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FOR
KING'S DEER HIGHLANDS**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
KING'S DEER HIGHLANDS**

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made and entered into as of the date shown below, by KING 'S DEER DEVELOPMENT LLC, a Colorado limited liability company, hereinafter called "Declarant" for itself, its successors and assigns.

W I T N E S S E T H

WHEREAS, the Declarant is the owner of the real property described on Exhibit "A" attached hereto (hereinafter called the "Property"), and,

WHEREAS, the Declarant desires to submit the Property to the covenants, terms and provisions hereof.

NOW, THEREFORE, the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all persons or entities having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. **DEFINITIONS:** The terms used herein shall have the following meanings, except as otherwise provided herein:

A. **"Association"** shall mean and refer to the KING'S DEER HIGHLANDS HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation, which has been or shall be organized under the laws of the State of Colorado, its successors and assigns.

B. **"Board"** means the Board of Directors of the Association. Except as specified herein, or in the Association's Articles of Incorporation or Bylaws, the Board may act on behalf of the Association without any vote or prior approval of the members.

C. **"Committee"** shall mean the architectural control committee of three or more persons appointed by the Declarant or appointed by the Association's Board of Directors or it may be the Board itself, to review and approve the plans for all improvements constructed on the Property.

D. **"Common Area"** shall mean and refer to any tracts or parcels designated as such on any plat of the Property or otherwise granted or conveyed to the Association, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, and shall include any Common Area located upon any real property which is hereafter annexed to the project pursuant to Paragraph 26(G). Owners acknowledge that certain open spaces may be developed as a golf course or recreational facilities (the "Facilities"), and that the Facilities may be owned by public or private entities or, at Declarant's sole discretion, such open spaces or Facilities or both may be conveyed to the Association at any future time; Declarant has not made and will not make any representation or guarantee what Facilities or whether the Facilities will be constructed. Notwithstanding any contrary provision, the Facilities and the open spaces shall not be subject to any provision of this Declaration unless the Declarant expressly subjects them to this Declaration by written document duly recorded hereafter. The Common Areas shall include any trail easement on the Property and any related improvements granted to the Association.

E. **"Home"** shall mean the residential dwelling improvement constructed and located upon a Lot.

F. **"Lot"** shall mean and refer to any of the Lots shown on any recorded plat of the Property, together with all appurtenances thereto and improvements now or hereafter thereon and shall be interchangeable with the term "Lots." The boundaries of the Lots shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference.

G. **"Declaration"** means this Declaration as contained herein and as it may be amended from time to time as herein provided.

H. **"Declarant"** shall mean and refer to KING'S DEER DEVELOPMENT LLC, a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder.

I. **"Owner"** means any person, corporation, partnership, association, contractor, sellers or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any owner but shall not refer to any Mortgagee as herein defined.

J. **"Mortgage"** means and refers to any mortgage, deed or trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of the county in which the Property is located, and by which a Lot or any part thereof is encumbered.

K. **"First Mortgage"** shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

L. **"Mortgagee"** means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage. **"First Mortgagee"** means a mortgagee whose encumbrance is a First Mortgage.

M. **"Project"** means all of the Property, together with improvements and rights, and improvements located on the Property and all rights, easements and appurtenances belonging thereto, and shall include any real property subsequently annexed or added to the Project.

N. **"Property"** means the real property described on Exhibit "A" attached hereto, together with any real property subsequently annexed thereto under Paragraph 26(G) hereof.

O. **"Period of Declarant Control"** means twelve (12) years from the date on which this Declaration is recorded.

2. **INTENT:** The intent of this Declaration is to establish a general plan of development for the benefit of the entire Project and to preserve the Project as an exclusive, high quality residential area of lasting value, and this Declaration has been designed to that end. Owners in the Project should be people who value quality, and who will respect, uphold and observe the letter, spirit and intent of this Declaration. Pursuant to C.R.S. 38-33.3-116, the Association and the Property shall be subject only to C.R.S. 38-33.3-105, 38-33.3-106 and 38-33.3-107, and no other sections of said Article 33.

3. **BUILDING TYPE AND USE:**

A. All Lots shall be used and occupied only for single family residential purposes and shall be used only for custom built residential Homes. No structure shall be erected, altered, converted, placed or permitted to remain, except for daycare, private schools and comparable uses with the prior written approval of the Board in its sole discretion, on any Lot other than one single-family dwelling, not exceeding the height set forth therein, together with an attached garage and any related structures approved by the Committee; all building and improvements shall be used solely for single family residential purposes and shall not be used for trade, business or commercial purposes as defined by the Board in its reasonable discretion, or in violation of zoning or other laws or regulations. No structure may be erected prior to construction of the main dwelling. No mobile homes, pre-manufactured homes, domes or similar structures shall not be allowed upon any Lot, unless a variance is granted by the Committee.

B. Ancillary buildings and improvements, including without limitation, sheds, dog runs, recreational storage, play sets, guest houses, tennis courts and swimming pools, may be approved in the sole discretion of the Committee, which may condition its approval upon color, appearance, screening, and any other matter.

4. **DWELLING SIZE:**

A. The minimum size of the dwellings is not the only criteria used in the decision to approve or disapprove plans. Plans which meet the minimum size requirement may be disapproved based on other criteria. The size of the dwelling is established primarily to reflect the Declarant's intent regarding the quality of the Project. Recognizing that size is not necessarily indicative of the quality, the Committee may grant reasonable requests for variances to size criteria or give credit for special construction amenities when, in its opinion, such variances and credits enhance the quality and compatibility of the structure and the Project development.

B. Subject to Paragraph 4(A) above, the following square footage requirements are the minimum size allowable:

1. Ranch style Homes without a basement shall not have less than two thousand three hundred (2,300) square feet. For a ranch style Home with a basement, the total square footage shall not be less than three thousand (3,000) square feet, nor less than one thousand eight hundred (1,800) square feet on the main level.

2. For Homes with multiple levels or floors, excluding ranches with a basement, the total square feet shall not be less than three thousand (3,000) square feet, and the minimum square footage design shall contain not less than one thousand three hundred (1,300) square feet on the main level, and not less than one thousand (1,000) square feet on any levels other than the main level. Raised ranches and bi-level styles, as well as any unusual home styles, are discouraged and may be rejected by the Committee.

3. In its sole discretion, the Committee may treat a dwelling with walk-out basement as a single or multi-level building depending upon its appearance, size, location and amount of finished interior space.

C. Attached garages are required for all houses and shall be of size to accommodate not less than three full-sized cars and shall have garage doors equivalent to three cars. All garage doors shall be equipped with automatic remote control openers and shall be kept closed except for immediate ingress or egress. No carport or other open, unenclosed structure intended as storage or parking for vehicles shall be constructed or used on any Lot. Owners are encouraged to select floor plans with garages that open to the side or rear of a house.

5. **BUILDING LOCATION AND HEIGHT:**

A. The Declarant shall mark the required building site on each Lot. Owners shall be required to build within the designated building site as located unless a change is authorized in writing by the Committee. When the house plans are submitted, there shall be submitted to the Committee a separate plot plan showing the exact location of all improvements contemplated upon the Lot, and the Committee may require that the building site be moved or deny construction if, in the opinion of the Committee, the proposed site location would unduly interfere with adjoining Lots as to view, proximity and construction, the natural growth or terrain, or cause other potential interference with existing or proposed construction on adjoining Lots. Buildings should be located on Lots in such a way as to minimize damage to existing foliage and natural growth. No trees may be removed other than under the provisions of Paragraph 14 hereof, and the Lots shall be maintained in the natural state as nearly as possible, except that a reasonably sized lawn and garden, not to exceed four thousand (4,000) square feet of irrigated footage, may be planted around the house.

B. No building or other structure shall exceed thirty-five (35) feet in height. Typically, the height shall be computed from the existing grade of the vacant ground prior to construction to the peak of the roof at its highest point, provided however, the Committee, in its sole discretion, may utilize any other form of measurement in determining height.

6. **SETBACKS:**

A. No building shall be erected, placed or altered on any Lot nearer than ninety (90) feet to any Lot line fronting a road, nor nearer than thirty-five (35) feet to any other Lot line, provided however, the Owner of a corner Lot shall have the option of designating which of the two lot

lines fronting roads shall have a ninety (90) foot setback. Exceptions to the setback requirements are sometimes logical and may be made by the Committee in cases where extenuating circumstances exist, provided however, that any such exceptions must be requested in writing and granted by the Committee in writing. For the purposes of this covenant, eaves, steps and open porches shall be considered as part of the building. Setbacks shall also comply with any notes on the recorded plat and zoning requirements. Declarant or the Committee, in their sole discretion, may designate additional setbacks and/or designate no-build areas on Lots to facilitate golf course or other activities or to protect views of the mountains for adjacent Lots, provided however, neither the Declarant nor the Committee shall have any obligation to protect or guarantee any views and shall not be liable for any obstruction or impairment of views.

B. Any Lot which is adjacent to the Common Area (or the open space included in or related to the Facilities) shall have a one hundred (100) foot setback, provided however, the Committee, in its sole discretion, may reduce the extent of such setback.

7. **TEMPORARY RESIDENCES:** No structure of temporary character, trailer, basement, tent or accessory building shall be used on any Lot as a residence, temporarily or permanently.

8. **ASSOCIATION:** The Association shall operate as a Colorado non-profit corporation pursuant to its Articles of Incorporation and Bylaws, which may include, without limitation, provisions for the indemnification of officers and directors. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If additional Lots are added to the Association, membership shall automatically be expanded thereby. Members shall have the right to cast votes on all matters to be voted on by the members, and each Lot shall be entitled to one vote in the Association, as provided in the Association's Articles of Incorporation and Bylaws. When more than one person holds an interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

9. **ASSESSMENTS:**

A. **Creation of the 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, amounts and times prescribed herein, all assessments, charges, fees, fines and other sums which are described in this Declaration (hereinafter collectively called the "Assessments") and which shall be both a personal obligation of the Owner and a lien against his Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments. No Owner may waive or otherwise escape personal liability for the payment of the assessments by non-use of any common properties or services, by abandonment or leasing of his Lot, or by asserting any claims or defenses against the Association, the Declarant or any other person or entity.

B. **Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and for the improvement and maintenance of the Project as more specifically provided herein.

C. **Annual Assessments:** The annual Assessments may specifically include, but shall not be limited to, expenses of management of the Association and its activities; taxes and special Assessments upon the Association's real and personal property, if any; premiums for all insurance which the Association is required by statute or First Mortgages to maintain, or all insurance authorized by the Board in its sole discretion, and all other expenses connected with such insurance; running path, light poles and other street signs, entrance monuments, walls and lighting, ponds, recreation areas, and other items of common ownership, the creation of adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments of Assessments; and, 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, to promote the health, safety and welfare of the Owner under this Declaration including, without limitation, expenses relating to the Augmentation Plan and any Common Areas.

D. **Limit on Annual Assessments:** The maximum annual Assessment shall not exceed two hundred dollars \$200.00 per Lot for the fiscal year ending December, 1998; after that year,

the maximum annual Assessment may be increased by the Association's Board of Directors at a rate not to exceed ten percent (10%) per annum cumulated each year thereafter, provided however, the maximum may be increased by a two-thirds vote of the Owners present at an annual or special meeting of the Association, at which a quorum is present. Notwithstanding any contrary provision of this Declaration, (a) any Lot owned by the Declarant shall be assessed at the rate of \$50.00 per year until the earlier of the date on which the Lot is sold or 48 months after the final plat is recorded on each filing, at which time Declarant shall pay dues at the same rate as the other Owners, and (b) the annual Assessment for any Lot, exclusive of any optional user's fees and any insurance premiums paid by the Association, shall never exceed three hundred dollars (\$300.00) per year.

E. **Procedure for Annual Assessments:** The Assessments shall be payable in an annual amount and shall commence as to all Lots in that Filing, including Lots owned by Declarant, on January 1 of the year following the conveyance of the first Lot in that Filing from the Declarant. The Association's Board of Directors may fix the annual Assessment at an amount not in excess of the maximum stated above and shall provide such notice and procedure for budgeting and collection as the Board deems appropriate in its sole discretion. The Association may furnish to an Owner, upon written request delivered to the Association's registered agent, a written statement setting forth the amount of any unpaid Assessments levied against a Lot, and the statement may be relied upon all Owners acting in good faith thereon as conclusive evidence of payment of such Assessment.

F. **Collection of Assessments:**

(1) **Personal Liability.** Any Assessment which is not paid when due shall be delinquent, and the Association may impose a late charge for each month any Assessment is delinquent, and may also collect the attorneys fees, costs and expenses of any collection from the delinquent Owner. Additionally, the Association may bring an action at law against any Owner personally obligated to pay any Assessment, and, in the event of any lawsuit, the delinquent Owner shall pay all attorneys fees, court costs and any expenses of such lawsuit.

(2) **Lien.** Additionally, any such unpaid Assessment, together with all expenses of collection and attorneys fees, shall be a continuing lien upon the Lot against which such Assessment was made. The Association may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to said Lot, setting forth such information as the Association may deem appropriate. Said lien shall run with the land and shall additionally secure all Assessments and expenses which become due after its filing. Said lien may be foreclosed by the Association in the manner provided for foreclosures of mortgages under the laws and statutes of the State of Colorado. All rights and remedies of the Associations are cumulative, and foreclosure of the lien shall not prevent a lawsuit against the Owner personally liable therefor whether taken before, after or during such foreclosure. Said lien may be released by recording an appropriate document executed by an officer or agent of the Association. Such lien is in addition to any other lien allowed to the Association by statute, law or equity. Said lien shall be superior and prior to any homestead rights or similar exemption now or hereafter provided under state or federal law to any Owner, whose acceptance of a deed to a Lot shall constitute a waiver of such homestead or other rights.

G. **Subordination of the Lien to Mortgages.** The lien for any Assessment provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent Assessment was due, except to the extent of six (6) months Assessments. Sale or transfer of any Lot shall not affect the lien for said Assessment except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of any Assessment which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, except to the extent of six (6) months Assessments. No such sale, transfer or foreclosure, shall relieve any Lot from liability for any Assessment becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for Assessments due during the period his ownership.

10. **TIME OF CONSTRUCTION AND BUILDER'S COMPLIANCE FEE:**

A. Once construction shall have been initiated on any structure, including walls, fences, residences, ancillary buildings or any other structure which has been previously approved by the Committee, construction of that particular structure, including landscaping, shall be completed within nine (9) months of the time such construction was initiated. The Committee may extend the

time for completion under unusual circumstances, and any such time extension shall be in writing. In no event, other than inclement weather, shall final grading and clean-up (debris, stumps, limbs, leftover building items, etc.) be delayed more than thirty (30) days after completion of a Home. A builder's compliance fee, in an amount set by the Committee, shall be paid to the Committee at time of approval of house plans and may be refunded upon satisfactory completion of the dwelling structure and compliance with the clean-up and final grading provisions of this Declaration.

B. If any structure be abandoned, Declarant or the Committee shall have the authority to remove or complete all or portions of such structures so as to prevent its being unsightly and a detriment to the area. Notice of intent to remove or complete will be mailed to the Owner at his last known address, and shall be posted on the Lot ten (10) days prior to such action and, in the event that such removal becomes necessary, the Owner of the Lot shall be liable for all costs of such work, which costs shall constitute a lien which shall be recorded against said Property, and shall be due and payable immediately and bear interest at the rate of eighteen percent (18%) per annum.

11. **WATER AUGMENTATION PLAN REQUIREMENTS:**

A. All Lots in the Project shall be subject to the requirements as set forth in the decree in the District Court Water Division 1, Case No. 94CW144(A) and (B) which is recorded at Reception No. 097058052 of the El Paso County records (the "Augmentation Plan").

B. Each Owner shall be responsible for obtaining a permit for a well to provide a water supply to his dwelling and for constructing and operating such well. All wells shall be constructed and operated in compliance with the Augmentation Plan and the permits for such wells.

C. Each Owner will be required to log a well as it is constructed and a well. And a well meter shall be installed so as to provide information necessary to the Augmentation Plan upon written request from the Association. Failure to provide a well meter reading within 30 days written request shall be cause for fines to be levied in the amount of \$500.00 plus \$100.00 per day until the reading is provided to the Association. Each Owner shall maintain the meter and the well and shall allow the Association or its agents to enter the Owner's Lot to read and inspect the meter and well.

D. Each Owner shall provide any information necessary to enable any reports required under the Augmentation Plan to be filed in a timely manner.

E. Declarant hereby assigns to the Association any and all right, interest and responsibilities under the Augmentation Plan. By this assignment to the Association, Declarant shall be relieved of any responsibility for the administration or enforcement of the Augmentation Plan or the operation of the augmentation water supply, and the Association shall be obligated to perform the same. By such assignment, the Association shall hold such interest in the Augmentation Plan and augmentation water supply for the benefit of all Owners, shall assume the responsibility for administering and enforcing the Augmentation Plan, and shall take all necessary actions to ensure protection of water and well rights for all Owners pursuant to the Augmentation Plan, including pursuing and maintaining all further action required under the Augmentation Plan. Failure of the Association or the Owners to comply with the terms of the Augmentation Plan may result in an order from the Division Engineer's office to curtail or eliminate pumping of the Owners' wells.

F. Present and future retention structures may be placed in any area shown as a Common Area or "drainage easement" or "flood plain" on the plat. The purpose of the facilities is to maintain historic drainage flows within the Project property, because dwelling and road construction may slightly increase drainage flows. Additionally, no structures or landscaping or other materials shall be placed within any designated flood plain area as shown on the plat or any drainage easements unless approved in writing by the Committee. It may be necessary to place driveways across certain portions of the flood plain, and Owners may be given permission to do so by the Committee, provided that the driveway is constructed in a manner that will not impede drainage flows. Owners are hereby put on notice that drainage ways (even smaller drainage swells in lots) can have significant volumes of water during storms, and Owners are strongly encouraged to construct any structures, away from such drainage ways, whether identified on the plat or not. Any drainage or flood plain area and any structures on those areas shall be repaired and maintained by the Owner of said Lots for augmentation purposes. Owners shall be responsible for their actions or omissions in relation to said drainage easements and drainage areas. The Declarant, El Paso County, Soil Conservation entities, the

Association, and their successors and assigns reserve the right to enter upon the Lots and the easements and drainage areas periodically for purposes of inspection and related matters.

G. No changes or deletions to this Paragraph may be made which may alter or in any manner compromise the Augmentation Plan or the water rights of either Declarant or the Owners, without the prior written approval of all Owners and the Declarant.

12. **GENERAL DEVELOPMENT PLAN.** The Declarant has obtained the required approval of El Paso County for the PUD Development Guidelines, a copy of which is recorded at Reception No. _____, El Paso County, Colorado (the "Development Guidelines"). Each Owner and the Association shall comply with the Development Guidelines including, without limitation, the wildfire mitigation requirement, and the Association shall enforce the Development Guidelines, as well as the Augmentation Plan, as a part of this Declaration.

13. **ARCHITECTURAL CONTROL AND DESIGN:**

A. **Purpose.** The purpose of this Declaration is to assure, through intelligent architectural control of building design, placement, materials, colors and construction, so the Project shall become and remain an attractive residential community, and to uphold and enhance property values.

B. **Architectural Control Committee:**

(1) **Composition:** The Committee is composed of Declarant, its heirs, successors or assigns, represented by three (3) persons or more, who shall be appointed by Declarant during the Period of Declarant Control; however, at its option and choice of time, Declarant may relinquish control of the Committee to the Association at any time. After the Association controls the Committee, the Committee shall be appointed by the Association's Board of Directors, except that the Board may serve as the Committee.

(2) **Terms:** Members of the Committee shall serve two year terms, provided however, any member appointed by the Declarant may be removed by the Declarant and any member of the Committee appointed by Association may be removed by a vote of two-thirds (2/3) of the Board. In the event of the death or resignation of any member of the Committee, the Declarant or the Board shall have full authority to designate a successor member to fill the remaining term.

(3) **Non-Liability:** Neither the Declarant, the Committee, the Association, nor any persons acting therefor, shall be liable in damages or otherwise to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests, or with regard to any other actions taken by the Committee or the Association under authorization of the provisions hereof. The Committee shall not have any responsibility or liability for construction quality nor compliance with building codes or governmental requirements. The Association shall indemnify the Committee to the fullest extent allowed by law or statute.

(4) **Records retained by Committee:** The Committee shall maintain records of the election of its members. It shall retain a complete file of applications, Home plans, and location sketches until all structures applied for thereunder have been completed and for five (5) years thereafter. If requests for additions are made, both the original plans and plans for said additions will be kept until said additions are completed.

(5) **Compensation:** No compensation, other than reimbursement of expenses, shall be received by members of the Committee for services performed pursuant to this Declaration.

C. **Procedure for Obtaining Approval of Plans:**

(1) The application and plans shall be submitted to the Committee, which may require the payment of a review fee at that time.

(2) If the applicant believes that his plans may encounter serious objections or contain unusual designs, he should submit preliminary drawings and/or a preliminary sketch and

request, in writing, and preliminary review prior to incurring the expense of having detailed architectural working plans drawn. Such preliminary review shall not constitute final action.

(3) The applicant shall make written application on a form provided by and obtained from the Committee which shall be submitted with the following attachments:

(a) One (1) copy of a site plan, drawn to scale, showing the exact location on the Lot of all proposed improvements (house, well, septic systems, leach field and other buildings even if only contemplated for the future). Exact proposed setbacks from Lot lines must be delineated. Access routes (driveways) to proposed structures and any clearing, plantings, outside lighting plans, or fencing must be included. Topographic maps showing terrain lines are required.

(b) One (1) complete set of construction plans for building(s) detailing the floor plan, elevations, site locations, and exterior building materials.

(c) Color samples and, if deemed necessary by the Committee, samples of siding, roofing and other material.

(d) A landscape plan shall be submitted in accordance with this Declaration and the wildfire mitigation plan.

(e) A copy of the well permit application in the form to be submitted to the Office of the State Engineer.

(f) The Committee shall examine and consider plans, make field trips to the site; the applicant shall be required to provide a survey and shall stake out the proposed location of buildings prior to submission of final plans. The Committee shall approve or disapprove all submissions in writing and shall return a copy of the submission form with its determination and comments, as appropriate. The set of plans, site plan and material/color samples shall be kept in the files of the Committee. The Committee may require the applicant to make other submissions, to include material samples, prior to considering any application.

(g) The Committee should seek to approve or disapprove submissions within thirty (30) days of written receipt, but, if disapproved, the Committee may take an additional thirty (30) days to consider any resubmitted plans. Normally, submissions will be resolved in less time, but applicants should plan sufficiently in advance to give the Committee time to examine plans, make on-site inspections and make decisions. In the event that the Committee fails to approve or disapprove within sixty (60) days after written receipt of any written submission or, in any event, if no suit has been filed to enjoin the construction prior to its completion, approval shall not be required, and the related covenants requiring Committee approval shall be deemed to have been fully complied with, provided that all other covenants herein have been properly observed and complied with. The foregoing notwithstanding, no plans shall be approved nor shall the above sixty (60) day automatic approval pertain, unless the Owner is current on his Assessments to the Association. The Committee shall report its decisions to the Board of Directors for review prior to the Committee notifying the applicant and the Board may reverse or modify the Committee decision. A majority of the Committee shall determine approval or disapproval. The Committee members will coordinate and work in concert with each other and report their decisions as a group and not individually.

D. Authority of Committee:

(1) The Committee is empowered to approve or disapprove in writing all plans for construction, site locations, clearing, plantings, fencing, additions to existing structures, remodeling that alters the exterior, replacement of roofs, changing of house colors and any other changes in the natural environment of Lots or appearance of Homes in the Project. Disapproval of submissions by the Committee may be based upon any grounds, including purely aesthetic grounds. If such submissions are disapproved, the Committee shall give written reasons for said disapproval to applicant. The Committee may make other reasonable requirements of the applicant including, but not limited to, submission of additional plans, specifications, and material samples, and may require such changes as it deems necessary to conform to the overall intent as herein expressed.

(2) The Committee shall have the right to alter site locations as shown on the submitted site plan, or deny construction if, in the opinion of the Committee, the proposed site

locations will unduly interfere with adjoining Lots as to view, intrusions or sound or light, sanitation, proximity or type of construction, actual or proposed, or unduly damage the natural growth and terrain.

(3) The Committee may prohibit the construction of fences, Homes or any other improvements to any Lot, and is empowered to order their removal if written application was not made by the Owner, or if approval was not granted in accordance with this Declaration, or if actual construction is different from the approved plans or if the location of the structure is different than that approved by the Committee.

(4) The Committee may require a compliance deposit to be made prior to commencement of construction upon any Lot. Additionally, the Committee may require the submission of a non-refundable architectural review fee in an amount set forth in the Association's Rules, along with each submittal of plans to the Committee to defray the administrative costs of the review process. Any unused portions thereof shall be deposited into the general funds of the Association.

(5) The Committee, upon written request, shall have the authority to grant in writing, variances from the provisions of this Declaration as they apply to construction and setbacks, in cases of irregularly shaped Lots, unusual terrain, highly desirable building sites near Lot lines, or other conditions wherein the strict enforcement of this Declaration would result in unusual hardship. The Committee shall be the sole and exclusive judge of whether or not such hardship exists. It is the intent of this Declaration that the Committee and the Board shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive. The Board shall resolve all questions and interpretation and this Declaration shall be interpreted in accordance with their general purpose and intent as herein expressed.

E. **Architectural Design and Requirements:** In addition to the other requirements hereof, the following pertain:

(1) **Construction:** No building, accessory building, structure, walls, gates, hedges, fences, mailboxes, driveways, windbreaks, swimming pools, flagpoles, greenhouses, play areas, hot tubs, satellite dishes, windmills, pump houses, water tanks, gas tanks, exterior lighting or other improvements shall be commenced, erected, converted, placed, added to, maintained or altered on any Lot until the construction plans and specifications, to include design, height, material and color samples to be used, and a site plan showing the exact location of the structure(s), have been approved by the Committee in writing as to quality of workmanship and materials, harmony of external design with existing structure(s), location with respect to other structures planned, and as to topography and finished grade elevation. This requirement applies both to new construction and to subsequent changes, additions, repainting and major repairs or renovations. No constructions of any such improvement shall be commenced until the Committee approvals required by these covenants are obtained. All construction shall comply with the Development Plan, including wildfire mitigation, and fire retarding materials should be used whenever possible.

(2) **Masonry:** A minimum of fifty percent (50%) of the exterior area of the front of the primary dwelling shall be of masonry construction (e.g., brick, stone, cultured stone, stucco). Exceptions may be granted for homes of New England style, contemporary, log homes, or ranch style homes, provided that the proposed structure is of high quality and is in keeping with the overall intent of the Project.

(3) **Color:** Structural color schemes shall be compatible with the natural environment of the Project. Subdued, unobtrusive colors will normally be required, and color samples must be submitted with plans.

(4) **Facing/Siding:** Exposed concrete on building shall be stuccoed or covered with other material receiving the approval of the Committee. Natural wood siding must be treated and periodically maintained with some type of preservative or stain, and color samples shall be submitted with plans.

(5) **Chimneys:** Gas fireplaces are encouraged. Spark arrestors shall be required on all non-gas fireplace chimneys. Open fires in the Project are prohibited.

(6) Roofing: Roof materials and color shall be consistent with architecture, color, and exterior wall material of any structure. Tile, slate (real or similar) or three-dimensional asphalt shingles (with random appearance and at a least forty year warranty), will normally be required; however, the Committee may allow variations from this requirement in those cases where such variation would be harmonious with the surrounding area and where such roofing materials would not be practical for a particular design or structure. New and modern materials with shake appearance are encouraged.

The overhang of the roof on ranch-style Homes shall normally be at least twenty-four (24) inches.

(7) Energy Features: Energy efficiency is encouraged through well-sealed and insulated construction and the use of passive solar design techniques. Roof-mounted solar collectors, skylights and other unusual or energy conservation features should be custom designed and must be approved by the Committee. Roof mounted solar collectors shall match the slope of the roof to which they are attached. Solar collectors shall be located or screened so that reflections do not unreasonably defeat the intent of these covenants to maintain a natural environment. Tall wind-powered electrical generators are prohibited.

(8) Extreme Designs: Homes of extreme design may or may not be approved depending upon location and appearance, it being the intent of this Declaration to establish an area of quiet, unobtrusive dignity and quality consistent with other Homes in the Project.

(9) Materials. All materials used in the construction, alteration or remodeling of any building shall be new and of good quality and design. Used materials of good quality may be used, provided they are first approved in writing by the Committee.

(10) Driveways. In addition to obtaining approval from the Committee, purchasers must obtain a written driveway permit from the El Paso County Department of Transportation prior to connection of any driveway to a public road. Owners of Lots are advised that the County has no responsibility for and will not snow-plow or otherwise maintain driveways whether on flag Lots or other Lots; such responsibility is solely that of the Lot Owner. Metal flared end extensions with additional stone, rock, brick or other masonry treatment are required on all driveway culverts, or alternatively, concrete or masonry headwalls must be used to prevent bent and exposed ends of culvert pipes and a consequently unattractive approach to a Home. Plans submitted to the Committee must include the manner in which the driveway shall be constructed, and approval must be obtained from the Committee prior to commencement of construction.

(11) Mailboxes. Mailboxes and their support structures should be of a quality to enhance the Home and must be approved by the Committee. Owners must individually ensure that their mailbox placement is approved by both the El Paso County Department of Transportation as well as the U.S. Postal Service. Mailbox monuments must be at least three (3) feet from the edge of the pavement or proposed pavement if the street is not completed. Failure to comply with the requirements of the government offices having jurisdiction could result in the removal of the postal monument. Additionally, Owners are hereby notified that they El Paso County Department of Transportation has no liability in connection with the postal monument despite the fact the monument is placed in the legal right of way of El Paso County. Owners are also put on notice that in the event a postal monument is damaged or destroyed by County equipment (snow plows, etc.), El Paso County shall have no obligation to replace or repair the monument. The Declarant or the Board may require a standard mailbox. Maintenance of the mailbox and post system in good, attractive, painted (if appropriate) condition shall be the responsibility of the individual Owners, and any changes in appearance must be approved by the Committee.

(12) Fences: Fences are discouraged so as to encourage open space and must be approved by the Committee. Fencing, when permitted, shall be of high quality wrought iron, masonry, vinyl or other materials approved by the Committee. Chain link, cedar, post and rail fencing are prohibited unless approved in writing by the Committee. Fences which are not approved by the Committee may be removed by the Association at the Owner's expense and such expenses may be collected as an Assessment against the Owner and the Lot. Consideration shall be given as to the types of fence in relation to the architectural design of the dwellings and the overall appearance in the community. Existing fencing on the boundary of the Project shall not be removed, but may be replaced by new fencing after the prior written approval of the Committee. Declarant shall not be responsible for or defend against adverse possession suits based upon external boundary survey differences or fence encroachment.

(13) Antennas and Telecommunications: Attic antennas inside the house (as opposed to roof antennas) are effective, are less vulnerable to damage and are required. Tall or otherwise prominent and visible antennas are prohibited. Satellite dishes must be no more than three (3) feet in overall square footage; full sized dishes are not permitted. Satellite dishes and telecommunication devices are subject to the Associations rules, except as provided by federal or state law. Screening with small trees is effective and minimizes unattractive views from public roads and adjoining Lots. Builders may be required by the Declarant or the Committee or both to use an approved vendor or contractor for telecommunications wiring inside of dwellings.

(14) Lighting: Outdoor lighting will be permitted to the extent it does not create a visual nuisance to neighboring property (except that reasonable landscape lighting may be approved by the Committee). Outdoor lights will be focused and placed so as to avoid annoying nearby Owners. Normally, such lights shall be turned off when not needed.

(15) Landscaping: No yard or house ornaments, fountains or similar objects shall be allowed upon any Lot without the prior written approval of the Committee. New plantings and growth will be controlled so as not to unreasonably obstruct views from adjoining Lots. The Committee is authorized, but not obligated, to enforce removal, thinning or topping of view obstructions and, in their sole discretion, to determine the validity of any complaints. The Committee may remedy any view obstruction by entry and removal of the offending item, as well as exercising any rights and remedies hereunder.

(16) Thistle and other noxious weeds: It shall be the responsibility of the Owners to remove thistle and other weeds as may be identified by the Association. Thistle must be cut prior to seeding of the plant. The Association has the right to remove thistle if the Owner fails to do so. The Association can charge an hourly rate set by the Board for removal of small patches of thistle; in the event of heavy infestation, equipment may be employed and charges may be higher. In addition, Owners are responsible for controlling and removing weeds declared noxious by governmental authorities and in accordance with El Paso County weed control rules and regulations. The Association may remove any infected trees and/or obnoxious weeds as provided by Paragraph 28(A) and recover the cost of removal from the Owner.

(17) Mowing: Owners are required to mow their grass lawns to prevent unsightly conditions and to mow the entire Lot at least once per summer, but the Board may require Owners to mow more often and establish maximum heights for grass.

F. **Penalty Fee for Violations**: Written application for approval of plans shall be made by the Owner of the Lot (not the builder) and the Owner shall be held responsible for any violations of this Declaration which are committed by the builder or other persons engaged by the Owner. If any excavation, cutting of trees, or construction is commenced by an Owner or Owner's representatives prior to receipt of written approval by the Committee, then the Owner agrees to pay an immediate fine of One Thousand Dollars (\$1,000.00) to the Enforcement Fund described in Paragraph 28(B), which shall utilize said funds to enforce this Declaration as necessary. Purchasers of Lots in the Project agree to make such payment and understand that a lien shall be filed against their Lot if they do not, as provided in Paragraph 28(C). Further, if legal action is necessary to enforce this Declaration, Owners agree to pay all expenses and to include reasonable legal fees incurred by the Committee or the Association in collection of said fine. Payment of said fine does not preclude other or further action by the Committee to disapprove plans in areas in which clearing or construction has begun.

14. **TREES**: In the event it becomes necessary to remove a tree, the Owner shall be required to move any tree which is of a transportable nature (typically trees of trunk diameters of ten (10) inches or less). Cutting of trees (other than diseased or dead trees) that are movable shall result in a fine of \$500.00 per tree cut. Within six months of closing, Owners shall install ten (10) evergreen trees not less than four (4) feet in height and must water and maintain those trees. Declarant or Association may provide water and maintenance for a fee under a separate agreement. An Owner must obtain written approval from Declarant, or subsequently the Committee, to cut down or clear any trees on any Lot, except dead trees, pruning or reasonable thinning of trees of four inch (4") diameter or less, or for infestation control. Owners of Lots shall dispose of such cleared trees in a way to prevent accumulations of brush, stumps, trash or other materials which may constitute a fire hazard or render a Lot unsightly, provided however, that this shall not operate to restrict Owners from storing fireplace wood in neat stacks on their Lots. Owners are responsible for prompt treatment or removal of trees infected by pine beetle or

other insects which can kill trees within a year and might spread to adjacent trees and Lots, and to contain any trees with slow parasitic growth, such as mistletoe.

15. **EASEMENTS:** Easements for installation, operation and maintenance of utilities, roadways, water lines, drainage facilities and such other purposes as may be designated by Declarant and/or governmental authorities are reserved on, over and under a strip of land fifteen feet (15') wide along all front Lot lines, ten feet (10') along all side and rear Lot lines, and twenty feet (20') along all the Project exterior boundaries, except as otherwise shown on the recorded plat. In addition, Declarant reserves the right to create and grant easements in the setbacks described in Paragraph 6 above. If an Owner buys contiguous Lots, easements and setbacks shall apply unless the Owner formally vacates the common lot lines through the appropriate government agencies. Owners are responsible for providing access to the Association's utility companies and other governmental agencies which have reason to use said easements and, if damage is done to fences, shrubbery or plantings in said easements, Owners have no recourse against said agencies, the Declarant, the Association or the Committee. No building or similar structure may be placed within the easements, unless vacated by the agencies involved and approved by the Committee. It is recommended that such easements be kept open and unfenced.

16. **OBSTRUCTIONS TO VISION AT INTERSECTIONS:** No fence, wall, hedge, tree, shrub planting or other structure which unduly obstructs lines-of-sight shall be placed or permitted to remain on any corner formed by the intersections of streets. The Committee shall be the sole and exclusive judge of whether said obstruction exists or may exist or whether a possible safety hazard may exist.

17. **REDIVISION:** Further subdivision of Lots in the Project is not permitted, except that this covenant shall not preclude any further subdivision or replatting by Declarant or any minor Lot line adjustments to resolve building hardships, as long as such adjustments meet all legal requirements and are approved by Declarant and the Committee in writing. If a Lot line had been vacated, the affected property may not be again redivided into separate Lots without complying with all of the requirements of any governmental entities and obtaining the prior written approval of the Declarant and the Committee.

18. **NUISANCE:** Owners shall maintain their Lots in a clean, attractive condition and builders shall keep construction sites clean and free of trash and debris, which shall be placed in closed dumpsters. Nothing shall be done or permitted on any Lot which may be or become an annoyance or nuisance to the neighborhood. No noise or any noxious or otherwise offensive activities or commercial businesses or trades shall be carried on upon any Lot. Any exterior lighting on any Lot shall either be indirect or of such controlled focus and intensity as not to unduly disturb residents of adjacent or nearby property. Dogs or other domestic pets which make excessive noise or other nuisances shall not be allowed and the Committee may require their removal.

Horses, trail bikes, minibikes, motorcycles, all-terrain vehicles, snowmobiles, or other such noise causing vehicles shall not be operated within the Project other than on County roads and going to and from residences. No activity shall be permitted which will generate a noise level sufficient to interfere with the reasonable quiet enjoyment of the persons on any adjoining or nearby Lots.

No hunting of any kind and no discharge of firearms shall be permitted in the Project, without the prior written consent of the Board.

19. **REFUSE AND RUBBISH:** Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner. Containers or other equipment for the storage or disposal of garbage, trash, rubbish or other refuse shall be kept in a clean, sanitary condition. All garbage or trash containers shall be kept at all times in a closed garage or placed in walled-in areas designed to blend in with the house so that they shall not be visible from other Lots or from public streets, except on the day of trash pick up. Bottled gas tanks, if any, must be underground, or concealed behind walled-in areas designed to blend in with the house, and must be approved by the Committee and may be subject to the approval of the Fire Department. No trash, litter, junk, equipment, boxes or other such items shall be permitted to remain exposed upon any Lot and visible from public streets or from other Lots within the subdivision. Construction dumpsters shall be removed within seven (7) days of occupancy or completion of the Home, whichever occurs first. Daily fines may be assessed for any violation of this Section or other sections of the Declaration or rules and regulations.

20. **SIGNS:** All signs must be first approved in writing by Declarant or the Committee, except for the display of customary builder or real estate signs, not exceeding twenty (20) square feet. The Declarant or the Committee reserves the right to make exceptions to size requirements, or to require modification or removal of any signs deemed not in keeping with the appearance of the Project; however, neither the Declarant nor the Committee shall require real estate signs to be smaller than provided herein, and this restriction shall run with the land and may only be changed with the prior written consent of the Declarant. Builders who own permanent models in the subdivision may place permanent signs directing traffic to the models; such signs must be approved in writing by the Committee. Any signs in the County right of way shall be at risk of party installing such signs. Declarant, its successors or assigns, reserves the right to erect and maintain entrance signs or monuments on Lots at either side of the street at each entry point into the Project, and may also erect gateways, fences, posts, walls, signs and other structures both to permanently identify the Project and to market it. In addition, Declarant reserves the right to place signs on any Lot in the subdivision as Declarant deems necessary for marketing, safety or traffic guidance, and Owners of such Lots in the Project agree thereto. Easements are hereby created for all signs, gateways, fences, posts, walls and structures installed by Declarant and for their maintenance. The Association shall maintain all entrance signs, fences, monuments and related structures and pay all utilities and other expenses related thereto.

21. **DRILLING:** No oil drilling, oil development operations, oil refining, quarry or mining operations of any kind shall be permitted on or in any Lot, nor shall gas or oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

22. **CLOTHES DRYING AREA:** Exterior clotheslines are prohibited.

23. **VEHICLE PARKING AND EQUIPMENT:** No vehicles shall be stored or parked within the Project except in a closed garage or other structure which may include decks or fencing. Attached or detached garages and decking may be constructed to enclose recreational vehicles so long as they are architecturally compatible with the main structure and the vehicle must be completely placed under the deck so that the vehicle is completely screened from view with latticework or other material, which has been approved by the Committee. The Committee is empowered to remove and tow objectionable vehicles, at their owner's expense. The intent of this covenant is to prevent clutter and enhance natural appearance. No junk or abandoned vehicles, as defined by the Committee in its sole discretion, shall be allowed. Automobiles shall not be parked overnight outside of garages, as determined by the Board in its sole discretion, but overnight parking shall be allowed at the sales office and the Facilities. All parking shall be subject to the rules and regulations of the Board.

24. **UTILITIES:**

A. All utility lines, including service lines of whatsoever kind or nature, shall be underground on all Lots within the Project, excepting that existing poles and lines shall not be removed and placed underground by Declarant. It shall be the responsibility of each Owner to extend underground service lines to his house from existing lines or lines.

B. The water supply for the Project shall be provided by means of wells, to be constructed and operated in accordance with the Augmentation Plan described in Paragraph 11 above. Each Owner shall be responsible for the construction and maintenance of his own well and for the connection of the well to his house. No Owner may construct a well or initiate any water right within the Project except through a well approved pursuant to the Augmentation Plan.

C. Sewer service for the Project will be provided by means of individual septic systems, tanks and leach fields, to be constructed and maintained by each Owner. No systems of the evapotranspiration type shall be permitted unless required by the El Paso County Health Department or other governmental agency of proper jurisdiction and approved under the Augmentation Plan. All septic systems and leach fields shall require the prior approval by the Committee pursuant to Paragraph 13 of this Declaration.

25. **ANIMALS:**

A. No animals, poultry or livestock of any kind shall be housed, raised or kept on any Lot or property either temporarily or permanently except that commonly accepted domestic

household pets may be kept, provided that they are not kept or maintained for any commercial purposes and provided further that they are kept in full compliance with any applicable rules and regulations of the Association.

B. No pets shall be permitted to run loose and shall be kept under control of owners at all times and must be kept on a leash whenever outside of the Owner's Lot. Kennels for the commercial raising, breeding and boarding of animals are prohibited. Under no circumstances will dogs be allowed to run loose in the neighborhood.

C. The use of electronic pet containment (invisible) fences in lieu of conventional fencing is strongly recommended.

D. The Board may adopt Rules regulating or prohibiting any animals including without limitation, prohibiting dogs and domestic pets and restricting animal activities, fences and enclosures.

26. **RIGHT OF DECLARANT:** Notwithstanding any contrary provision of this Declaration, the Declarant, its successors or assigns, expressly reserves the following rights and privileges, which may or may not be exercised in the Declarant's sole discretion:

A. Declarant may amend or change the plat to add additional property to the subdivision, change Lot lines or subdivide Lots into more Lots, and grant utility or other easements.

B. The Declarant, or any builder authorized by Declarant may construct and maintain sales offices, management offices, advertising signs, model Homes, construction yards and construction materials within the Project.

C. Declarant may grant easements for the Common Areas, the Facilities, and utilities or public purposes through the Property and make improvements or changes necessitated by such easements.

D. The Declarant may, during the Period of Declarant Control, appoint or remove any officer of the Association or any member of the Committee and the Board of Directors of the Association. Following the relinquishment of control by Declarant, the Owners shall elect the Board as provided in this Declaration, the Articles of Incorporation and the Bylaws.

E. Notwithstanding any contrary provisions of this Declaration or any other document, the Declarant hereby reserves the right, until the expiration of the Period of Declarant Control, but without approval or vote of the Members, to amend this Declaration and/or the Bylaws, as may be necessary to correct typographical errors or make clarifications or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or the Department of Veterans Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the subdivision, and each Owner and Mortgagee by accepting a deed, mortgage or other instrument affecting a lot appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's name and Mortgagee's name and recording any such amendments to this Declaration and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments.

F. The Declarant may enter into agreements with the purchaser of any Lot or Lots (without the consent of the purchasers of other Lots or adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth, and any such deviation, which shall be manifested by agreement in writing, shall not constitute a waiver of any such condition, restriction, limitation, or agreement as to the remaining Lots in the Project, and the same shall remain fully enforceable on all other Lots located in the Project by Declarant, its successors or assigns, and the Association or other Owners, except as against the Lot where such deviation is permitted.

G. During the Period of Declarant Control, the Declarant reserves the right to expand the Project, without approval of the Owners or Mortgagees, to include additional real property and improvements, but the total number of Lots as expanded shall not exceed eight hundred (800) Lots. Such expansion may be accomplished by recording a supplement or supplements to this Declaration with the Clerk and Recorder of El Paso County, Colorado containing a legal description of

the real property thereby annexed and any additional provisions deemed appropriate by Declarant, which may annex the property in phases, but shall not be liable or obligated to annex any property. Upon annexation, the additional property and the owners thereof shall be bound by this Declaration, the Association's Articles of Incorporation, Bylaws and Rules, and any additional provisions in the annexation supplement. By accepting a deed to any Lot or a Mortgage, each Owner and Mortgagee grants Declarant a right to expand the Project and consents to such annexation expanding the Project and will not oppose or hinder Declarant's right to expand and annex additional real property and improvements or to develop adjoining properties and improvements. Declarant also reserves the right to deed open spaces or Facilities to the Association and to create and extend the trail easement or any other easements to and upon any real property annexed to the Project.

27. **TERMS OF COVENANTS:** These covenants and restrictions are to run with the land and shall remain in full force and effect for twenty-five (25) years from the date on which this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless revoked as provided herein. This Declaration may be revoked or amended at any time by an instrument signed by a majority of the Owners of the Lots (one vote per Lot), except that any amendment of Paragraph 26 hereof, or any provision hereof benefiting Declarant, shall also require the prior written approval of the Declarant. All amendments shall be certified by the Association's President and Secretary as complying with this Paragraph, and the certified amendment shall be recorded in the real property records of El Paso County.

28. **ENFORCEMENT:**

A. **General Enforcement:** Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. This Declaration is intended for the use, convenience and protection of all Owners, the Declarant and the Association. The Declarant, the Committee, any Owner or the Association may act to enforce the covenants; none of the foregoing, however, are obligated to do so. In any enforcement of the Declaration, whether by lawsuit or lien, the Declarant, the Committee, the Owner or the Association or all of them shall be entitled to collect their attorneys fees and expenses of enforcement from the non-complying Owner or party. The Declarant and the Committee, together or separately, or through authorized agents or employees, further reserve the right, whenever there shall have been an apparent violation of one or more of the provisions of these covenants and after ten (10) days notice to Owner, to enter upon the Lot where such violation exists and summarily abate or remove the same at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. Owners expressly agree to abide by injunctions without necessity of bond, in order to simplify judicial proceedings to remedy covenant violations. In addition, if a judicial action is necessary to prohibit a covenant violation and a violation is established, the violator(s) shall pay and agree to pay all costs of the enforcement proceeding, including without limitation reasonable attorneys' fees. The Board may impose daily or lump sum fines for any violation of these Covenants or the Rules or both; such fines shall be imposed after written notice and opportunity for a hearing and may be enforced by legal action, including without limitation recovery of the Association's attorneys fees and expenses, or by lien or both. The failure to enforce any right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way effect any of the other restrictions, but they shall remain in full force and effect.

B. **Enforcement Funds:** One Hundred Dollars (\$100.00) shall be paid at closing by the purchaser of each Lot at the time the Lot is sold; and said funds shall be placed in the Association's funds by Declarant to be used for enforcement of this Declaration. Any fines under Paragraph 13(F) or as otherwise may be collected from time to time shall also be placed in said fund. Said fund shall be used by Declarant, its successors and assigns, for paying future legal and other expenses involved in enforcing this Declaration, and the Declarant is hereby authorized to use said fund. In addition, said fund or portions thereof may be transferred into the Association treasury for the purposes set forth herein, and may be used at the discretion of Association for paying subdivision expenses which shall no longer be the responsibility of the Declarant, such as maintenance of entrance ways and signs, special mailings, and other expenses; however, the fund shall not be depleted to the extent that insufficient funds are available to enforce this Declaration. Likewise, the Association may transfer Association funds into the Enforcement Fund if needed to enforce these covenants. The Committee or the Association desiring to use said fund for the enforcement of these covenants shall

make written request of Declarant for the use of monies in said fund, and Declarant shall have sole authority to approve or deny any such request.

C. **Liens:** Nonpayment of any fines or any sums incurred by Declarant or the Committee or the Association in enforcing correction of a violation of these covenants or in abatement or removal as covered herein shall result in a recorded lien being placed upon the Lot or Lot interest owned by the violator(s), including improvements thereon; said lien shall bear interest at eighteen percent (18%) per annum. Declarant or the Committee or the Association is empowered to file such lien if, within thirty (30) days of written notification to Owner of amount due, the Owner has not made payment in full. Such lien shall run with the land except as provided in Paragraph 9 hereof. Continued failure to pay such liens may result in foreclosure on the entire Lot in order to enforce payment as provided by Paragraph 9 hereof.

D. **Rules and Regulations:** The Association's Board of Directors may adopt, amend, repeal and enforce such rules and regulations (sometimes called the "Rules") as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of the Project including, without limitation, rules to enforce the Augmentation Plan, the Development Guidelines, and related matters. Any such Rules should be reasonable and uniformly applied as determined by the Board in its sole discretion. Rules shall be effective upon adoption by resolution of the Board of Directors. Each Owner and other person shall comply with such Rules and shall see that family members, contractors, guests and invitees of such Owner comply with the Rules. Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Board of Directors shall have power and discretion to interpret this Declaration, and any such interpretation shall be final, absolute and binding on each Owner, unless made with malice or wanton disregard for an Owner's rights.

29. **NOTICES:** Any notice required to be given to any Owner or other person under the provision of this Declaration shall be deemed to have been properly given when mailed, post paid, to the last known address of the record owner of the Lot in which the member has an interest.

30. **DECLARANT MAY ASSIGN:** The Declarant, its successors or assigns, may assign any and all of its rights, powers, obligations and privileges under this instrument to any other corporation, association, committee or person.

31. **PROPERTY RIGHTS IN THE COMMON AREA:**

A. **Title to the Common Area.** Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed by the Declarant to the Association in fee simple or granted by easement. Owners acknowledge and agree that Declarant may retain or convey certain open space areas to private or public parties or entities for use as a golf course, recreation area and related facilities, but absolutely no representations or statements have or will be made by Declarant that such Facilities will be constructed; alternatively, Declarant may, at its sole option, convey such areas to the Association as Common Areas.

B. **Non-Partition of Common Area.** The Common Area shall not be subject to partition by the Owners. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this provision may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area.

C. **Owners' Common Area Easement of Enjoyment.** Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass automatically with the title to every Lot without the necessity of additional reference.

D. **Extent of Owners' Common Area Easement.** The rights and easements of enjoyment created hereby in the Common Area shall be subject to the following:

(1) The right of the Association to enforce the restrictions contained in this Declaration and to promulgate and publish Rules with which every Owner, his family members, guests, tenants, and contractors shall strictly comply, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

(2) The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to the use of the Common Area for any period during which such Owner is in default under this Declaration, including without limitation the non-payment of any assessment levied by the Association, and to make such suspensions for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(3) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area;

(4) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes, subject to such conditions as may be imposed by the public entity; for example, if any interior streets are private and have not been built to city or county specifications and so might not be accepted by them;

(5) The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Area and to mortgage said property as security for any such loan;

(6) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(7) The rights of the Declarant as set forth in this Declaration, and notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Common Area and the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, any drainage or retention areas, or for other public purposes consistent with the intended use of the Project under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment and the right to enter into agreements relating to such utility service and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Common Area or the Property or both without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. The rights reserved in this Paragraph shall pass from the Declarant to the Association upon the earlier of when the Declarant assigns such rights to the Association or when the Declarant no longer owns any Lot or real property in the Project, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association.

E. **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on his Lot. Each Owner shall, to the maximum extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's rules and regulations by such persons.

F. **Non-Dedication of Common Area.** Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment of

Owners for recreation and other related activities. Nothing contained in this Declaration shall be deemed to dedicate the Common Area or any open spaces for use by the general public.

G. **Association Maintenance.** The Association shall provide all repair, replacement, improvement and maintenance of the Common Area and all improvements located thereon, including without limitation, if applicable, any landscaping, sprinkler system, any parking, roadways, driveways, utility lines ponds, recreational areas, trail easements, any drainage structures or facilities or public improvements to the extent applicable and any light fixtures, sidewalks, and pathways, or other improvements located on the Common Area.

32. **COMMON INSURANCE.** Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies on the Common Area, and any other Association properties and activities, covering the following risks:

A **Property.** Property insurance on the Common Area for broad form covered causes of loss.

B. **Public Liability.** Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and Association properties and activities, and deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and Association properties and activities.

C. **Other Insurance.** In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on this ____ day of _____, 1997.

KING'S DEER DEVELOPMENT, LLC, a Colorado
limited liability company

By: _____
Its: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 1997, by _____ as _____ of KING'S DEER DEVELOPMENT, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:

Notary Public

CONSENT TO DECLARATION

King's Deer Highlands Homeowners Association, Inc., a non-profit Colorado corporation, hereby approves, ratifies and agrees to the foregoing Declaration of Covenants, Conditions and Restrictions for King's Deer Subdivision to which this Consent is attached.

KING'S DEER HIGHLANDS HOMEOWNERS
ASSOCIATION, INC., a Colorado non-profit corporation

By _____

Title _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 1997, by King's Deer Development Highlands Homeowners Association, Inc.

Witness my hand and official seal.

My commission expires:

Notary Public

