otherwise; (b) by commencing and maintaining actions and suits to recover damages for a violation of any of the provisions of the Association Documents; (c) by suspension, after Notice and Hearing, of the voting rights of an Owner; (d) by levying and collecting, after Notice and Hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations, from any Owner or other Person determined to be in violation of any provision of the Association Documents; and (e) by exercising any right or remedy permitted by law or in equity.

(g) Borrowing and Pledge of Future Assessments. Upon a majority vote of the Board, the Association may borrow funds for capital or other expenses and grant a security interest in the Association's right to levy and collect assessments as collateral for such borrowing.

(h) Conveyance of Common Area to the City. Notwithstanding any provision hereunder, upon the City's establishment of the District for the purpose of maintaining the Common Area, the Association shall convey to the City fee simple title to all or a portion of the Common Area which the District shall thereafter have the responsibility to maintain.

(i) Inclusion of Lot 1, Creek Terrace at Mesa Village in the Property. Upon the written request of the owner(s) of Lot 1, Creek Terrace at Mesa Village (as may be subdivided in the future) ("Lot 1"), that Lot 1 be made subject to this Declaration, and provided that Lot 1 meets the covenants, conditions and restrictions set forth in this Declaration, the Association shall accept

and include Lot 1 in the Property subject to this Declaration by a recorded document acknowledged by the Association and the Lot 1 owner(s). The owner(s) of Lot 1 shall then be members of the Association with all membership rights and obligations described in the Association Documents.

4.06 Notice and Hearing. Under certain circumstances where the Board determines a hearing is necessary, and as further provided in this Declaration and Rules and Regulations, an Owner or other Person alleged to be in violation of any provision of an Association Document shall be given written notice of the violation and the scheduling of a hearing by the Board or its designated representative to hear evidence concerning the violation and render a decision. The notice shall provide the day, time and location of the hearing. The notice shall be hand-delivered or sent by U.S. Mail, postage prepaid, to the Owner or Person alleged to be in violation not less than ten (10) days prior to the scheduled hearing date. The Association and the Owner or other Person may audiotape the hearing. The Association and the Owner or other Person shall have the opportunity to present evidence in support of their position. Within ten (10) days of the hearing, the Board or its designated representative will issue its decision. The hearing will occur whether or not the Owner or other Person attends the hearing, absent extraordinary circumstances as determined by the Board or its designated representative. The decision shall be final and binding unless clearly arbitrary and there is no competent evidence to support the decision.

4.07 Transfer of Records. No later than sixty (60) days after the expiration of the Period of Declarant Control, Declarant shall deliver to the Association all records and other tangible property of the Owners and the Association held by or controlled by the Declarant.

4.08 Association Easements. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over, in and under all property within the Property, together with the right to make such use of the Property as may be necessary or appropriate in carrying out such maintenance or other rights or obligations, provided that the Association, in utilizing such easements, will:

- (a) Provide reasonable advance notice to a Lot Owner before it enters upon the Lot, unless an emergency exists;
- (b) Limit its use of an easement on a Lot to regular business hours, unless an emergency exists;
- (c) Be responsible for any material alteration to an Owner's Lot that causes damage.

ARTICLE 5 ASSESSMENTS

5.01 Purpose of Assessments. The Assessments shall be used to pay expenses of the Association, including those incurred in connection with the management, ownership, maintenance, repair, replacement, and insurance of the Common Area, until such time as the Common Area is conveyed to the City and maintained by the District, and for design review, covenant enforcement activities and other Association obligations under this Declaration.

5.02 Declarant's Obligation. Until Assessments are first levied by the Association, Declarant shall pay the expenses of the Association.

5.03 Obligation for Assessments. Each Owner, for each Lot owned within the Property, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner and amounts, and at the times prescribed herein, the Assessments as described in this Declaration. Assessments shall be both a personal obligation of the Owner and a lien against the Owner's Lot. Joint or common Owners shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise avoid personal liability for the payment of the Assessments by non-use of the Common Area, by non-use of any service provided by the Association for Owners, by abandonment or leasing of the Owner's Lot, or by asserting any claims against the Association, the Declarant or any other Person. Owners of Lots having the exclusive use and benefit of a particular Common Area or having services performed by the Association that are not performed for all Owners may be obligated to pay additional Assessments. In addition to the Assessments, each Owner shall have the obligation to pay real property ad valorem taxes and any special assessments imposed by Colorado governmental entities against a Lot, including assessments levied by the District. All property dedicated to and accepted by a governmental entity shall be exempt from Assessments.

5.04 Assessments. By way of example but not by way of limitation, Assessments may be intended to cover the following Association expenses:

- (a) expenses of Association management and its activities;
- (b) taxes and special assessments levied upon the Common Area,
- (c) premiums for all Association insurance;
- (d) common services to Owners as may be approved by the Board, including but not limited to trash pickup;
- (e) maintenance of the Common Area and any facilities or Improvements located thereon until such time as the District may assume such responsibility;
- (f) other repairs and maintenance that are the responsibility of the Association;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal, accounting and other professional fees of the Association;
- (i) any deficit remaining from a previous Assessment year;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds;
- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies; and
- (l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners.

5.05 Assessment Procedure.

(a) The obligation for any Owner to pay Assessments will begin on the date when the ownership of the Lot upon which the completed Residence is located is transferred to a purchaser other than a Builder, or upon occupancy, whichever is earlier.

(b) Promptly after this Declaration is recorded in the County records, the Board shall set the total annual Assessment for 2006, based upon an estimated budget for the Association for that year. Before the beginning of each year thereafter, the Board shall set the

next year's total annual Assessment upon the Board's approval of a budget consistent with the Association's financial requirements for the following Assessment year.

(c) At least thirty (30) days before the date the first Assessment payment is due for the new year, the Board shall mail or deliver to each Owner a copy of a budget summary and a payment statement setting forth the Owner's annual Assessment. The Assessment shall be payable in advance in annual or quarterly installments, or as designated by the Board. The Board may require the Owner, at the time when Assessments first commence upon that Owner's Lot, to prepay the Assessments for the balance of the current period and an additional period which may not exceed an additional twelve (12) months.

(d) If, during the fiscal year of the Association, and after the Association budget has been approved, the Board determines the necessity of raising additional funds to cover Association expenses, the Board may request the Owners' majority approval of an additional Assessment amount; provided, however, the total Assessment for the fiscal year does not exceed the limitations set forth in Section 5.06 below.

5.06 Maximum Assessments. The maximum average Assessment against each Lot, exclusive of i) assessments or fees that are charged to some, but not all, Owners of Lots that have the exclusive use and benefit of a particular Common Area or have services performed by the Association that are not performed for all Owners, and ii) any insurance premiums paid by the Association; may not exceed four hundred dollars (\$400.00) annually. The \$400.00 limitation shall be adjusted annually at the beginning of the fiscal year of the Association in accordance with any increase or decrease in the United States Department of Labor Bureau of Labor Statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year ("CPI").

5.07 Rate of Assessments. Assessments shall be set to meet the expected needs of the Association. The rate for Assessments shall generally be determined by dividing the total Assessments payable for any Assessment period as determined by the budget, by the number of Lots then subject to this Declaration. The resulting quotient shall be the amount of the Assessments payable with respect to each Lot.

5.08 Failure to Fix Assessment. The failure of the Board to levy an Assessment for any period 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 Owner to pay Assessments for that or any subsequent period.

5.09 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board determines in its discretion.

5.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorney fees, court costs, witness expenses, and all related expenses (collectively, "collection expenses"), and to pay a reasonable late charge as determined by the Board. Any Assessment not paid within ten (10) days after the date of any notice of default shall bear interest from the due date at a rate determined by the Board, not to exceed twenty-one percent (21%) per annum.

5.11 Notice of Default and Acceleration of Payments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Owner and to a first mortgagee of the Lot which has made a written request to the Association to receive such notice. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in foreclosure of the lien for the Assessment against the Owner's Lot. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

5.12 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. If there is a default in payment of an Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by foreclosure of the lien as further provided herein. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and collection expenses, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 5.13 below.

5.13 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien"). In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this Section. The Board may elect (but is not required) to file a claim of Lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which have accrued; (c) the legal description and street address of the Lot against which the Lien is claimed, and (d) the name of the record Owner. Such Notice of Lien shall be signed and acknowledged by an officer or a duly authorized agent of the Association. The Lien shall have priority over all other liens, except liens recorded prior to the recording of this Declaration, and shall also be prior to any homestead rights of an Owner, whose rights are, with respect to a Lien, waived by the acceptance of a deed to the Lot upon which the Lien is asserted. The Lien shall also have priority over a security interest on the Lot to the extent provided in Section 38-33.3-316, Colorado Revised Statutes, as amended. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filing fees, have been fully paid, the Association shall execute and record a notice releasing the Notice of Lien, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosures of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage and convey the same.

5.14 Estoppel Certificates. Upon the payment of a reasonable fee as may be determined by the Board, and upon the written request of any Owner and any Person having, or intending to

acquire, any right, title or interest in the Owner's Lot, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and remaining unpaid with respect to a Lot and the Owner, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable.

5.15 No Offsets. All Assessments shall be payable in the amounts specified in the levy. No offset, abatement or reduction of an Assessment shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or Board is not properly exercising its duties and powers under the Association Documents; for inconvenience or discomfort arising from any activity of the Association; for an Owner's non-use of the Common Area or services provided by the Association, or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

5.16 Site Assessments. In addition to levying Assessments authorized in this Declaration, the Board may levy a Site Assessment against any Owner and that Owner's Lot if the willful or negligent acts or omissions of the Owner cause any violation of an Association Document or cause any loss or damage to the Association or the Common Area or cause any expenditure of funds in connection with the enforcement powers of the Association. By way of example, but not by way of limitation, if the Association must perform an act of maintenance or repair which is the obligation of an Owner to perform, the Board may levy a Site Assessment against the Owner and the Owner's Lot in the amount of the reasonable cost incurred by the Association in remedying the Owner's default. Except for a default consisting solely of a failure to timely pay any Assessment, a Site Assessment under this Section 5.16 will be levied only after Notice and Hearing. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owing. The Site Assessment imposed on an Owner under this Section will include the cost of such maintenance, repair or replacement performed by the Association, together with any administrative, legal, financing and collection expenses, and the Association shall have a lien to secure payment of such Site Assessment as provided in this Article 5. Imposition or non-imposition of Site Assessments under this Section shall not preclude the Association from pursuing all other legal or equitable rights and remedies against an Owner or other Person responsible for the loss or damage, or otherwise defaulting on an obligation imposed on such Owner by this Declaration.

ARTICLE 6 INSURANCE

~~The Association will maintain insurance of types, in amounts, upon terms and with companies as the Board determines is prudent and/or as is required by law. The Board will review annually the Association's insurance coverage, if any. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. Owners shall be responsible for maintaining all liability and property damage insurance on their Lots, Residences and personal property.~~

ARTICLE 7 DECLARANT'S DEVELOPMENT RIGHTS

7.01 Period of Declarant's Rights and Reservations. In addition to other rights of Declarant described elsewhere in this Declaration, Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Property during the Period of Declarant Control. Those rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not,

without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents.

7.02 Declarant's Development Rights. Declarant has the right, but not the obligation, to perform any of the following:

- (a) to complete any Improvements or satisfy any conditions shown on the plats or the ODPs of the Property;
- (b) to exercise any development rights set forth in this Declaration;
- (c) to maintain anywhere within the Property, sales offices, management offices, signs advertising the Development and model homes;
- (d) to store building materials, supplies and equipment on land owned by Declarant within the Property; and
- (e) to use easements benefiting or burdening any of the Property for the purpose of making, maintaining, reconstructing or repairing improvements within the Common Area.

Declarant may delegate any of the above rights to any Builder in the sole discretion of Declarant.

7.03 Expansion and Withdrawal. For as long as Declarant owns real property within the Property, Declarant may add real property to the Property, or may withdraw real property from the Property, provided that any property added or withdrawn shall be with the consent of the property owner. Such real property need not be contiguous to land already subject to this Declaration.

7.04 Subdivision of Lots. Declarant may subdivide any Lot within the Property into two or more Lots with the Lot Owner's consent.

ARTICLE 8 MISCELLANEOUS

8.01 Term of Declaration. Unless amended as herein provided, all provisions of this Declaration shall be effective for **twenty (20)** years following the date this Declaration is recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by written agreement of the Owners with at least **seventy-five percent (75%)** of the voting power of the Association, which written agreement shall be acknowledged by the Owner in the same manner as a real property deed and recorded in the County records.

8.02 Amendment of Declaration by Declarant. Declarant may amend or repeal any provisions, covenants, conditions or restrictions of this Declaration by recording a document in the County records, setting forth such amendment or repeal and upon the satisfaction of one or more of the following conditions:

- (a) The conveyance of the first Lot by recorded deed to an Owner other than a Builder has not yet occurred;
- (b) A government agency requires an amendment or repeal as a condition to making, purchasing, insuring or guaranteeing mortgages, or an amendment or repeal is required in order to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, HUD, FHA or other government mortgage agency; or

(c) An amendment or repeal is necessary or useful for the exercise of Declarant's development rights as set forth in this Declaration, including but not limited to the inclusion of additional land within the scope of this Declaration and the creation of additional Lots.

8.03 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition or restriction contained in this Declaration may be amended, added, modified or repealed upon the written approval of Owners with at least sixty-seven percent (67%) of the voting power of the Association; provided that Declarant's written approval of such amendment shall be required during the Period of Declarant Control. An approved amendment shall be recorded in the County records.

8.04 Rights of First Mortgagees. Any first mortgagee, upon filing a written request with the Association that provides, at a minimum, the name and mailing address of the first mortgagee, the name and address of the mortgagor, and the legal description and street address of the mortgaged Lot, may: (a) receive written notice from the Association of any default by the Owner indebted to such first mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association upon advance written notice during normal business hours; (c) receive a copy of the Association's current financial statement; (d) receive written notice of all Owners' meetings; (e) designate a representative to attend any Owners' meeting; (f) receive written notice of termination of the Association or of this Declaration; and (g) receive notice of any amendment to the Association Documents.

8.05 Notices. Any notice under this Declaration will be in writing and may be served either personally, by U.S. mail or by 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 or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the U.S. Postal Service. Notice may be provided by electronic mail if a Person has provided an electronic mail address in writing to the Association. An address may be changed from time to time by written notice to the Association.

8.06 Persons Entitled to Enforce Declaration. The Association (acting by authority of the Board), the Declarant or any Owner (acting on such Owner's own behalf), shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of this Declaration, and all other rights and remedies provided in this Declaration or available at law or in equity.

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

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

8.09 Costs and Attorney Fees. In any action or proceeding to enforce any provision of the Association Documents, the party who prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, costs and expert witness fees.

8.10 Alternative Dispute Resolution. The use of alternative dispute resolution methods (e.g., mediation, arbitration) rather than court action to resolve disputes arising out of the Association Documents is encouraged. The Board may adopt Rules and Regulations concerning alternative dispute resolution processes that will be used in resolving disputes.

8.11 Limitation on Liability. The Association, the Board, the DRC and Declarant, and any 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.

8.12 Representations and Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, any Builder, the Association, or by any of their officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless specifically set forth in writing.

8.13 Disclaimer Regarding Safety. DECLARANT, THE BUILDERS, AND THE ASSOCIATION, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE BUILDERS, AND THE ASSOCIATION, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.

8.14 Acknowledgement of Ongoing Construction and Development Activities. By accepting a deed to a Lot, each Owner hereby acknowledges and accepts that construction and development activities will occur on and within the Property and adjacent and surrounding real property. This Declaration shall not be interpreted so as to unreasonably interfere with or prevent normal construction of Improvements on the Property by Declarant, Builders or Owners; provided that when an Improvement is completed, it shall conform to this Declaration. Each Owner specifically acknowledges that construction activities shall not be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities.

8.15 Governing Law. This Declaration shall be interpreted and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding shall be in El Paso County, Colorado.

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

The undersigned, an owner of real property subject to this Declaration, hereby consents to the inclusion of its property into the Property subject to this Declaration.

Fountain Lake, LLC,
a Colorado limited liability company

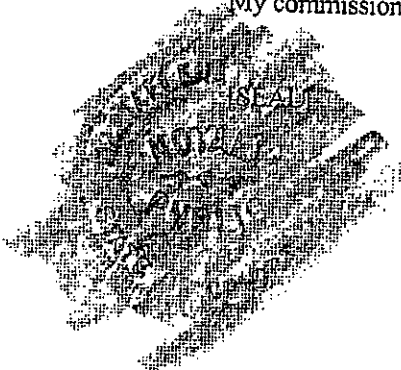
By: *Janis Leayman, Manager*
Janis Leayman, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO).

The foregoing instrument was acknowledged before me this 17 day of February 2006, by Janis Leayman, as Manager of Fountain Lake, LLC.

Witness my hand and official seal.

My commission expires: 9-9-06



Maria L. Doria
Notary Public

EXHIBIT A

Legal Description of the Property

Lots 2 through 159, inclusive, and Tracts A, B, C, and D, Creek Terrace at Mesa Village, City of Fountain, El Paso County, Colorado.

Lots 1 through 46, inclusive, Tuscan Ridge at Mesa Village Filing No. 1, City of Fountain, El Paso County, Colorado.

Lots 1 through 57, inclusive, Tuscan Ridge at Mesa Village Filing No. 2, City of Fountain, El Paso County, Colorado.

Future identified Lots and Tract(s) within the following described property:

A portion of Tract 23, Subdivision No. 1 of the Fountain Suburban Homes Corporation as recorded in Plat Book L at Page 44 of the El Paso County records together with a portion of the Southeast Quarter of the Southeast Quarter of Section 32, Township 15 South, Range 65 West of the 6th P. M., City of Fountain, El Paso County, Colorado, described as:

Commencing at the South Quarter Corner of said Section 32; thence N00°23'40"W, on the West line of the Southeast Quarter of said Section 32 (the preceding course being the Basis of Bearings used in this description) a distance of 745.98 feet; thence N89°35'46"E a distance of 639.83 feet to the Point of Beginning; thence N00°24'14"W a distance of 571.47 feet to a point on the South boundary line of Creek Terrace at Mesa Village as recorded at Reception Number 206712289 of said records; thence N89°42'57"E, on the South line of Creek Terrace at Mesa Village, a distance of 684.11 feet to the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section 32; thence N89°35'54"E, on the South line of Creek Terrace at Mesa Village, a distance of 292.64 feet; N89°45'49"E, on the South line of Creek Terrace at Mesa Village, a distance of 188.66 feet to the Southwest corner of Creek Terrace at Mesa Village; thence N89°31'09"E a distance of 67.86 feet; thence S08°58'15"W a distance of 315.07 feet; thence S31°42'21"W a distance of 305.43 feet; thence S89°35'46"W a distance of 1019.67 feet, more or less, to the Point of Beginning.