

**AMENDED AND RESTATED  
SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE ENCLAVE  
ON KEN-CARYL RANCH**

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AMENDED AND RESTATED

SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE ENCLAVE ON KEN-CARYL RANCH

THIS AMENDED AND RESTATED SUPPLEMENTAL DECLARATION of Covenants, Conditions and Restrictions is made this \_\_ day of \_\_\_\_\_, 1983, by Ken-Caryl Ranch Corporation, a Delaware corporation (hereinafter "Grantor"), and The Valley Building Venture, a Colorado general partnership in the form of a joint venture (hereinafter "Declarant").

The Supplemental Declaration of Covenants, Conditions and Restrictions for The Enclave on Ken-Caryl Ranch recorded on October 4, 1982, in the office of the Clerk and Recorder of Jefferson County, Colorado, at Reception No 82069115, as corrected by that certain Notice recorded on October 6, 1982 in the real property records of Jefferson County, Colorado, at Reception No 82069504, is hereby amended and restated in its entirety to read as follows:

**R E C I T A L S:**

- A. On April 25, 1974, Grantor executed that certain Master Declaration of Covenants, Conditions and Restrictions of Ken-Caryl Ranch recorded on April 26, 1974 under Reception No 635595 in book 2616 at pages 163 through 237 of the Jefferson County, Colorado, real property records, and in June 1978, Grantor amended and restated the same by that certain Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Ken-Caryl Ranch recorded on June 30, 1978 under Reception No. 78059201 of the Jefferson County Colorado, real property records (hereinafter the "Master Declaration", as owner of the lands described on Exhibits A and B thereto and referred to in the Master Declaration as Ken-Caryl Ranch.
- B. Declarant is the owner of the real property located in the County of Jefferson, State of Colorado and described on Exhibit I attached hereto and by this reference incorporated herein. This Supplemental Declaration shall apply only to the real property described on Exhibit I hereto and to such additional real property as has been hereafter subjected to this Supplemental Declaration in the manner set forth below in Article 2. All real property described on Exhibit I hereto, together with all real property which has been hereafter so subjected to this Supplemental Declaration from and after the date of such subjection, is sometimes hereinafter referred to as the "Real Property".
- C. This Supplemental Declaration is made and recorded pursuant to Article II, Section 2.01 of the Master Declaration and the provisions hereof may be enforced as provided for the enforcement of other provisions in the Master Declaration or as provided for herein.
- D. Ken-Caryl Ranch is an area of unique natural beauty, featuring distinctive terrain. By subjecting certain portions of Ken-Caryl Ranch to this Supplemental Declaration in addition to the Master Declaration, it is the desire, intent and purpose of Grantor and Declarant to create a community in which such beauty shall be substantially preserved, to enhance the desirability of living on those portions of Ken-Caryl Ranch and to increase and preserve the attractiveness, quality and value of the lands and improvements therein.

# DECLARATION

NOW, THEREFORE, Grantor and Declarant hereby declare that the Real Property is and shall henceforth be owned, held, conveyed, devised, encumbered, leased, improved, used, occupied and enjoyed subject to the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Property. Grantor and Declarant further publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the Real Property as covenants running with the land and equitable servitudes enforceable at law or in equity, as the case may be, and shall be a burden upon the Real Property and be a burden upon and inure to the benefit of all parties having, acquiring or owning any right, title or interest in the Real Property or in any improvements located thereon, their grantees, successors, heirs, personal representatives, devisees and assigns, however said right, title or interest is obtained.

## ARTICLE I

### DEFINITIONS

The following terms and phrases shall have the following meanings when used herein unless the context otherwise specifies or requires.

SECTION 1.01. Architectural Committee. “Architectural Committee” shall mean the committee created pursuant to Article VIII of the Master Declaration.

SECTION 1.02 Board. “Board” shall mean the Board of Directors of The Enclave Homeowners Association.

SECTION 1.03 CPI. “CPI” shall mean the Consumer Price Index for All Urban Consumers for Denver-Boulder, Colorado, for All Items, 1967=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or if said index should ever cease being published, such reasonably similar index as may be designated by the Board.

SECTION 1.04 Declarant. “Declarant” shall mean and refer to The Valley Building Venture, a Colorado general partnership in the form of a joint venture, and its successors and assigns if such successor or assign should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development and is designated as a successor Declarant by the Declarant.

SECTION 1.05 Grantor. “Grantor” shall mean Ken-Caryl Ranch Corporation, a Delaware corporation, and its successors by corporate merger or dissolution.

SECTION 1.06 Improvement. “Improvement” shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, patios, tennis courts, swimming pools, cabanas, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs,

decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

SECTION 1.07 Local Common Area. “Local Common Area” shall mean all of the real property, together with all Improvements located thereon, designated on any recorded plat of The Enclave Homeowners Association for the common use and enjoyment of the Owners.

SECTION 1.08 Lot. “Lot” shall mean any unit of land which is designated on any recorded subdivision plat of The Enclave, with the exception of the Local Common Area.

SECTION 1.09 Managing Agent. “Managing Agent” shall mean the person, firm or corporation (except Declarant while there is a Class B Member pursuant to Section 11.02 of this Supplemental Declaration) employed by The Enclave Homeowners Association pursuant to Section 12.04 of this Supplemental Declaration, and delegated any of the duties, powers or functions of The Enclave Homeowners Association or the Board pursuant to said Section.

SECTION 1.10 Master Association. “Master Association” shall mean Ken-Caryl Ranch Master Association, the nonprofit Colorado corporation described in Article VI of the Master Declaration, and its successors.

SECTION 1.11 Master Declaration. “Master Declaration” shall mean that certain Master Declaration of Covenants, Conditions and Restrictions of Ken-Caryl Ranch dated April 25, 1974 and recorded on April 26, 1974 in Book 2616 at Page 163 of the real property records of Jefferson County, Colorado, as amended and restated by that certain Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Ken-Caryl Ranch recorded on June 30, 1978 under Reception No 78059201 of the real property records of Jefferson County, Colorado.

SECTION 1.12 Member. “Member” shall mean any person or entity who is a member of The Enclave Homeowners Association.

SECTION 1.13 Mortgage. “Mortgage” shall mean a mortgage or a deed of trust, as the case may be, given on a Lot or the Local Common Area to secure the payment of a debt, which mortgage or deed of trust is duly recorded in the real property records of Jefferson County, Colorado. The term “Mortgage” shall also mean any executory land sales contract for a Lot wherein the Administrator of Veterans Affairs, an officer of the United States of America, is identified as the seller, whether or not such contract is recorded and whether such contract is owned by the Administrator or has been assigned to another and whether or not the real property records in the office of the Clerk and Recorder of the County of Jefferson, Colorado, show the said Administrator as having the record title to the Lot.

SECTION 1.14 Mortgagee. “Mortgagee” shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, which mortgage or deed of trust is given on a Lot or the Local Common Area to secure payment of a debt and is duly recorded in the real property records of Jefferson County, Colorado. The term “Mortgagee” shall also mean the Administrator of Veterans Affairs, an officer of the United States of America, and his assigns under any executory land sales contract for a Lot wherein the said Administrator is identified as the seller, whether or not such contract is recorded and whether or not the real property records in the office of the Clerk and Recorder of the County of Jefferson,

Colorado, show the said Administrator as having the record title to the Lot.

SECTION 1.15 Notice and Hearing. “Notice and Hearing” shall mean ten (10) days’ prior written notice given as in Section 19.03 of this Supplemental Declaration provided and a hearing open to all Members at which the person to whom the notice is directed shall have the opportunity to be heard in person or by counsel at his expense.

SECTION 1.16 Owner. “Owner” shall mean the record owner, whether one or more persons or entities, of an aggregate fee simple title to any Lot which is part of The Enclave, including Grantor and Declarant, and contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 1.17 Person. “Person” shall mean a natural individual or any partnership, joint venture, corporation, unincorporated association, trust or other entity with the legal right to hold title to real property.

SECTION 1.18 Plans and Specifications. “Plans and Specifications” shall mean any and all documents designed to guide or control the Improvement or other proposal in question, including but not limited to those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the Improvement or proposal in question.

SECTION 1.19 Private Maintenance Area. “Private Maintenance Area” shall mean that area of each Lot located behind the dwelling unit to be maintained by the Owner of said Lot. For Lots on which a duplex structure is constructed, the four boundary lines of the Private Maintenance Areas are: (1) the exterior surface of the rear wall of the dwelling unit; (2) the interior surface of the privacy fence parallel to said rear wall of the dwelling unit; (3) the common property line of the Lot and the adjacent Lot which divides in half the duplex structure of which the dwelling unit is a part, including the interior surface of any privacy fence along said property line; and (4) an invisible plane which extends the exterior surface of the side wall of the duplex structure to the privacy fence parallel to the rear wall of the dwelling unit. For Lots on which a single-family home is constructed, the four boundary lines of the Private Maintenance Area are: (1) the exterior surface of the rear wall of the dwelling unit; (2) the interior surface of the privacy fence parallel to said rear wall of the dwelling unit; and (3) two invisible planes which extend the exterior surfaces of the two side walls of the dwelling unit to the privacy fence parallel to the rear wall of the dwelling unit.

SECTION 1.20 Real Property. “Real Property” shall mean that certain real property described on Exhibit I, hereto and any additional real property which may be subjected to this Supplemental Declaration pursuant to Article 2 below from and after the date of such subjection.

SECTION 1.21 Supplemental Declaration. “Supplemental Declaration” shall mean this instrument as it may be amended from time to time.

SECTION 1.22 The Enclave. “The Enclave” shall collectively mean the Real Property and all Improvements located or be located on the Real Property.

SECTION 1.23 The Enclave Homeowners Association. “The Enclave Homeowners Association” shall mean the nonprofit Colorado corporation described in Article II

hereof and its successors.

SECTION 1.24 Incorporation by Reference. Unless the context otherwise specifies or requires and except as above provided in this Article I, words and phrases defined in Article I of the Master Declaration shall have the same meanings when used in this Supplemental Declaration.

## ARTICLE 2

### SUBJECTION OF LAND TO THIS SUPPLEMENTAL DECLARATION

Grantor and Declarant acting together, and other Persons with their written consent, hereby reserve the right, to be exercised before December 31, 1989, to submit in phases, from time to time, all or some of the additional land described on Exhibit II attached hereto and by this reference incorporated herein, and the Improvements constructed or to be constructed thereon, to this Supplemental Declaration. Upon the recording of a Notice of Addition of Land containing the provisions set forth below in this Article, the terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations contained in this Supplemental Declaration shall apply to the added land in the same manner as to the land originally subject to this Supplemental Declaration; and thereafter, such added land, together with the Improvements constructed or to be constructed thereon, shall for all purposes be treated as an integral part of The Enclave and the rights, privileges, duties and liabilities of all Persons subject to this Supplemental Declaration shall be the same with respect to all added land as with respect to the land originally covered by this Supplemental Declaration. The Notice of Addition of Land referred to hereinabove shall contain the following provisions:

- (a) A reference to this Supplemental Declaration, which reference shall state the date of recordation hereof and the reception number wherein this supplemental Declaration is recorded.
- (b) A statement that the provisions of this Supplemental Declaration shall apply to the added land as set forth herein;
- (c) An adequate legal description of the added land; and
- (d) Grantor's written consent and Declarant's written consent.

When additional land is subjected to this Supplemental Declaration, the total number of votes in The Enclave Homeowners Association available to be cast on any matter shall increase, reducing each Owner's vote in relation to all votes available to be cast. The assessments against Lots and the votes appurtenant to Lots, which Lots constitute part of any such expansion of The Enclave, shall become effective in accordance with the terms of this Supplemental Declaration upon the recording in the Jefferson County, Colorado, real property records of the Notice of Addition of land. The minimum number of Lots to be included in The Enclave shall be fifty-three (53) Lots and the maximum number of Lots that may be included in The Enclave, as expanded, shall be one hundred eighty-three (183) Lots. In the event of such expansion, the definitions used in this Supplemental Declaration automatically shall be expanded to encompass and refer to The Enclave as so expanded. No additional land may be added to The Enclave without the prior written consent of the Veterans Administration; no other consent of Owners or Mortgagees shall be required. Improvements installed within areas to be added to this Supplemental Declaration

shall be consistent with the initial Improvements in terms of quality of construction. Any lien arising from ownership or construction upon land added to this Supplemental Declaration shall appertain only to such land and shall not affect the rights of existing Owners or the priority of Mortgages on Lots or Local Common Area within the theretofore existing portion of The Enclave.

## ARTICLE 3

### BASIC BUILDING RESTRICTIONS

SECTION 3.01. Use of Property. Each Lot shall be used solely for one single-family residence. This single-family residence may consist of one-half of a duplex structure in which the party wall coincides with one of the side boundary lines of the Lot.

SECTION 3.02. Architectural Committee Approval. The Plans and Specifications, including the location and exterior colors and materials, of all Improvements must be approved in writing by the Architectural Committee prior to the commencement of any construction. Any matter not specifically designated herein or in the Master Declaration as being within the jurisdiction of or requiring the approval of the Architectural Committee or the Board of Directors of the Master Association shall be governed by and within the jurisdiction of the Board of Directors of The Enclave Homeowners Association.

SECTION 3.03. New Construction. All dwelling units shall be of new construction and no existing or prefabricated dwelling unit shall be moved onto any Lot. No other building or structure (including but not limited to playhouses, storage sheds and windmills) may be moved onto a Lot without the prior written approval of the Architectural Committee.

SECTION 3.04. Storage of Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement or its repair, alteration or replacement.

SECTION 3.05. Occupancy During Construction. A structure shall not be occupied in the course of original construction until all required certificates of occupancy have been issued by the appropriate governmental authorities. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

SECTION 3.06. Temporary Structures. No trailer, mobile home, tent or shack other than temporary building, improvement or structure shall be placed upon any property, except that temporary structures necessary for storage of tools and equipment and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of the Architectural Committee, such approval to include the nature, size, location and maximum duration of such structure.

SECTION 3.07. Construction Activities. This Supplemental Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by any Owner, provided that when completed such Improvements shall in all ways conform to this Supplemental Declaration and the Master Declaration. Specifically, no such construction activities shall be deemed to constitute a

nuisance or a violation of this Supplemental Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including but not limited to any provision prohibiting temporary structures, may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form.

## ARTICLE 4

### USE RESTRICTIONS

SECTION 4.01. Single-Family Use Only. No Lot and no residence on any Lot shall be used for any purpose other than for one single-family residence. However, nothing in this Supplemental Declaration shall prevent the rental of a Lot by the Owner thereof for residential purposes in accordance with Section 4.12 below, subject to all the provisions of the Master Declaration, this Supplemental Declaration and the Ken-Caryl Ranch Rules, as the same may be amended from time to time. No commune, co-operative or similar type living arrangement shall be permitted on any Lot.

SECTION 4.02. Animals. No animals shall be kept on any Lot except an aggregate of two (2) domesticated dogs or cats, and except domesticated birds and fish and other small domestic animals, and then only if kept as pets. All dogs shall be kept on a hand-held leash except when on their Owner's own Lot. No animal or other pet of any kind shall be permitted which in the opinion of the Board might be dangerous or which makes an unreasonable amount of noise or odor or is a nuisance. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. No poultry may be kept on any Lot. No rare, exotic or unusual animals or other pets (except non-dangerous birds and fish) shall be kept on any Lot without the prior written approval of the Board. Each Owner shall be responsible for cleaning up after his pet and for all damage to the Local Common Area or to the Lot of any other Owner caused by any pet possessed by such Owner.

SECTION 4.03. Antennas. No aerial or antenna for reception of radio or television or other electronic signal shall be maintained on the roof of any building nor shall any be maintained at any location so as to be visible from neighboring property or adjacent streets. No towers of any type, including those for the purpose of generating electricity from wind, shall be erected or maintained on any Lot or on the Local Common Area.

SECTION 4.04. Transmitters. No electronic or radio transmitter of any kind, other than garage door openers, shall be located or operated in or on any Improvement or on any Lot without the prior written approval of the Board.

SECTION 4.05. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof in the opinion of the Board unsanitary, unsightly,

offensive or detrimental to any other property or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be, in the opinion of the Board, offensive or detrimental to any other property or its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot without the prior written approval of the Board.

SECTION 4.06. Unsightly Articles. No unsightly article shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, recreation vehicles, graders, trucks other than pickups used solely for the private and non-business use of the residents of a dwelling, boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment, garden and maintenance equipment, and all commercial and business vehicles shall be kept at all times, except when in actual use, in an enclosed structure or screened from view; and no repair or maintenance work shall be done on any of the foregoing, or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass or plant waste, shrub or tree clippings, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view. Liquid propane gas, oil and other exterior tanks shall be kept within an enclosed structure or permanently screened from view.

SECTION 4.07. Signs. No sign or advertising device of any kind shall be displayed to the public view on any Lot or the Local Common Area; provided, however, that signs which have received the prior approval of the Architectural Committee may be displayed on or from a residence advertising the residence for sale or lease. Signs used for sale, administration and directional purposes during development of The Enclave will be permitted. All signs must be professionally painted, lettered and constructed.

SECTION 4.08. Hazardous Activities. No activities shall be conducted on any Lot and no Improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

SECTION 4.09. Garages. The doors of any garage located on a Lot shall be kept closed at all times except when an automobile is entering into or exiting from such garage.

SECTION 4.10. Garage Sales. No garage, patio, porch or lawn sale shall be held on any Lot, except that the Owner of any Lot may conduct such a sale if the items sold are only his own furniture and furnishings, not acquired for purposes of resale; if such sale is held at such time and in such manner as not to disturb any other resident of the area; and if such sale is held in full compliance with all applicable governmental ordinances, statutes, resolutions, rules and regulations.

SECTION 4.11. Restrictions on Parking. Each Owner for himself, members of his

family, his agents, employees, invitees, licensees and lessees shall make every effort to park private vehicles in the garage or driveway located on said Owner's Lot and not on the streets. To the extent permitted by the law, the Board may from time to time adopt and enforce restrictions or prohibitions on parking in public ways within The Enclave.

SECTION 4.12. Leasing of a Lot. The Owner of a Lot, including Declarant, shall have the right to lease his Lot under the following conditions:

(a) All leases must be in writing, must be approved by the Board and must affirmatively obligate the lessee and all other residents to abide by the provisions of the Master Declaration and this Supplemental Declaration and by the provisions of the Articles of Incorporation and the Bylaws and all rules and regulations of The Enclave Homeowners Association. Any failure by the lessee to comply therewith shall be a default under the lease; and

(b) No lease shall be for a period of less than thirty (30 ) days.

SECTION 4.13. Drainage. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading except after first obtaining the prior written approval of the Architectural Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture.

## ARTICLE 5

### MAINTENANCE OBLIGATIONS OF OWNERS

SECTION 5.01. Private Maintenance Area. Each Owner, with the exception of Grantor and Declarant, shall improve, within a reasonable period of time not to exceed six (6) months from the date said Owner acquires title to the Lot, the Private Maintenance Area on his Lot, which improvement shall require at a minimum the planting of a lawn. Prior to commencement of any construction of any fence, screening wall, retaining wall or landscaping (not including lawns, groundcover, flowers or vegetables) in the Private Maintenance Area, and prior to any planting of trees or shrubs in the Private Maintenance Area, the Owner shall obtain the approval of the Architectural Committee to such construction or planting pursuant to Article VIII of the Master Declaration. Each Owner shall be responsible for the management, control, operation, maintenance, repair and replacement of the Private Maintenance Area on his Lot and shall perform such functions at said Owner's sole expense. Each Owner shall keep the Private Maintenance Area on his Lot free from weeds, free from plants infected with noxious insects or plant diseases which are likely to spread to other property, and in an attractive and sightly condition and a good state of repair. The maintenance, repair and replacement of any fence along the common property line between the two Lots shall be the joint and several obligation of the Owners who make use of said fence. The management, control, operation, maintenance, repair and replacement of the landscape Improvements on the remaining portion of each Lot shall be the exclusive responsibility of The Enclave Homeowners Association as in Section 12.02 hereof provided.

SECTION 5.02. Improvements. All Improvements upon each Lot (except landscaping, hedges, planted trees and shrubs and other landscape Improvements to be maintained by The Enclave Homeowners Association as in Section 12.02 hereof provided) shall be maintained by the Owner of said Lot at said Owner's own expense. Without limiting the generality of the foregoing, this maintenance obligation shall include snow, ice and trash removal and paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, windows, glass, walks, driveways and other structures. An Owner shall not allow any such Improvement upon his Lot to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by and at the expense of the Owner before the surfacing becomes weather-beaten or worn off. Materials which are customarily left unfinished are permitted so long as in the opinion of the Architectural Committee they have not become unsightly. Each Owner shall have the obligation to replace any exterior finishing or other materials removed with similar colors and types or kinds of materials, such colors and materials to be approved by the Architectural Committee. No Owner shall make any changes or alterations of any type or kind to the exterior surfaces of the buildings or other Improvements on his Lot without the prior approval of the Architectural Committee.

SECTION 5.03. Failure to Maintain. If any Owner fails to carry out or neglects the responsibilities set forth in this Article, The Enclave Homeowners Association may fulfill the same and charge such Owner therefor. Any amount assessed against an Owner by The Enclave Homeowners Association pursuant to this Section shall be in addition to any annual or special assessment to which said Owner's Lot is subject, but The Enclave Homeowners Association shall have all of the rights pertaining to a special assessment specified in Section 13.05 hereof for such amount. Any expense incurred by an Owner under this Article shall be the sole expense of said Owner.

## ARTICLE 6

### PROPERTY RIGHTS IN THE LOCAL COMMON AREA

SECTION 6.01. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Local Common Area and such right and easement shall be appurtenant to and shall pass with the title to every Lot. Such right and easement of enjoyment in and to the Local Common Area shall be subject to the following:

- (a) The right of The Enclave Homeowners Association to limit the number of guests of Owners who may use at any one time any recreational facilities situated on the Local Common Area.
- (b) The right of The Enclave Homeowners Association to collect money upon a cost basis for the use of any recreational facility situated upon the Local Common Area.
- (c) The right of The Enclave Homeowners Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Local Common Area and facilities situated thereon and in aid thereof to mortgage or grant other security interests in the Local Common Area; provided, however, that the rights of any Mortgagee shall be subject to the rights of the Owners while any Mortgage is current and not in default, and further provided that no funds may be

borrowed nor shall any Mortgagee be given on the Local Common Area unless Section 12.10 hereof is fully complied with. Further, any such mortgage transaction while there is a Class B membership pursuant to Section 11.02 hereof must be approved by the Veterans Administration.

- (d) The right of The Enclave Homeowners Association to suspend the right to use of any recreational facilities situated on the Local Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and the right of The Enclave Homeowners Association to suspend the right to use of any recreational facilities situated on the Local Common Area by an Owner for a reasonable period of time for any infraction of its published rules and regulations.
  
- (e) The right of The Enclave Homeowners Association to dedicate, transfer, grant or convey all or any part of the Local Common Area, subject to the ingress and egress and utility easements created by recorded subdivision plats of The Enclave, to any public agency, authority, utility or other Person or to the Master Association for such purposes and subject to such conditions as may be agreed to by the Members and by Persons holding Mortgages on any portion of the subject property. No such dedication, transfer, grant or conveyance shall be effective unless Section 12. 10 hereof has been fully complied with. Further, any such transaction while there is a Class B membership pursuant to Section 11.02 hereof must be approved by the Veterans Administration. Declarant shall have the right at any time to use so much of the Local Common Area as it may deem reasonably necessary and advisable for the purpose of aiding in the construction and development of the unimproved Lots and the Local Common Area, and the maintenance and repair of the same; provided, however, that such use may not unreasonably interfere with an Owner's use and access to the Local Common Area nor with an Owner's right of ingress and egress to his Lot.

SECTION 6.02. Delegation of Use. Each Owner's right and easement of enjoyment in and to the Local Common Area shall extend to the members of said Owner's family who reside on his Lot and, subject to the restriction contained in Section 6.01(a) hereof, to said Owner's guests. Any Owner shall delegate his right of enjoyment to the Local Common Area to his tenants who reside on his Lot.

SECTION 6.03. Title to the Local Common Area. Declarant will convey fee simple title to that part of the Local Common Area described on Exhibit III attached hereto and by this reference incorporated herein to The Enclave Homeowners Association, free and clear of all liens.

## **ARTICLE 7**

### **FURTHER SUBDIVISION**

No Lot shall be further divided or subdivided, nor may any easement, right-of-way or other interest therein less than the whole, other than a leasehold estate or interest in or to the Lot or an easement across the Lot in question to serve only said Lot or the Improvements located thereon,

be conveyed by the Owner of said Lot, nor shall any two or more Lots be combined into a single parcel. Notwithstanding the foregoing, however, while Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot, convey any easement, right-of-way or other interest less than the whole and combine any two or more Lots into a single parcel. Nothing herein shall prohibit transfer or sale of any Lot to more than one Person to be held by them as tenants in common or joint tenants or prohibit the granting of any Mortgage. Nothing herein shall prohibit easements created by recorded subdivision plats for utilities, drainage or vehicular or pedestrian ingress and egress.

## **ARTICLE 8**

### **UTILITIES**

SECTION 8.01. Payment of the Cost of Utilities and Services. Each Lot is subject to all easements for gas, electric, telephone, cable television, water, sewer and other lines as are necessary to provide utility services to said Lot and the Improvements located thereon, and each Owner shall execute such further grant or other documentation as may be required by any utility or other company or public, governmental or quasi-governmental entity for such purposes. Each Owner shall be billed separately and shall pay as billed for all electric, gas, telephone, cable television and other utilities and services supplied to said Owner's Lot and the Improvements located thereon; provided, however, that water shall be supplied to each Lot and the Local Common Area from a central, common water system and sewer service will not be billed separately to each Owner and, therefore, the cost of said water and sewer service shall be borne as provided in Article 13 hereof.

SECTION 8.02. Rules and Regulations. Each Owner agrees to abide by all applicable rules and regulations of all utility and other companies and public, governmental and quasi-governmental entities which supply any of the services mentioned in Section 8.01 above.

SECTION 8.03. Street Lighting. All Lots shall be subject to and bound by Intermountain Rural Electric Association tariffs which are now or may in the future be filed with and approved by the Public Utilities Commission of the State of Colorado relating to street lighting, together with rates, rules and regulations therein provided, and subject to all future amendments and changes thereto so approved. The Owner of each Lot shall pay as billed a portion of the cost of public street lighting according to Intermountain Rural Electric Association rates, rules and regulations, including future amendments and changes, on file with and approved by the Public Utilities Commission of the State of Colorado.

## **ARTICLE 9**

### **EASEMENTS**

SECTION 9.01. Local Common Area. The easements over and across the Local Common Area shall be those shown, or provided for, upon the recorded plats of The Enclave and such other easements as may be established pursuant to or provided for by the provisions of this

## Supplemental Declaration.

SECTION 9.02. Easements for Encroachment. If any building or other Improvement located on the Local Common Area encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any building or other Improvement located on a Lot encroaches or shall hereafter encroach upon the Local Common Area, or upon an adjacent Lot, the Owner of that Lot shall and does have an easement for such encroachment and for the maintenance of the same. Such encroachment shall not be considered to be an encumbrance either on the Local Common Area or the Lot. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building or other Improvement, by error in the recorded plats of The Enclave, by overhangs as designed, or by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of The Enclave or any part thereof.

SECTION 9.03. Utilities. Notwithstanding anything contained in Section 6.01(e) of Article 6 hereof, the Board of The Enclave Homeowners Association or, until such time as the Class B membership has ceased to exist as provided in Section 11.02 hereof, Declarant may grant easements upon, across and under the Local Common Area to the Master Association for such purposes as the Board or Declarant, as the case may be, sees fit or to a public agency, authority or utility for installing, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, without a vote of the membership.

SECTION 9.04. Easement for The Enclave Homeowners Association. The Enclave Homeowners Association (including its agents, employees and contractors) shall have a non-exclusive easement to make use of the Local Common Area and each Lot as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Supplemental Declaration.

SECTION 9.05. Emergency Easement. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing The Enclave, to enter upon all streets, roads and driveways located n The Enclave, and upon the Real Property, in the performance of their duties.

SECTION 9.06. Easements Deemed Created. All conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements, uses and rights as are provided in this Supplemental Declaration, even though no specific reference to such easements, uses or rights appears in any such conveyance.

## **ARTICLE 10**

### **PARTY WALLS**

SECTION 10.01. General Rules of Law to Apply. Each wall that is built as a part of the original construction of the duplex homes located upon certain Lots and placed on the dividing line between such Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for

property damage due to negligence or willful acts or omissions shall apply thereto.

SECTION 10.02. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 10.03. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

SECTION 10.04. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 10.05. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

SECTION 10.06. Arbitration. Any dispute that arises concerning a party wall, or under the provisions of this Article, shall be settled by arbitration according to the rules and practices of the American Arbitration Association from time to time in force.

## ARTICLE 11

### THE ENCLAVE HOMEOWNERS ASSOCIATION

SECTION 11.01. Membership. Every Owner of a Lot shall be entitled and required to be a Member of The Enclave Homeowners Association, which Association shall be formed by Declarant. Said membership is appurtenant to the Lot of said Owner and the ownership of the membership for a Lot shall automatically pass with fee simple title to the Lot. An Owner shall be entitled to one (1) membership for each Lot owned by him. No Person other than an Owner of a Lot may be a Member of The Enclave Homeowners Association and the memberships in The Enclave Homeowners Association may not be transferred except in connection with the transfer of title to a Lot.

SECTION 11.02. Voting Rights. The Enclave Homeowners Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be all of the Owners with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote per Lot for each Lot in The Enclave owned by said Class A Member. When more than one Person owns any Lot, all such Persons shall be Members, but the vote appurtenant to such Lot shall be exercised as the several Owners among themselves determine and in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes per Lot for each Lot in The Enclave owned by said

Class B Member, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever shall first occur:

- (a) One hundred twenty (120) days after the date on which the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) December 31, 1989.

If the Class B membership has ceased to exist pursuant to subsection (a) above, and other real property is thereafter subjected to this Supplemental Declaration, the Class B membership shall be reinstated and for purposes of determining the total number of votes to which the Class B Member is entitled, all Lots then owned by Declarant anywhere in The Enclave shall be counted.

SECTION 11.03. Amplification. The provisions of this Article 11 are to be amplified by the Articles of Incorporation and the Bylaws of The Enclave Homeowners Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth herein. In case of conflict between this Supplemental Declaration and the Articles of Incorporation or the Bylaws of The Enclave Homeowners Association, this Supplemental Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws of The Enclave Homeowners Association, the Articles of Incorporation shall control.

## **ARTICLE 12**

### **CERTAIN RIGHTS AND OBLIGATIONS OF**

### **THE ENCLAVE HOMEOWNERS ASSOCIATION**

SECTION 12.01. Maintenance of the Local Common Area. The Enclave Homeowners Association shall be responsible for the exclusive management, control, operation, maintenance, repair, improvement and replacement of the Local Common Area and all Improvements located thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, safe, attractive and sanitary condition, order and repair. The cost of such management, operation, maintenance, repair, improvement and replacement shall be borne as provided in Article 13 of this Supplemental Declaration.

SECTION 12.02. Landscape Maintenance of Lots. The Enclave Homeowners Association shall be responsible for the exclusive management, control, operation, maintenance, repair, improvement and replacement of the landscaping, plantings, hedges, planted trees and shrubs and other landscape Improvements located on that portion of each Lot that does not constitute a Private Maintenance Area or directly underlie a dwelling unit and shall keep the same free from weeds, free from plants infected with noxious insects or plant diseases which are likely to spread to other property, and in a good, clean, safe and attractive condition. Without limiting the generality of the foregoing, the landscape maintenance obligation of The Enclave Homeowners Association referenced above shall include lawn mowing and raking, weeding,

irrigation, tree and shrub pruning and trimming and replacement of diseased or dead plantings, trees and shrubs. The cost of such landscape maintenance shall be borne as provided in Article 13 of this Supplemental Declaration.

SECTION 12.03. Assumption of Owners' Maintenance Obligations. If the Board should determine that any maintenance obligation of the Owners relating to snow, ice or trash removal, to paint, repair, replacement and care of the exterior of the dwelling units or the exterior of other Improvements on the Lots, or to maintenance, repair and replacement of any fences around the Private Maintenance Areas set forth in this Supplemental Declaration should be assumed by The Enclave Homeowners Association, it shall call a special meeting of Members to consider such decision. Any such special meeting shall comply with the notice and quorum requirements set forth in Section 19.04 hereof. If the Members, by two-thirds (2/3) of the total number of votes cast at such meeting, elect to ratify such decision, within sixty (60) days thereafter The Enclave Homeowners Association shall assume said maintenance obligation and the Owners shall be relieved of the same. Any cost incurred by The Enclave Homeowners Association in performing said maintenance obligation shall be a common expense to be paid by the Owners as provided in Article 13 hereof and, accordingly, the Board may increase the amount of the annual assessment against each Lot and, if necessary, the amount of the maximum annual assessment as of the date The Enclave Homeowners Association assumes said maintenance obligation to cover the cost thereof, without a vote of the membership.

SECTION 12.04. Management and Other Services. The Enclave Homeowners Association may obtain and pay for the services of any person or entity (the "Managing Agent") to manage its affairs, or any part thereof, to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine to be necessary or desirable for the proper operation of The Enclave, whether such personnel are furnished or employed directly by The Enclave Homeowners Association or by the Managing Agent. To the extent permitted by law, The Enclave Homeowners Association and the Board may delegate any of their duties, powers and functions to the Managing Agent. If professional management of The Enclave Homeowners Association has been previously required by the Veterans Administration, any decision to establish self-management by The Enclave Homeowners Association shall require the prior consent of the Members expressed by a vote of two-thirds (2/3) of the votes of the Class A Members and two-thirds (2/3) of the votes by the Class B Members present, either in person or by proxy, at a meeting duly called for this purpose, which meeting shall comply with the notice and quorum requirements set forth in Section 19.04 hereof, and shall require the approval of fifty-one percent (51%) of the first Mortgagees of the Lots (based on one (1) vote for each first Mortgage). Each and every management contract made between The Enclave Homeowners Association and a Managing Agent while there is a Class B membership as in Section 11.02 hereof provided shall terminate no later than thirty (30) days after the termination of the Class B membership; shall require approval of the Veteran's Administration pursuant to Section 19.12 hereof; and shall specifically state that, notwithstanding any other provision contained in the contract, it shall be subject to this sentence of Section 12.04 of the Supplemental Declaration. In addition to the foregoing, The Enclave Homeowners Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of The Enclave or the enforcement of this Supplemental Declaration. The Enclave Homeowners Association may also arrange with others to furnish lighting, heating, water, trash collection, sewer service, snow removal, landscaping, gardening and other common services to the Local Common Area and, to the extent The Enclave Homeowners Association is responsible therefor under this

Supplemental Declaration, to the Lots. The cost of such management and other services shall be borne as provided in Article 13 hereof.

SECTION 12.05. Personal Property for Common Use. The Enclave Homeowners Association may acquire and hold for the use and benefit of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Each Owner shall have the right to use such property in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of other Owners.

SECTION 12.06. Rules and Regulations. The Enclave Homeowners Association may from time to time adopt, amend and terminate, and Owners shall comply with, reasonable rules and regulations governing the use of the Local Common Area, the Lots, and personal property for common use and covering any or all aspects of its functions hereunder, which rules and regulations shall be consistent with the rights and duties established in this Supplemental Declaration and shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument of conveyance or assignment, agrees to accept and be bound by any such adopted rules and regulations.

SECTION 12.07. Availability of Records and Current Copies of Documents. The Enclave Homeowners Association shall make available to Owners, prospective purchasers, prospective Mortgagees and existing holders, insurers and guarantors of the first Mortgage on any Lot or on the Local Common Area, current copies of this Supplemental Declaration, the Bylaws of The Enclave Homeowners Association and other rules and regulations governing The Enclave and other books, records and financial statements of The Enclave Homeowners Association, including the most recent annual audited financial statement, if any, "Available" shall mean available for inspection upon request during normal business hours.

SECTION 12.08. Payment of Taxes. The Enclave Homeowners Association shall pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by The Enclave Homeowners Association, to the extent that such taxes and assessments are not levied directly upon the Members. Such taxes and assessments shall constitute part of the annual assessments provided for in Article 13 hereof. The Enclave Homeowners Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

SECTION 12.09. Right of Entry and Enforcement. The Enclave Homeowners Association shall enforce, in its own name and in behalf of all Owners, all of the covenants, conditions and restrictions set forth in this Supplemental Declaration, as the same may be amended from time to time, under an irrevocable agency (hereby granted) coupled with an interest, as beneficiary of said covenants, conditions and restrictions, and as assignee of Declarant; and it shall perform all other acts, whether or not anywhere expressly authorized, as may be necessary to enforce any of the provisions of this Supplemental Declaration and any rules and regulations that may be adopted by the Board pursuant to this Supplemental Declaration. The Enclave Homeowners Association may enter, after twenty-four (24) hours written notice, without being liable to any Owner, onto any Lot for the purpose of enforcing by peaceful means the provisions of this Supplemental Declaration. If any Owner unreasonably fails to comply with any obligation of such Owner under this Supplemental Declaration, The Enclave Homeowners Association, after Notice and Hearing, may also suspend such Owner's voting rights in The Enclave Homeowners Association for a reasonable period of time. The

Enclave Homeowners Association may exercise any right or privilege given to it expressly by this Supplemental Declaration or by law, and every right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The Enclave Homeowners Association shall also have the power and authority, in its own name and behalf or in the name and behalf of any Owner who consents thereto, to take judicial action against any Owner to enforce by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of the provisions of this Supplemental Declaration or the Articles of Incorporation or the Bylaws of The Enclave Homeowners Association or the decisions of The Enclave Homeowners Association or the Board thereof made pursuant to such documents, or to obtain damages for non-compliance, all to the extent permitted by law. Any Mortgagee may request notice, as provided herein, of any default by the Owner of the Lot in which the Mortgagee has an interest in the Owner's obligations hereunder or under the Articles of Incorporation or the Bylaws of The Enclave Homeowners Association, which default is not cured within sixty (60) days of notice to the Owner. Owners shall have a right of action against The Enclave Homeowners Association for failure to comply with the provisions of this Supplemental Declaration or the Articles of Incorporation or the Bylaws of The Enclave Homeowners Association or with the decisions of The Enclave Homeowners Association or the Board thereof made pursuant to such documents; provided, however, that decisions of such bodies may be reversed or altered from time to time.

SECTION 12.10. Prohibitions. Unless an instrument signed by at least two-thirds (2/3) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) or Owners holding at least two-thirds (2/3) of the votes of the Class A membership, and signed by Owners holding at least two-thirds (2/3) of the votes of the Class B membership, if any, agreeing to such action has been recorded with the Clerk and Recorder of Jefferson County, Colorado, The Enclave Homeowners Association shall not be entitled to:

- (a) By act or omission seek to abandon, subdivide, or transfer the Local Common Area owned, directly or indirectly, by The Enclave Homeowners Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Local Common Areas shall not be deemed a transfer within the meaning of this clause);
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner.
- (c) By act or omission, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwelling units, the maintenance of the common walks, fences and driveways, or the upkeep of lawns and plantings in The Enclave;
- (d) Fail to maintain casualty insurance as in Section 14.01 (a) hereof provided; or
- (e) Use hazard insurance proceeds for losses to the Local Common Area for other than the purposes outlined in the Article 15 hereof.

## **ARTICLE 13**

### **ASSESSMENTS**

SECTION 13.01. Agreement to Pay Assessments. Declarant for each Lot owned by it within The Enclave , and for and as owner of The Enclave and every part thereof, hereby covenants, and each Owner of any Lot within the Enclave by the acceptance of a deed or other instrument of conveyance thereof, whether or not it be so expressed in the deed or other instrument of conveyance, shall be deemed to covenant and agree to pay The Enclave Homeowners Association: (1) annual assessments made by The Enclave Homeowners Association for the purposes provided in this Supplemental Declaration, and (2) special assessments for capital improvements and other matters as provided in this Supplemental Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article 13.

SECTION 13.02 Basis of Annual Assessments. The annual assessments against all Lots levied by The Enclave Homeowners Association through its Board of Directors shall be based upon a budget developed by the Board, consisting of advance estimates made from time to time by the Board of amounts necessary to provide for the payment of all estimated expenses arising out of or connected with the improvement, maintenance and operation of the Local Common Area, the improvement and maintenance of the landscape improvements on certain portions of the Lots as provided in Section 12.02 hereof and such other maintenance or improvement obligations which may be deemed necessary for the common benefit of the Owners and the maintenance of property values or which may be incurred by virtue of agreement with or requirement of city, county or other governmental authorities; the furnishing of water, sewer and other common utilities and services, if any, to the Lots; and the establishment of an adequate reserve fund for periodic maintenance, repair and replacement of the Local Common Area. Said estimated expenses may include, but are not limited to, management; insurance premiums; landscaping and care of grounds; electricity, lighting and heating service for the Local Common Area; snow, ice and trash removal from the Local Common Area; water and sewer service; repairs, replacements and maintenance; taxes and special assessments not separately assessed to Owners by taxing authorities; legal and accounting fees; payment of any deficit remaining from a previous period; the creation of a reasonable contingency fund; and any other expense or liability incurred by The Enclave Homeowners Association under or by reason of this Supplemental Declaration.

SECTION 13.03. Amount of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment shall be Nine Hundred Dollars (\$900.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant, the maximum annual assessment may be increased by the Board each year either by not more than fifteen percent (15%) above the maximum annual assessment for the previous year or by the percentage increase, if any, in the most recent available CPI as of November 1 of the current year over the CPI for November 1 of the previous year, whichever is greater, without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment may be increased by the Board each year by an amount greater than that set forth in subsection (a) above; provided, however, that for a period of time not to exceed thirty (30) days after the date

on which Owners are given notice of the increased assessment pursuant to Section 13.04 below, any such increased assessment may be vetoed by a vote of fifty-one percent (51%) of the Class A Members or fifty-one percent (51%) of the Class B Members who are voting in person or by proxy at a meeting duly called for this purpose.

- (c) The Board may, after consideration of the current maintenance costs and the financial requirements of The Enclave Homeowners Association, fix the annual assessment at an amount less than the maximum, but the maximum annual assessment for the previous year, rather than the actual annual assessment, shall in all cases be used as the basis for determining the maximum annual assessment for the current year.

**SECTION 13.04. Notice of Annual assessments and Time for Payment Thereof.**

Annual assessments shall be payable and collected in advance on a calendar month basis or such other reasonable basis as the Board may determine, but in no event more frequently than monthly or less frequently than yearly. Annual assessments shall commence on all Lots in The Enclave upon the conveyance of the first Lot to an Owner other than Declarant. The Declarant shall pay one-quarter (1/4) of the installments of the annual assessment with respect to each Lot owned by it until the issuance of a Certificate of Occupancy for said Lot. Upon the issuance of a Certificate of Occupancy for any Lot owned by Declarant, Declarant shall commence payment of full annual assessments with respect to said Lot for which a Certificate of Occupancy has been issued. All other Owners shall be subject to full annual assessments and shall commence payment thereof upon the purchase of their Lots. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least forty-five (45) days in advance of each annual assessment period, the Board shall fix the amount of the annual assessment against each Lot and shall give written notice to each Owner as to the amount of the annual assessment with respect to his Lot and as to the amount of each installment thereof. The installments of the annual assessments shall be due and payable on or before the first day of each calendar month or such other installment period set by the Board without further notice. If any installment of the annual assessment against any Lot is not paid within ten (10) days after the due date thereof, the installment shall bear interest at a rate established by the Board from the date it became due and payable until the date it is actually paid.

**SECTION 13.05. Special Assessments.** In addition to the annual assessments authorized above, The Enclave Homeowners Association may levy through its Board of Directors, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Local Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Class A Members and two-thirds (2/3) of the votes of the Class B Members who are voting in person or by proxy at a meeting duly called for this purpose. Notwithstanding the foregoing, however, in the event of any emergency expenditure by The Enclave Homeowners Association, the Board may fix and collect without vote of the membership a special assessment in an amount not to exceed Five Thousand Dollars (\$5,000.00) for the purpose of defraying, in whole or in part, the cost of said emergency expenditure. Notice in writing of the amount of any special assessment levied by The Enclave Homeowners Association pursuant to this Section and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have

been given. A special assessment or any installment thereof shall bear interest at a rate established by the Board from the date it becomes due and payable until the date it is actually paid.

SECTION 13.06. Notice and Quorum for any Action Authorized Under Sections 13.03 and 13.05. Written notice of any meeting called for the purpose of taking any action authorized under Sections 13.03 and 13.05 above shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 13.07. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots.

SECTION 13.08. Assessments for Damages. Any cost incurred by The Enclave Homeowners Association in the repair of damages caused by the negligent or willful or tortious act of an Owner, member of his family, his agents, employees, invitees, licensees or lessees or any cost incurred by The Enclave Homeowners Association to cure an Owner's default hereunder, including reasonable attorney's fees, shall be the responsibility of such Owner. The Enclave Homeowners Association shall assess such Owner for such costs and shall have all of the rights pertaining to a special assessment for such an assessment for damages.

SECTION 13.09. Late Charges. If any assessment or any installment thereof shall remain unpaid after the due date thereof, The Enclave Homeowners Association may impose a late charge on such defaulting Owner in an amount established by the Board sufficient to cover the extra cost and expense involved in handling such delinquent assessment or installment thereof, in addition to the interest charges set forth above in this Article.

SECTION 13.10. Lien for Assessments. All sums assessed to any Lot pursuant to this Article, together with interest and late charges thereon as provided in this Article and together with the costs of collection thereof, including reasonable attorneys' fees, shall be secured by a lien on such Lot and all Improvements located thereon in favor of The Enclave Homeowners Association. Such lien shall be superior to all other liens and encumbrances on such lot, voluntary and involuntary, whether granted by operation of law or otherwise, except only for:

- (a) Valid tax and special assessment liens on the lot, in favor of any government assessing authority; and
- (b) A lien for all sums unpaid on a first mortgage duly recorded in the Jefferson County, Colorado, real property records, including all unpaid obligatory advances to be made pursuant to such mortgage; and
- (c) Any executory land sales contract for the lot wherein the Administrator of Veterans Affairs, an officer of the United States of America, is identified as the seller, whether such contract is owned by the said Administrator or its assigns and whether or not such contract is recorded; and
- (d) Any assessment of the Master Association levied with respect to the Lot Pursuant to the

## Master Declaration.

The sale or transfer of any Lot shall not affect the assessment lien thereon, except that sale or transfer of any Lot pursuant to the foreclosure of any duly recorded first mortgage or any executory land sales contract of the type referenced in subsection © above, or any proceeding in lieu thereof (including deed in lieu of foreclosure), or pursuant to the cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of such assessment charges which became due prior to any such sale or transfer pursuant to foreclosure, or any proceeding in lieu of foreclosure, or pursuant to cancellation or forfeiture of any such executory land sales contract. No such sale or transfer pursuant to foreclosure, or any proceeding in lieu of foreclosure, or pursuant to cancellation or forfeiture of any such executory land sales contract shall relieve any Lot from liability for or the lien of any assessment charges becoming due after such sale or transfer.

To evidence a lien for sums assessed pursuant to this Article, The Enclave Homeowners Association may prepare a written notice of lien setting forth the amount of the assessment, date due, the amount remaining unpaid, the name of the Owner of the Lot and the description of the Lot. Such a notice shall be signed by The Enclave Homeowners Association and may be recorded in the office of the Clerk and Recorder of Jefferson County, Colorado. Not notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by The Enclave Homeowners Association in the same manner in which mortgages on real property may be foreclosed in the State of Colorado. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing a notice of lien and all reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to The Enclave Homeowners Association any assessments against the Lot which become due during the period of foreclosure. The Enclave Homeowners Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, encumber and otherwise deal with the Lot and all Improvements located thereon as the Owner thereof.

A release of notice of lien shall be executed by The Enclave Homeowners Association and recorded in the Jefferson County, Colorado, real property records at the Owner's expense, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any Mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Article, and upon such payment such Mortgagee shall be subrogated to all rights of The Enclave Homeowners Association with respect to such lien, including priority.

Each Owner hereby agrees that The Enclave Homeowners Association's lien on a Lot for assessments as hereinbefore described shall be superior to the Homestead Exemption provided by Colo. Rev. Stat. Ann. § 38-41-201, et seq. (1973, as amended) and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot within The Enclave shall signify such grantee's waiver of the Homestead right granted in said sections of the Colorado statutes.

SECTION 13.11.     Personal Obligation of Owner. The amount of any assessment

against any Lot shall be the personal obligation of the Owner thereof to The Enclave Homeowners Association. Suit to recover a money judgment for such personal obligation shall be maintainable by The Enclave Homeowners Association without foreclosing or waiving the lien securing the same. No owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Local Common Area or by abandonment of his Lot. This personal obligation of an Owner for delinquent assessments shall not pass to successors in title or interest to said Owners Lot unless assumed by them; provided, however, that any such sale or transfer of the Lot pursuant to a foreclosure shall not relieve the purchaser or transferee from liability for, nor the Lot so sold or transferred from the lien of, any assessments becoming due after the date upon which such purchaser or transferee acquires title to or possession of the Lot, whichever shall first occur.

SECTION 13.12. Statement of Account. Upon payment of a fee to be established by the Board and upon written request in the manner herein provided by any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, The Enclave Homeowners Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current annual assessment, the date that such assessments become due and credit for advance payments, which statement shall be conclusive upon The Enclave Homeowners Association in favor of prospective Mortgagees or prospective purchasers who rely thereon in good faith.

SECTION 13.13. Notice. The first Mortgagee of a Lot is entitled to written notice from The Enclave Homeowners Association of any delinquency in the payment of assessments or charges owed by the Owner of such Lot where such delinquency has continued for a period of sixty (60) days and provided such first Mortgagee requests such notice as provided in Section 19.03 of this Supplemental Declaration.

## ARTICLE 14

### INSURANCE

SECTION 14.01. Types of Insurance to be Carried by The Enclave Homeowners Association. The Enclave Homeowners Association shall obtain and keep in full force and effect at all times policies of insurance, provided by companies duly authorized to do business in the State of Colorado, adequate, in the opinion of the Board, in kind and amount. The premiums for such insurance shall be a common expense paid by The Enclave Homeowners Association. Without limiting the generality of the foregoing, such policies of insurance shall include:

- (a) Casualty Insurance. Casualty insurance covering the Local Common Area and all personal property belong to The Enclave Homeowners Association against loss or damage by fire and lighting, vandalism and malicious mischief, under extended coverage and all-risk endorsements, the amount of such insurance to be equal to the full replacement value of the Local Common Area (except land, foundation, excavation and other items normally excluded from such coverage) without deduction for depreciation. Such insurance shall name as insured The Enclave Homeowners Association and any authorized Mortgagee of the Local Common Area, as their interests may appear.
- (b) Public Liability and Property Damage Insurance. Comprehensive general liability

insurance which shall include bodily injury and property damage liability insurance in amounts not less than \$1,000,000.00 for bodily injury per occurrence and \$50,000 for property damage per occurrence. Coverage shall include, without limitation, liability for personal injuries, for property damage, for bodily injuries and death of persons arising from activities of The Enclave Homeowners Association or with respect to property under its jurisdiction and, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The liability insurance policies referred to above shall name as separately protected insureds Grantor, Declarant, The Enclave Homeowners Association, the Board and each of its members, and the Managing Agent, and such policies may also name some or all of the respective officers, employees and agents of the foregoing.

- (c) Workmen's Compensation and Employer's Liability Insurance. Workmen's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees, contractors and subcontractors of The Enclave Homeowners Association in the amounts in the form and to the extent necessary to comply with all applicable laws.
- (d) Fidelity Bonds. Fidelity Bonds in an amount to comply with the regulations of the Veterans Administration for coverage against dishonesty of officers, directors or employees or any other person handling funds of or administered by The Enclave Homeowners Association, destruction or disappearance of money or securities, and forgery. Said policy shall also contain endorsements thereto covering any persons who serve The Enclave Homeowners Association without compensation. Where a Managing Agent has the responsibility of handling or administering funds of The Enclave Homeowners Association, the Managing Agent shall be required to maintain fidelity bond coverage in an amount to comply with the regulations of the Veterans Administration for its officers, employees and agents handling or responsible for funds of or administered on behalf of The Enclave Homeowners Association. Said fidelity bonds shall name The Enclave Homeowners Association as obligee.
- (e) Other. Such other insurance as the Board shall deem necessary or expedient to carrying out The Enclave Homeowners Association's functions, including errors and omissions insurance with respect to the actions of the Board, officers or any Managing Agent of The Enclave Homeowners Association.

The Enclave Homeowners Association shall be deemed trustee of the interests of all Members in all insurance proceeds, and shall have full power to receive and to deal with such proceeds.

SECTION 14.02. Form of Association Insurance. The insurance policy or policies obtained by The Enclave Homeowners Association shall provide that it or they cannot be terminated, canceled or substantially modified by either the insured or the insurance company until after twenty (20) days' prior written notice is first given to The Enclave Homeowners Association and to any other named insured. Any insurance policy may contain such deductible provisions as the Board deems consistent with good business practice. Certificates of insurance coverage or copies of insurance policies shall be issued to each Owner and each Mortgagee who makes written request as provided herein to The Enclave Homeowners Association for any such certificate or copy of an insurance policy.

SECTION 14.03. Types of Insurance to be Carried by the Owner. Each Owner shall

obtain from a company duly authorized to do business in the State of Colorado and shall keep in full force and effect at all times casualty insurance covering the dwelling unit located on said Owner's Lot against loss or damage by fire and lightning, vandalism and malicious mischief, under extended coverage and all-risk endorsements, the amount of such insurance to be not less than the full insurable replacement value of the dwelling unit. Each Owner shall also be responsible for obtaining such other insurance he deems desirable, including, without limitation, casualty insurance covering furnishings and personal property belonging to that Owner and insurance covering personal liability of that Owner. The Enclave Homeowners Association shall have no responsibility for obtaining any of the aforesaid insurance or assuring that the Owner does so. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by The Enclave Homeowners Association and shall, to the extent possible, contain a waiver of the right of subrogation by the insurer as to any claim against The Enclave Homeowners Association, its officers, directors, agents and employees and against other Owners.

## ARTICLE 15

### CASUALTY DAMAGE AND DESTRUCTION

SECTION 15.01. Repair and Reconstruction. The phrase "repair and reconstruction" of Improvements as used in this Article means restoring the Improvements to substantially the same condition in which they existed immediately prior to the damage, with each Improvement having the same boundaries as before.

SECTION 15.02. Damage to the Local Common Area. As soon as practicable after an event causing damage to or destruction of any part of the Local Common Area, The Enclave Homeowners Association shall obtain reliable and complete estimates of the costs for repair and reconstruction of that part of the Local Common Area damaged or destroyed.

- (a) Sufficient Insurance Proceeds. Subject to the provisions of Section 15.02© below, if the insurance proceeds with respect to such Local Common Area damaged or destroyed are sufficient to pay the costs of repair and reconstruction thereof, The Enclave Homeowners Association shall, as soon as practicable, diligently pursue to completion the repair and reconstruction of that part of the Local Common Area damaged or destroyed. The Enclave Homeowners Association may take all appropriate action to effect repair or reconstruction and no consent or other action by any Owner shall be necessary in connection therewith. Such repair and reconstruction shall be substantially in accordance with this Supplemental Declaration and the original Plans and Specifications. If there is a balance of insurance proceeds after payment of all costs of repair and reconstruction of the damage or destroyed Local Common Area, such balance shall be apportioned among the Owners equally and distribution of said apportioned amounts by The Enclave Homeowners Association shall be by checks payable jointly to Owners and the first Mortgagee of their respective Lots, if any.
- (b) Insufficient Insurance Proceeds. Subject to the provisions of Section 15.02© below, if the insurance proceeds with respect to such Local

Common Area damaged or destroyed are insufficient to pay the costs of repair and reconstruction thereof, The Enclave Homeowners Association shall present to the members a notice of special assessment for approval by the membership in accordance with Section 13.05 hereof, which special assessment shall be in an amount sufficient to provide funds to pay the costs of repair and reconstruction of that portion of the Local Common Area damaged or destroyed. If said special assessment is approved by the Members, The Enclave Homeowners Association shall levy and collect the special assessment as provided in Article 13 hereof and thereafter shall diligently pursue to completion the repair and reconstruction of that part of the Local Common Area damaged or destroyed. Such repair and reconstruction shall be substantially in accordance with this Supplemental Declaration and the original Plans and Specifications. If there is a balance from the special assessment after payment of all costs of such repair and reconstruction, such balance shall be distributed by The Enclave Homeowners Association to the Owners in proportion to the contributions each Owner made. If the aforesaid special assessment is not approved by the Members, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by a vote of fifty-one percent (51%) of the votes held by Class A Members and fifty-one percent (51%) of the votes held by Class B Members present, either in person or by proxy, at a meeting duly called for this purpose, which meeting shall comply with the notice and quorum requirements set forth in Section 19.04 hereof, and any such decision of the membership must be approved by two-thirds (2/3) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned); except that, at a minimum, that damaged structures on the Local Common Area shall be demolished and the Local Common Area cleaned-up and that any insurance proceeds remaining shall not be distributed to the Owners unless made jointly payable to Owners and the first Mortgagee of their respective Lots, if any.

- (c) Decision Not to Rebuild. If the Board determines not to rebuild any Local Common Area so damaged or destroyed, or to rebuild facilities substantially different from those which were damaged or destroyed, it shall call a special meeting of the Members to consider such decision. Any such special meeting shall comply with the notice and quorum requirements set forth in Section 19.04 hereof. If the Members, by two-thirds (2/3) of the total number of votes cast at such meeting, and two-thirds (2/3) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) elect to ratify such decision, the Board shall act accordingly; but if the Members or the first Mortgagees do not by such percentage elect to ratify such decision, The Enclave Homeowners Association shall proceed to repair and reconstruct the Local Common Area damaged or destroyed pursuant to subsection (a) or (b), as the case may be, of this Section 15.02.

Notwithstanding the foregoing, if the damage or destruction to all or a portion of the Local Common Area is caused by the negligent or willful or tortious act of an Owner, member of his family, his agents, employees, invitees, licensees or lessees, The Enclave Homeowners Association shall, as soon as practicable, diligently pursue to completion the repair and reconstruction of the Local Common Area damaged or destroyed and the costs of such repair and reconstruction shall be assessed to such Owner by The Enclave Homeowners Association pursuant to Section 13.08 hereof and shall be added to and become part of the assessments to which such Owner's Lot is subject and shall be an addition to any annual or special assessments

to which such Owner's Lot is subject.

SECTION 15.03. Damage to Improvements on Lots. In the event of damage or destruction to the Improvements on a Lot, the Owner of said Lot shall repair and reconstruct the same, which repair and reconstruction shall be commenced within a reasonable time after the date of the event causing the damage or destruction but in no event more than four (4) months after said date and shall be completed within a reasonable time after commencement but in no event more than one (1) year after the date of the event causing the damage or destruction. Such repair and reconstruction shall be accomplished in a workmanlike manner with materials comparable to those used in the original structure, in substantial accordance with this Supplemental Declaration and the original Plans and Specifications, and in conformity in all respects with the laws or ordinances regulating the construction of buildings in force at the time of such repair and reconstruction. In addition, the Owner shall remove all debris from the Lot and restore the Lot to a slightly condition. The costs of such repair and reconstruction shall be borne solely by the Owner of said Lot. Any such Improvement damaged or destroyed, when rebuilt or repaired, shall be substantially similar to, and its architectural design and landscaping shall be in conformity with, the design of the original Improvement and the surrounding Improvements which are not so damaged or destroyed. The Owner shall not be relieved of this obligation to repair and reconstruct by the fact that insurance proceeds received by the Owner are not sufficient to cover the cost thereof.

Notwithstanding the preceding paragraph of this Section 15.03, the Owners and first Mortgagees of any or all of the destroyed or damaged Improvements may agree that the destroyed or damaged Improvements shall forthwith be demolished and all debris and rubble caused by such demolition be removed and the Lot(s) regraded and landscaped to the satisfaction of the Architectural Committee. The costs of such landscaping and demolition work on any Lot shall be paid for by the Owner of said Lot.

## ARTICLE 16

### CONDEMNATION OF LOCAL COMMON AREA

If at any time or times during the continuance of ownership pursuant to this Supplemental Declaration, all or any part of the Local Common Area shall be taken in eminent domain or condemned by any public authority or sold or otherwise disposed of in lieu thereof (hereinafter called "condemned"), the following provisions of this Article shall apply.

SECTION 16.01. Proceeds. All compensation, damages or other proceeds from the condemnation of all or any part of the Local Common Areas, the sum of which is hereinafter called the "Condemnation Award", shall be payable to The Enclave Homeowners Association.

SECTION 16.02 Complete Taking. In the event that all of the Local Common Area is condemned, the Condemnation Award shall be apportioned among the Owners equally and, on the basis of this principle, The Enclave Homeowners Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. The Enclave Homeowners Association shall distribute the Condemnation Award as soon as practicable thereafter to the Owners in the shares so determined, such distribution to be made by checks payable jointly to the Owners and the first Mortgagee of their respective Lots, if any.

SECTION 16.03 Partial Taking. In the event that less than the entire Local Common Area is condemned, the Condemnation Award shall first be applied by The Enclave Homeowners Association to the repair and reconstruction of those improvements on the Local Common Area damaged or taken by the condemning public authority, unless the Owners, by a vote of two-thirds (2/3) of the votes held by Class A Members and two-thirds (2/3) of the votes held by Class B Members present, either in person or by proxy, at a meeting duly called for this purpose, which meeting shall comply with the notice and quorum requirements set forth in Section 19.04 hereof, agree otherwise. Repair and reconstruction of any such Improvements shall be governed by the procedures outlined in Section 15.02 hereof and such repair and reconstructions shall be substantially in accordance with this Supplemental Declaration and the original Plans and Specifications. Any portion of the Condemnation Award not used for repair and reconstruction of such Improvements shall be apportioned among the Owners equally and distribution of said apportioned amounts by The Enclave Homeowners Association shall be by checks payable jointly to the Owners and the first Mortgagee of their respective Lots, if any.

## **ARTICLE 17**

### **SPECIFIC RIGHTS OF DECLARANT**

SECTION 17.01. Sale, Retention and Use of Lots by Declarant. Declarant contemplates sale of one hundred percent (100%) of the Lots; however, Declarant may use or lease Lots as provided and permitted by this Supplemental Declaration. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of any construction on and/or sale of Lots in The Enclave, upon such portion of The Enclave as Declarant may choose, employees in offices in The Enclave and such facilities as may be reasonably required, convenient or incidental to the construction on or sale or rental of Lots, including a business office, storage area, construction yards, signs identifying The Enclave and Advertising the sale of Lots or in any way related to the business of Declarant, model Lots and dwellings, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots. In addition, Declarant, its agents, employees and contractors shall have the right of ingress and egress of over the Local Common Area as may be reasonably required with regard to the foregoing. Further, Declarant shall have the right of ingress and egress in and through the Local Common Area and the Lots for the purpose of making repairs pursuant to this Supplemental Declaration. Declarant shall have the obligation to restore any Lot, any Improvement on any Lot or any part of the Local Common Area damaged by Declarant's exercise of the aforesaid rights of access. Further, during the period of construction on and/or sale of Lots, Declarant shall have a blanket, non-exclusive easement in, upon, over, under, across and through the Local Common Area and each Lot for sanitary and storm sewers, water, gas, electric, telephone, cable television, and other utility services and for surface water runoff and drainage caused by natural forces and elements, grading and/or improvements located within The Enclave or on adjacent lands owned by Declarant. No individual Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within The Enclave.

SECTION 17.02. Approval of Amendments to Supplemental Declaration, Articles and Bylaws. Until such time as the Class B membership has ceased to exist as provided in Section 11.02 hereof, Declarant shall have the right to approve any amendment to this Supplemental Declaration or to the Articles of Incorporation, Bylaws or rules and regulations of The Enclave Homeowners Association, including without limitation any bylaw, rule or regulation interfering with or restricting Declarant's use of Lots owned or leased by it as model Lots for sales promotion and exhibition. No such amendment shall be effective without the prior written consent of Declarant.

SECTION 17.03 Special Amendments. Notwithstanding and in addition to any other provisions contained in this Supplemental Declaration, Declarant hereby reserves and is granted the right and power to record a Special Amendment to this Supplemental Declaration at any time and from time to time that amends this Supplemental Declaration (1) to comply with requirements of the Veterans Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, and/or (2) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first Mortgages covering Lots. A vote or consent of the Owners shall not be required for any such Special Amendment. Each Owner, by the acceptance of his deed or other instrument of conveyance for a Lot, acknowledges and consents to the reservation by Declarant of the right and power to make, execute and record Special Amendments as aforesaid.

## **ARTICLE 18**

### **ENFORCEMENT AND NONWAIVER**

SECTION 18.01. Right of Enforcement. Each Owner shall comply with the provisions of this Supplemental Declaration, the Articles of Incorporation and the Bylaws of The Enclave Homeowners Association, and the decisions and resolutions of The Enclave Homeowners Association adopted pursuant thereto as the same may be lawfully amended from time to time. Any Owner of any Lot which is subject to this Supplemental Declaration, regardless of when it became so subject, at his own expense, Declarant and the Board shall have the right to enforce all of the provisions of this Supplemental Declaration, the Articles of Incorporation and the Bylaws of The Enclave Homeowners Association, and the decisions and resolutions of The Enclave Homeowners Association adopted pursuant thereto against any property which is subject to this Supplemental Declaration, regardless of when it became so subject, and the Owners thereof. Such right of enforcement shall include both damages for and injunctive relief against the breach of any such provision. However, only the Board and, until such time as the Class B membership has ceased to exist as provided in Section 11.02 hereof, Declarant and the duly authorized agent of either of them may enforce by self-help any of the provisions of this Supplemental Declaration and then only if such self-help is preceded by reasonable notice to the Owner in violation.

SECTION 18.02. Violation of Law. Any violation of any federal, state or local law,

resolution or regulation pertaining to the ownership, occupancy or use of any property subject hereto is declared to be a violation of this Supplemental Declaration and subject to all of the enforcement provisions set forth herein.

SECTION 18.03. Remedies Cumulative. Each remedy provided by this Supplemental Declaration is cumulative and not exclusive.

SECTION 18.04. Nonwaiver. The failure to enforce any provision of this Supplemental Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision hereof.

## ARTICLE 19

### GENERAL PROVISIONS

SECTION 19.01. Amendment. Except as otherwise provided in Section 12.10 hereof, this supplemental Declaration may be amended as hereinafter indicated.

- (a) During Period of Declarant Control. Until such time as the Class B membership has ceased to exist pursuant to Section 11.02 hereof, amendment of this Supplemental Declaration shall require the written approval of Declarant, of Owners holding at least two-thirds (2/3) of the votes of the Class A membership then entitled to be cast, and of the Veterans Administration. Amendment of this Supplemental Declaration shall be effected by recordation in the Jefferson County, Colorado, real property records of an instrument setting forth the amendment and including a statement of Declarant's consent thereto, executed and acknowledged by Declarant; a statement executed and acknowledged by the president and secretary of The Enclave Homeowners Association certifying that such amendment has been approved in writing by Owners holding at least two-thirds (2/3) of the votes of the Class A membership then entitled to be cast; and a statement of consent executed by the Veterans Administration.
- (b) After Period of Declarant Control. Upon the termination of the Class B membership pursuant to Section 11.02 hereof and thereafter, amendment of this Supplemental Declaration shall require the written approval of Owners (including Declarant) holding at least two-thirds (2/3) of the total number of votes in The Enclave Homeowners Association then entitled to be cast. Amendment of this Supplemental Declaration shall be effected by recordation in the Jefferson County, Colorado, real property records of an instrument setting for the amendment and including a statement executed and acknowledged by the president and secretary of The Enclave Homeowners Association certifying that such amendment has been approved in writing by Owners holding at least two-thirds (2/3) of the total number of votes in The Enclave Homeowners Association then entitled to be cast.

Evidence sufficient to establish the truth of the certification by The Enclave Homeowners

Association on any recorded amendatory instrument shall be retained by The Enclave Homeowners Association in its permanent files. Upon written request as herein provided, any first Mortgagee shall be entitled to timely written notice from The Enclave Homeowners Association of any amendment of this Supplemental Declaration. This Supplemental Declaration may not be amended in such a way that to effect the provisions of the amendment would necessitate a violation of the Master Declaration. No amendment of any provision of this Supplemental Declaration shall in any way affect the priority of any lender or holder of a recorded first Mortgage or any executory land sales contract wherein the Administrator of Veterans Affairs, an officer of the United States of America, is identified as the seller, whether or not said contract is recorded, except upon the express written consent of such lender or holder; provided, however, that after the foreclosure of any such first Mortgage or executory land sales contract, or after cancellation or forfeiture of any such executory land sales contract, or any conveyance in lieu of foreclosure, the property which was subject to such first Mortgage or executory land sales contract shall be fully subject to such amendment.

SECTION 19.02. Term. This Supplemental Declaration, as the same may be amended from time to time hereafter, including all of the covenants, conditions and restrictions hereof, shall run with and bind the land until December 31, 2020, unless said date shall be amended as herein provided. After December 31, 2020, this Supplemental Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least two-thirds (2/3) of the Lots then in The Enclave and recorded in the Jefferson County, Colorado, real property records.

SECTION 19.03. Registration of Mailing Address: Notices. Each Owner shall register his mailing address with The Enclave Homeowners Association as may be further provided in the Bylaws of The Enclave Homeowners Association and all notices, requests or demands intended to be served upon any Owner shall be sent to such registered address or to the residence of such Owner in The Enclave if no address has been registered with The Enclave Homeowners Association. Any Mortgagee shall be entitled to such notices as herein specified upon making written request therefore, specifying the address to which such notices are to be sent and the Lot or other property in which he holds an interest. Unless such request is made, no Mortgagee shall be entitled to any notice provided for in this Supplemental Declaration. Any notice referred to in this Section shall be in writing and may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or a legal holiday) after a copy of the same has been deposited in the regular United States mail, postage prepaid, addressed to the Owner or Mortgagee, as appropriate, at their address as provided above. All notices, requests and demands intended to be served upon The Enclave Homeowners Association shall be given by registered or certified mail, postage prepaid, to the address of The Enclave Homeowners Association as designated in the Articles of Incorporation or the Bylaws of The Enclave Homeowners Association.

SECTION 19.04. Notice and Quorum Requirements for Certain Meetings. Written notice of any meeting called for the purpose of taking any action authorized under Sections 12.03, 12.04, 15.02 and 16.03 hereof shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each

class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Not such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 19.05. Payment of Taxes and Insurance by First Mortgagees. The first Mortgagees of the Lots may, jointly or singly, pay taxes and other charges which are in default and which may or have become a charge against any Local Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Local common Area and any such first Mortgagees making such payments shall be owed immediate reimbursement therefore from The Enclave Homeowners Association.

SECTION 19.06. Interpretation. The provisions of this Supplemental Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots subject hereto and of promoting and effectuating the fundamental concepts of Ken-Caryl Ranch as set forth in the RECITALS and DECLARATION of this Supplemental Declaration. This Supplemental Declaration shall be construed and governed under laws of the State of Colorado.

SECTION 19.07. Severability. If any of the provisions of this Supplemental Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Supplemental Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

SECTION 19.08. Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

SECTION 19.09. Warranty. Grantor and Declarant disclaim any intent to warrant or make representations except as expressly set forth in this Supplemental Declaration and as set forth in a written warranty required by the Veterans Administration.

SECTION 19.10. Successors and Assigns. This Supplemental Declaration shall be binding upon and shall inure to the benefit of Grantor, Declarant, The Enclave Homeowners Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

SECTION 19.11. Captions. All captions and titles used in this Supplemental Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

SECTION 19.12. Veterans Administration Approval. As long as there is a Class B membership pursuant to Section 11.02 hereof, the following actions shall require the prior approval of the Veterans Administration: (1) annexation of additional properties pursuant to Article 2 hereof; (2) amendment of this Supplemental Declaration; (3) amendment of the Articles of Incorporation of The Enclave Homeowners Association; (4) amendment of the Bylaws of The Enclave Homeowners Association; (5) merger, consolidation or dissolution of The Enclave

Homeowners Association; (6) mortgaging of the Local Common Area or any part thereof by The Enclave Homeowners Association; (7) conveyance of the Local Common Area or any part thereof by The Enclave Homeowners Association; and (8) entering into of any independent contract with a Managing Agent as is described in Section 12.04 hereof.

EXHIBIT I  
TO  
SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE ENCLAVE ON THE KEN-CARYL RANCH  
LEGAL DESCRIPTION OF THE PHASE I PROPERTY

A portion of Section 31, Township 5 South, Range 69 West of the Sixth Principal Meridian, County of Jefferson, State of Colorado, being more particularly described on the Plat entitled Ken-Caryl Ranch, The Valley Filing No. 3, Phase I, recorded January 5, 1982 under Reception No. 82008253 of the Jefferson County, Colorado, real property records.

EXHIBIT II  
TO  
SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE ENCLAVE ON THE KEN-CARYL RANCH  
LEGAL DESCRIPTION OF THE ANNEXABLE PROPERTY

A PORTION OF SECTION 31, TOWNSHIP 5 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPLE MERIDAN, COUNTY JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING IS THE EAST LINE OF THE NORTHEAST ONE QUARTER OF SECTION 31 BEING N00°50'44"W.

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 31, THENCE S82°29'30" A DISTANCE OF 1,475.34 FEET TO A POINT ON CURVE, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF SOUTH VALLEY ROAD, AS CONVEYED TO JEFFERSON COUNTY UNDER RECEPTION NO. 82004985, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTHERLY ALONG THE WESTERLY RIGHT OF WAY LINE OF THE SOUTH VALLEY ROAD THE FOLLOWING 9 COURSES:

- 1) ALONG A CURVE TO THE LEFT WHOSE CENTER BEARS S69°01'17"E HAVING A DELTA OF 05°58'43", A RADIUS OF 650.00 FEET, A DISTANCE OF 67.83 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT.
- 2) S15°00'00"W A DISTANCE OF 200.00 FEET TO A POINT OF CURVE.
- 3) ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 20°00'00", A RADIUS OF 350.00 FEET A DISTANCE OF 122.17 FEET MEASURED ALONG THE ARC TO A

POINT OF TANGENT.

- 4) S35°00'00"W A DISTANCE OF 123.50 FEET TO A POINT OF CURVE.
- 5) ALONG A CURVE TO THE LEFT HAVING A DELTA OF 55°00'00", A RADIUS OF 550.00 FEET A DISTANCE OF 527.96 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT.
- 6) S20°00'00"E A DISTANCE OF 232.72 FEET TO A POINT OF CURVE.
- 7) ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 50°00'00", A RADIUS OF 450.00 FEET A DISTANCE OF 392.70 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT.
- 8) S30°00'00"W A DISTANCE OF 35.00 FEET TO A POINT OF CURVE.
- 9) ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 90°00'00", A RADIUS OF 20.00 FEET, A DISTANCE OF 31.42 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF VALLEY LOOP ROAD, AS CONVEYED TO JEFFERSON COUNTY UNDER RECEPTION NO. 82008249;

THENCE WESTERLY ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF VALLEY LOOP ROAD THE FOLLOWING 7 COURSES:

- 1) N60°00'00"W A DISTANCE OF 230.00 FEET TO A POINT OF CURVE.
- 2) ALONG A CURVE TO THE LEFT HAVING A DELTA OF 35°00'00", A RADIUS OF 450.00 FEET A DISTANCE OF 271.84 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT.
- 3) S85°00'00"W A DISTANCE OF 130.00 FEET TO A POINT OF CURVE.
- 4) ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 81°00'00", A RADIUS OF 605.00 FEET A DISTANCE OF 855.30 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT.
- 5) N14°00'00"W A DISTANCE OF 675.00 FEET TO A POINT OF CURVE.
- 6) ALONG A CURVE TO THE LEFT HAVING A DELTA OF 04°19'24", A RADIUS OF 645.00 FEET A DISTANCE OF 48.67 FEET MEASURED ALONG THE ARC TO A POINT OF REVERSE CURVE.
- 7) ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 84°49'24", A RADIUS OF 20.00 FEET A DISTANCE OF 29.61 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF CLUB DRIVE, AS CONVEYED TO JEFFERSON COUNTY UNDER RECEPTION NO. 82008250;

THENCE EASTERLY ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF CLUB DRIVE THE FOLLOWING 4 COURSES:

- 1) N66°30'00"E A DISTANCE OF 193.03 FEET TO A POINT OF CURVE.
- 2) ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 39°30'00", A RADIUS OF 189.32 FEET A DISTANCE OF 130.52 FEET MEASURED ALONG THE ARC TO A POINT OF TANGENT.
- 3) S74°00'00"E A DISTANCE OF 250.00 FEET TO A POINT OF CURVE.
- 4) ALONG A CURVE TO THE LEFT HAVING A DELTA OF 05°00'00", A RADIUS OF

505.00 FEET A DISTANCE OF 44.07 FEET MEASURED ALONG THE ARC TO A POINT ON CURVE, SAID POINT BEING ON THE WESTERLY BOUNDARY LINE OF KEN-CARYL RANCH THE VALLEY FILING NO.3 PHASE I, AS RECORDED IN JEFFERSON COUNTY.

THENCE SOUTHERLY AND EASTERLY ALONG THE BOUNDARY LINE OF KEN-CARYL RANCH, THE VALLEY FILING NO. 3 PHASE I THE FOLLOWING 17 COURSES:

- 1) S11°00'00"W A DISTANCE OF 126.00 FEET
- 2) S65°00'00"E A DISTANCE OF 90.00 FEET
- 3) S12°00'00"E A DISTANCE OF 120.00 FEET
- 4) N78°00'00"E A DISTANCE OF 90.00 FEET
- 5) S12°00'00"E A DISTANCE OF 70.00 FEET
- 6) N78°00'00"E A DISTANCE OF 122.00 FEET
- 7) N12°00'00"W A DISTANCE OF 40.00 FEET
- 8) N78°00'00"E A DISTANCE OF 98.00 FEET
- 9) N64°00'00"E A DISTANCE OF 120.00 FEET
- 10) N50°00'00"E A DISTANCE OF 104.02 FEET
- 11) N36°00'00"E A DISTANCE OF 191.91 FEET
- 12) N54°00'00"W A DISTANCE OF 85.00 FEET
- 13) N36°00'00"E A DISTANCE OF 50.00 FEET
- 14) S54°00'00"E A DISTANCE OF 85.00 FEET
- 15) N36°00'00"E A DISTANCE OF 140.00 FEET
- 16) S49°26'51"E A DISTANCE OF 153.15 FEET
- 17) N40°33'09"E A DISTANCE OF 209.31 FEET.

THENCE N40°33'09" A DISTANCE OF 16.46 FEET TO THE POINT OF BEGINNING, CONTAINING 13.952 ACRES.

EXHIBIT III  
TO  
SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE ENCLAVE ON THE KEN-CARYL RANCH

LEGAL DESCRIPTION OF THE LOCAL COMMON AREA

A portion of Section 31, Township 5 South, Range 69 West of the Sixth Principal Meridian, County of Jefferson, State of Colorado, being more particularly described as Tracts A, B, and C on the Plat entitled Ken-Caryl Ranch, The Valley Filing No. 3, Phase 1, recorded January 5, 1982 under Reception No. 82008253 of the Jefferson County, Colorado, real property records.