

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS FOR  
ROWLEY DOWNS HOMEOWNERS ASSOCIATION**

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**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
ROWLEY DOWNS HOMEOWNERS ASSOCIATION**

**RECITALS**

WHEREAS, Rowley Downs Homeowners Association, a Colorado non-profit corporation, recorded that certain Amended and Restated Declaration of Covenants, Reservations and Restrictions of Rowley Downs Homeowners Association in the real property records of Douglas County, Colorado on June 23, 1993 in Book 1132 at Page 1782 subjecting the real estate described therein to the terms and conditions set forth in the Declaration;

WHEREAS, The Owners of Dwelling Units located in Rowley Downs Homeowners Association desire to amend and restate all provisions of the Amended and Restated Declaration by virtue of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rowley Downs Homeowners Association ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments, and supplements thereto shall be superseded and replaced in their entirety by this Declaration and shall no longer be effective in any manner whatsoever.

**ARTICLE I  
DEFINITIONS**

Section 1.1 Act. The Colorado Common Interest Ownership Act, as it may be amended from time to time, and as it applies to planned communities created prior to July 1, 1992.

Section 1.2 Articles of Incorporation. The Articles of Incorporation of the Association as they may be amended from time to time.

Section 1.3 Association. Means Rowley Downs Homeowners Association and its successors and assigns.

Section 1.4 Association Documents. Means this Second Amended and Restated Declaration, the Articles of Incorporation, the Bylaws, the Plat Map, Policies and the Rules and Regulations.

Section 1.5 Board of Directors or Board. The Board of Directors of the Association duly elected pursuant to the Bylaws of the Association, the "Executive Board" as the term is used in the Act.

Section 1.6 Bylaws. The Bylaws of the Association, as they may be amended from time to time.

Section 1.7 Common Areas. Any real property within the Community owned and/or maintained by the Association for the common use and enjoyment of the Owners. The Common

Areas are not dedicated for use by the general public.

Section 1.8 Common Expenses. The expenses or financial liabilities for the operation of the Association. These expenses include:

- A. Expenses of administration, maintenance, repair or replacement of any Common Areas or property owned and/or maintained by the Association, including, but not limited to, costs to meet the Association's maintenance responsibility as provided in Section 5.1;
- B. Expenses declared to be Common Expenses by the Documents or by the Act;
- C. Expenses agreed upon as Common Expenses by the Board;
- D. Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Areas or any other real or personal property acquired or held or maintained (under an easement, license or contract) by the Association; and
- E. The costs and expenses imposed on the Association, benefiting fewer than all the Dwelling Units shall be a Common Expense.

Section 1.9 Common Expense Assessments. The funds required to be paid by each Owner in payment of a Common Expense liability, including Annual Common Expense Assessments and Special Assessments.

Section 1.10 Community. The real property subject to this Declaration, as supplemented from time to time, and with respect to which a Person, by virtue of such Person's ownership of a Dwelling Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in this Declaration. The Community is a planned community under the Act.

Section 1.11 County. The county of Douglas, State of Colorado.

Section 1.12 Declaration. This document, including any supplements, amendments, plats and maps.

Section 1.13 Architectural Committee. The committee appointed by the Association's Board of Directors to review and approve or disapprove plans for Improvements submitted by any Owner, as more fully provided in Article VIII of this Declaration.

Section 1.14 Director. A member of the Board of Directors.

Section 1.15 Documents or Governing Documents. The Declaration and Plat recorded and filed pursuant to the provisions of the Act, the Bylaws, Architectural Guidelines, and the Rules as they may be amended from time to time. Any exhibit, schedule or certification

accompanying a Document is a part of that Document.

Section 1.16 Dwelling Unit. The residence constructed on each Lot within the Community, including the front porch, patio, and basement, if any. As used in this Declaration, Dwelling Unit shall include the Lot upon which such Dwelling Unit is constructed.

Section 1.17 Eligible Mortgagee. The holder of a First Security Interest in a Dwelling Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a First Security Interest in a Dwelling Unit. The notice must include the address of the Dwelling Unit on which it has a security interest. This notice shall include a request that the Eligible Mortgagee be given the notices and other rights described in this Declaration.

Section 1.18 First Security Interest. A Security Interest that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special tax assessments).

Section 1.19 Good Standing. An Owner who is no more than thirty (30) days late in the payment of any Common Expense Assessments, and who has none of his, her or its membership privileges suspended.

Section 1.20 Improvements. Any exterior construction, structure, fixture, landscaping or facilities existing or to be placed on a Dwelling Unit constructed in the Community, or changes, alterations, modifications, expansions, or additions to any of the foregoing, or any change of exterior appearance, finish material, color or texture. Improvements include but are not limited to: buildings, outbuildings, patios, patio covers, awnings, solar collectors or panels, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, fences, screening walls, retaining walls, stairs, decks, drainage facilities, landscaping (including any material change in slope, pitch or drainage pattern), hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball stands, trampolines, or other recreational or sporting equipment or structures, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

Section 1.21 Lot. Any plot of land shown upon any recorded Subdivision Map of the Properties, with the exception of the Common Area.

Section 1.22 Manager. A person, firm or other entity employed or engaged to perform management services for the Community and the Association.

Section 1.23 Member. All Owners of a Dwelling Unit, collectively.

Section 1.24 Notice and Hearing. The right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon.

Section 1.25 Owner. A Person who is the owner of record of the fee title to any Dwelling Unit, but not a Person having an interest in a Dwelling Unit solely as security for an obligation.

Section 1.26 Permitted User. (a) Any person who resides with an Owner within the Community; (b) a guest or invitee of a Member; or (c) an occupant or tenant of a Dwelling Unit, and any member of his or her household, or a guest, invitee or cohabitant of any such person.

Section 1.27 Person. A natural person, corporation, trust, partnership, limited liability company, association, joint venture, government subdivision or agency or other legal or commercial entity or combination thereof.

Section 1.28 Rules. Rules, regulations, resolutions and policies adopted and amended from time-to-time by the Board of Directors for the regulation of the Community.

Section 1.29 Security Interest. An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.30 Security Interest Holder. Any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest, or any successor to the interest of any Person under such Security Interest. The holder of a First Security Interest shall be a First Security Interest Holder.

Section 1.31 Special Assessments. Those Common Expenses Assessments defined in Section 6.4 below.

## ARTICLE II THE COMMON AREAS

Section 2.1 Title to the Common Areas. The Common Areas are owned by the Association.

Section 2.2 Owners' Easements. Every Member shall have a nonexclusive right and easement for the purpose of access to their Dwelling Unit and for use for all other allowed purposes, in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Dwelling Unit. Any Member may delegate their right of enjoyment to the Common Areas to the members of their family, their Permitted Users, or contract purchasers who reside in their Dwelling Unit. No Member shall make any addition or alteration to any portion of the Common Areas, no matter how minor, without the express written consent of the Board, which consent may be withheld in the Board's sole and absolute discretion.

Section 2.3 The Association's Rights. The rights of each Member in the Common



Areas shall be subject to the following rights of the Association:

- A. To convey or dedicate all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. The granting of permits, licenses and easements for public utilities or for other purposes consistent with the intended use of such Common Areas shall not be deemed a conveyance or dedication within the meaning of this clause;
- B. To adopt, amend or repeal Rules governing the use of the Common Areas, and enforce penalties and sanctions for the infraction thereof;
- C. To take such steps as are reasonably necessary to maintain, repair, replace, restore or protect the Common Areas; and
- D. To close or limit the use of the Common Areas temporarily while maintaining, repairing, making replacements to or restoring the Common Areas.

Section 2.4 Payment of Taxes, Assessments or Insurance by First Security Interest Holders. First Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and any First Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS

Section 3.1 Membership. Members of the Association shall be every record Owner of a Dwelling Unit subject to this Declaration. Membership shall terminate on transfer of a fee simple title by the Owner but may not be separated from the ownership of a Dwelling Unit. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration shall be amplified by the Articles of Incorporation, Bylaws, Rules and any Architectural Guidelines.

Section 3.2 Voting Rights. The Association shall have one class of voting membership. Members shall be entitled to one vote for each Dwelling Unit owned. If more than one person holds such interest, the vote for such Dwelling Unit shall be exercised as the persons holding such interest shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any Dwelling Unit. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Dwelling Units then existing within the Association. No Owner shall be entitled to vote on any matter who is not in Good Standing with the Association. All Owners in Good Standing shall be entitled to vote in accordance with the provisions of this Declaration and the Bylaws.

Section 3.3 Board of Directors. The affairs of the Association shall be managed by the Board of Directors. Except as otherwise provided in this Declaration or the Bylaws, the Board of Directors may act in all instances on behalf of the Association. The number, term and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and the Bylaws.

Section 3.4 Manager. The Association may employ or contract for the services of a Manager to whom the Board of Directors may delegate certain powers, functions and duties of the Association.

Section 3.5 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association in accordance with the records policy of the Association and Colorado law.

Section 3.6 Address of Association. The address of the Association for purposes of receiving notices required by Colorado law, including without limitation, notices of foreclosure, shall be the address of the Association's principal place of business on file with the Colorado Secretary of State, as such address may be changed from time to time.



#### ARTICLE IV POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Section 4.1 Powers of the Executive Board. Except for those matters expressly reserved to the Members as provided in the Association Documents, the Act and the Colorado Revised Nonprofit Corporation Act, the Executive Board may act in all instances on behalf of the Association, to:

- A. Adopt and amend Bylaws;
- B. Adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the conduct of Members, the operation of the Association, the use and enjoyment of the Common Areas and Dwelling Units and such other Rules and Regulations as the Executive Board deems necessary and proper and which do not contradict the terms of this Declaration or violate Colorado law.
- C. Determine Common Expenses and adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- D. Hire and terminate managing agents and other employees, agents and independent contractors;
- E. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Members on matters affecting the Project;

- F. Enter into contracts, leases, agreements, and licenses and incur liabilities, including entering into any agreement for professional management of the Association's business. Any such contract or agreement for professional management shall be terminable by the Association for cause without penalty to the Association and any such contract shall be subject to renegotiation.
- G. Regulate the use, maintenance, repair, replacement and modification of Common Areas;
- H. Cause additional improvements to be made as a part of the Common Areas;
- I. Grant easements, and licenses through, under, or over the Common Areas;
- J. Take such steps as reasonably necessary to protect the Common Areas from foreclosure;
- K. Close or limit the use of the Common Areas temporarily while maintaining, repairing and making replacements in the Common Areas, or permanently if approved by a vote of sixty-seven percent (67%) of the members present and entitled to vote at a meeting of the owners when a quorum is present;
- L. Enforce the provisions of this Declaration and the Bylaws and Rules of the Association. Said enforcement may be by imposition of fines, the filing of a lawsuit, request for injunctive relief or any other remedies permitted by the Governing Documents and/or Colorado law.;
- M. Impose charges (including without limitation, late charges and default interest at the rate specified herein) for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of provisions of the Association Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within thirty (30) days after they become due). The right to recover attorney fees and other legal costs shall also extend to appeals, matters submitted to arbitration and collection of outstanding Judgments;
- N. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;
- O. Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- P. Assign its right to future income, including the right to receive Assessments;

- Q. Exercise any other powers conferred by the Declaration or Association Bylaws;
- R. Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including without limitation, those powers specified by the Colorado Revised Nonprofit Corporation Act; and
- S. Exercise any other powers necessary and proper for the governance and operation of the Association or as may be set forth in the Bylaws.

Section 4.2 Liability of Association.

- A. The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Areas or from any other items for which the Association is responsible to maintain hereunder, except for injuries or damages arising only after the Owner has put the Association on written notice of a specific leak or flow from any portion of the Common Areas or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility, and only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.
- B. The Association shall not be liable to the Owner of any Dwelling Unit or such Owner's tenant, guest, agent, occupant, invitee or family for loss or damage, by theft or otherwise, of any property which may be stored in or upon the Common Areas.
- C. The Association shall not be liable to any Owner, or any Owner's tenant, guest, agent, occupant, invitee or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

ARTICLE V  
MAINTENANCE

Section 5.1 Association Maintenance Responsibilities.

- A. Common Areas. The Association shall manage, operate, insure, maintain, repair and replace all of the Common Areas and any improvements located thereon, including without limitation, entry signage and monumentation.
- B. Landscape Maintenance. The Association shall be responsible for the maintenance of the irrigation system and all landscaping on the Common Areas.
- C. Drainage System. The Association shall be responsible for the maintenance,

repair and replacement of any drainage structure (including underdrains and interceptor drains) located in the Common Areas.

- D. Driveways, Sidewalks, and Playground Equipment. The Association shall maintain, repair, care for and replace, as the Board deems appropriate from time to time, all driveways, sidewalks, ball field parking lot, and playground equipment located in the Common Areas.
- E. The Association may provide such other maintenance, repair and replacement as the Executive Board deems appropriate from time to time, including without limitation, publicly-dedicated property (including pedestrian and vehicular accesses and roadways) and improvements located thereon.

Section 5.2 Owner Maintenance of Lots and Dwelling Units. All maintenance, repair and upkeep with respect to a Dwelling Unit shall be the responsibility, and at the cost, of the Owner of the Dwelling Unit.

Section 5.3 Owner's Failure to Maintain. In the event an Owner shall fail to perform the maintenance, repair or replacement required to be performed as required by the governing documents of the Association, the Association may, without any obligation to do so, if said failure continues for a period of thirty (30) days after written notice to said Owner, enter upon such Dwelling Unit after expiration of the thirty (30) day period to perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair or replacement shall be the sole personal obligation of the Owner of the Dwelling Unit on which such work was performed.

Section 5.4 Repairs Resulting From Owner's Acts or Omissions. In the event that the need for maintenance, repair or replacement of the Common Areas, a Lot, or any Improvements located thereon, is caused by the act or omission of an Owner, or by the act or omission of any Permitted User, the cost of such repair, maintenance, replacement or expense to avoid or mitigate such damage shall be the personal obligation of such Owner.

## ARTICLE VI ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 6.1 Purpose of Common Expenses. The Common Expense Assessments levied by the Association may be used for the general improvement of the Community and to promote the recreation, health and welfare of the residents of the Community and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association or by law.

Section 6.2 Apportionment of Common Expenses. Except as provided elsewhere in this Declaration, all Common Expenses shall be assessed against all Dwelling Units.

- A. Annual Common Expense Assessment. Annual Common Expense Assessments shall be sufficient to meet the expected needs of the Association and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The Annual Common Expense Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.
  
- B. Levy of Assessments. The Annual Common Expense Assessment shall be levied on an annual basis against all Dwelling Units and collected on a monthly basis or such other period as the Board of Directors deems proper. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. No assessment may be levied retroactively.

Section 6.3 Special Assessments. In addition to the Annual Common Expense Assessments authorized in this Article, but subject to the limitations set forth herein, the Association, may levy after obtaining the approval of at least 67% of the Members present at a duly called meeting for that purpose at which a quorum is present, in any assessment year, a Special Assessment applicable to that year only for the purpose of: (1) defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of the Common Areas, including fixtures and personal property related thereto; or (2) for repair or reconstruction of any damaged or destroyed Improvements located on said Common Areas; (3) for the funding of any operating deficit incurred by the Association; or (4) any other purpose deemed necessary and appropriate by the Board of Directors, based upon a budget. The budget shall be adopted pursuant to the Act, as applicable, and as set forth in the Bylaws, as the Bylaws may be amended from time-to-time. The budget may be vetoed by votes of Owners representing a majority of the total Association vote.

Section 6.4 Budget Adoption and Ratification. Within ninety (90) days after adoption of any proposed budget for the Community, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as provided for in the Bylaws. The budget proposed by the Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners to which fifty-one percent (51%) of the votes in the Association are allocated, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners.

Section 6.5 Lien. As provided for in the Act, the Association shall have a lien on a Lot from the time Common Expense Assessments become due.

Section 6.6 Certificate of Payment of Common Expense Assessments. The Association, upon written request, shall furnish an Owner or their designee, or a Security Interest Holder or its designee, a written Statement setting out the amount of unpaid Common Expense Assessments against the Lot. Said request shall be delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent. The Statement shall be furnished within fourteen (14) calendar days after receipt of the request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, and is binding on the Association, the Board of Directors and each Owner. If no statement is furnished, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request.

Section 6.7 Effect of Nonpayment of Assessments. Any Common Expense Assessment not paid within ten (10) days after the due date thereof shall be delinquent and shall be subject to imposition of a late charge determined by the Board of Directors, and interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors. Fees, including attorney fees, charges, late charges, fines and interest may be charged pursuant to the Act and the Documents due to late payment of Common Expense Assessments. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Dwelling Unit. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include late charges, interest on the Common Expense Assessment and attorney's fees, together with the costs of the action, and other fees.

Section 6.8 Acceleration of Common Expense Assessments. If any Owner does not make the payment of any Common Expense Assessment levied against their Dwelling Unit within sixty (60) days of the date due, the Board of Directors shall have the right to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable for that Dwelling Unit.

Section 6.9 No Waiver of Liability for Common Expenses. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Areas, by abandonment of the Dwelling Unit against which the Common Expense Assessments are made, or because of dissatisfaction with the Association's performance.

Section ~~6.10~~ Personal Liability of Owners. Each Owner, by acceptance of a deed for a Dwelling Unit, whether or not it shall be so expressed in such deed, is personally liable for Common Expense Assessments made against such Owner's Dwelling Unit during the period of ownership of such Dwelling Unit, at the time a Common Expense Assessment or portion of the assessment is due and payable. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Dwelling Unit unless the successor agrees to assume the obligation. All Owners of each Dwelling Unit shall be jointly and severally liable to the Association for the payment of all Common Expense Assessments. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise

expressly provided in this Declaration), and without setoff or deduction.

Section 6.11 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be paid to the Owners in proportion to their Common Expense liability or credited to them to reduce their future Common Expense Assessments.

## ARTICLE VII ARCHITECTURAL COMMITTEE

### Section 7.1 Written Approval of Plans Required.

- A. No Improvements shall be constructed, erected, placed, planted, applied or installed upon any Dwelling Unit unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Committee. Said plans and specifications shall show exterior design, height, materials, color, and location and type of the Improvements, as well as such other materials and information that may be required by the Architectural Committee. The Architectural Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures and maintain or improve the value of the Dwelling Units.
- B. In addition to the required approvals of the Architectural Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction over such Improvements, and issuance of all required permits, licenses and approvals by such entities.

Section 7.2 Guidelines, Standards, Rules, Regulations and Procedures. The Board of Directors may, from time to time, adopt, promulgate, amend or otherwise revise guidelines, standards, rules and regulations and procedures governing architectural review for the purposes of further enhancing, defining, or interpreting what items or improvements are covered by this Article VII, and providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the Board of Directors deems to be proper, necessary or in the best interests of the Community. In determining what is in the best interests of the Community, the Board of Directors may, but shall not be required to, solicit input from: (1) Owners whose Dwelling Units are near a proposed improvement or item to be placed on a Dwelling Unit; or (2) from the entire Community. The Board of Directors shall not be bound by said input but shall use its best judgment in approving or disapproving the proposed improvement or item. Any guidelines, standards, rules and regulations, procedure or amendment thereto, shall apply to construction, additions, modifications, installations or items placed on a Lot occurring after the date such guidelines, standards, rules and regulations, procedures or amendments are published or



otherwise made available to all Owners.

Section 7.3 Membership of Committee. The Board of Directors may act as the Architectural Committee by default or, in its discretion, appoint members from the Community to act on the committee.

Section 7.4 Procedures. The Architectural Committee, shall approve or disapprove all requests for approval within thirty-five (35) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Architectural Committee fails to approve or disapprove any request within thirty-five (35) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been denied by the Architectural Committee.

Section 7.5 Vote and Appeal. A majority vote of the Architectural Committee, is required to approve a request for approval pursuant to this Article. The decision of the Architectural Committee shall be final. If the homeowner is not in agreement with the decision, they may submit an appeal to the Board in writing within thirty (30) days.

Section 7.6 Records. The Architectural Committee shall maintain written records of all applications submitted to it and all actions taken by it.

Section 7.7 Liability. The Architectural Committee and the members thereof, as well as the Association, the Board of Directors, or any representative of the Architectural Committee appointed to act on its behalf, shall not be liable for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee for any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its authority hereunder, if such action was in good faith or without malice. In reviewing any matter, the Architectural Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

Section 7.8 Variance. The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only if the granting is not materially detrimental or injurious to the other property or improvements in the neighborhood, shall not militate against the general intent and purpose hereof, and shall not set a precedent for any other applicant.

Section 7.9 Waivers. The approval or consent of the Architectural Committee, any representative thereof, or the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Architectural Committee, any representative thereof, or the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required, and shall not set a precedent for any other applicant.

ARTICLE VIII  
RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 8.1 Restrictions Imposed. All of the Dwelling Units shall be held, conveyed, used, improved, occupied, owned, resided upon and secured, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Board shall have the power and duty to adopt, amend, repeal and enforce more specific and restrictive guidelines, rules and regulations as the Board deems to be reasonable and necessary to carry out the intent of this Declaration.

Section 8.2 Occupancy and Use Restrictions. The following occupancy restrictions apply to all Dwelling Units and to the Common Areas.

- A. Residential Use. All Dwelling Units shall be used exclusively for single family residential purposes.
- B. No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Lot; provided, however, that home operated businesses are permitted, so long as such business (i) is allowed by zoning resolutions; (ii) is not apparent or detectable by sight, sound, smell or vibration from the exterior of the Unit, (iii) does not increase traffic or parking demands within the Property; and (iv) does not increase the insurance obligations or premiums of the Association. Uses described as “day care” or “child care” facilities (whether licensed or unlicensed) are expressly prohibited in the Dwelling Units.
- C. Antennae. The following types of antennas are permitted to be installed by an Owner on their Dwelling Unit without prior approval of the Association: (i) a “dish” antenna that is one meter (39.37”) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite; (ii) an antenna that is one meter (39.37”) or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; and (iii) an antenna that is designed to receive local television broadcast signals.

The acceptable location for antenna installation is as follows: (i) if acceptable quality signals can be received by placing antennas inside a residence, without unreasonable delay or unreasonable cost increase, then outdoor installation is prohibited; (ii) if an acceptable quality signal cannot be received from an indoor location, or such installation unreasonably delays or increases the cost of installation, maintenance or use of the antenna, the antenna shall be installed on the fascia board under the roof line of the Owner’s Dwelling Unit; (iii) if an

acceptable quality signal cannot be received from the fascia board under the roof line, or such installation unreasonably delays or increases the cost of installation, maintenance or use of the antenna, the antenna shall be installed on a mast located within the enclosed patio area on the Owner's Dwelling Unit, except that such antennas with masts higher than twelve (12) feet above the roofline may not be installed on a Dwelling Unit without prior approval of the Association; or (iv) if an acceptable quality signal cannot be received in any of the locations listed above, or if installation, maintenance or use of the antenna would be unreasonably delayed or the cost unreasonably increased in such a location, the antenna may be installed in another location on the Owner's Dwelling Unit that is the least visible from the streets and other lots, in which an acceptable quality signal can be received, and which does not unreasonably delay or increase the cost of installation, maintenance or use of the antenna. Antennas must not encroach upon any common areas or any other owner's individual Dwelling Unit.

Owners who install or maintain antennas are responsible for all associated costs, including but not limited to costs to: (i) place (or replace), repair, maintain, and move or remove antennas, including whenever necessary for the Association to perform its maintenance and repair obligations; (ii) repair damage to any property caused by antenna installation, maintenance or use; (iii) pay medical expenses incurred by persons injured by antenna installation, maintenance, or use; (iv) reimburse residents or the Association for damage caused by antenna installation, maintenance or use; and (v) restore antenna installation sites to their original condition. If antennas become detached, Owners shall remove or repair such detachment within 72 hours of the detachment. If the detachment threatens safety, the Association may remove antennas at the expense of the Owner.

- D. Clotheslines. No clotheslines shall be erected or maintained upon any part of the Dwelling Units unless they are retractable and are removed when not in use.
- E. Woodburning Devices. All solid fuel or woodburning stoves and devices, including fireplaces, shall comply with any rules and regulations implemented and in effect by any federal, state or local governmental entity.
- F. Signs. Except for political signs permitted in the Act, no advertising or signs of any character shall be erected, placed, maintained or permitted on any part of a Dwelling Unit, other than a name plate of the occupant and an address or street number, and except a "For Sale," "Open House," "For Rent" or security signs of not more than five (5) square feet; and other such signs, for such lengths of time as have been approved in advance by the Board of Directors. The Association may issue, and amend from time to time, Rules or architectural guidelines that modify, relax or further restrict the provisions of this subsection.
- G. Drainage. No Owner shall do or permit any work, construction of improvements or do any landscaping which shall alter or interfere with the natural drainage for the Dwelling Unit, except to the extent the same is approved by the Board of

Directors.

- H. Occupancy Prohibited. No persons shall occupy a modular home, mobile home, trailer house, travel trailer or RV vehicle and same shall not be permitted on any Lot or Common Area.
- I. Trash. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed upon any Lot or Common Area. There shall be no burning or other disposal of refuse outdoors. All trash, garbage or other waste shall be kept in receptacles that are maintained in good, clean condition and in a location not visible from any Dwelling Unit or Common Area (except on trash collection days).
- J. Completion of Construction. All construction, reconstruction, alterations or improvements, approved by the Board of Directors, shall be prosecuted diligently through completion and shall be completed within six months of the commencement thereof unless otherwise agreed in writing between the Board and subject Owner.
- K. Abandoned or Inoperable Vehicles. Abandoned or inoperable automobiles or motor vehicles of any kind, shall not be stored or parked on any driveway, road or Common Area within the Community. Abandoned or inoperable vehicles shall be defined as any vehicle which either is incapable of legal operation upon a public highway or has not been driven under its own propulsion for a period of fourteen (14) days or longer.
- L. Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the improvements on any Dwelling Unit, shall be placed or used on any Dwelling Unit.
- M. Nuisance. No obnoxious or offensive activity shall be carried on within the Dwelling Units and Common Areas, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance, including smoke or other odors, shall be permitted to exist or operate upon the Dwelling Units and Common Areas so as to be offensive or detrimental to any other part of the property or its Owners or occupants, or which may unreasonably interfere with the peaceful enjoyment or possession or proper use of a Dwelling Unit or Common Area.
- N. Hazardous Activities. No activities shall be allowed or conducted on the Dwelling Units and Common Areas which are or might be unsafe-or-hazardous to any person or property. Such hazardous activities include, but are not limited to fireworks, firearms, bows and arrows, explosives, air or pellet guns or any similar type devices.
- O. Maintenance and Repair. If an Owner fails to maintain his or her Dwelling Unit

or any part thereof or improvements thereon, in good repair, the Board of Directors may give the Owner written notice of the needed maintenance or repair. If said maintenance or repair is not completed by Owner within fourteen (14) days of the mailing of such notice, the Board of Directors, at its option, may obtain an injunction against the Owner to force completion of the needed work. In the alternative, the Board of Directors may contract with a third party for the needed work on Lots and assess the cost of same against the Owner pursuant to the assessment provisions contained herein.

- P. Animals. No livestock or exotic animals of any kind may be kept on a Dwelling Unit. Common or household pets, including but not limited to dogs and cats, may be kept. In no event will more than four (4) household pets, not including fish, be kept per Dwelling Unit, provided that they do not make objectionable noises or otherwise constitute an unreasonable nuisance or inconvenience to any other resident. No animals shall be allowed to run free and must be on a leash and in close control of the owner at all times when on the Common Areas. Owners must immediately remove any pet waste from the Common Areas. No pets or animals may be kept or maintained for commercial purpose, and “commercial purpose” shall specifically include doggy day care or other pet-sitting or pet care services. The Owner of any animal shall at all times be personally liable and responsible for all actions of such animals and any damage caused by such animal.
- Q. Neighbor-to-Neighbor Disputes. The Association shall not be obligated to take enforcement action when a dispute under the Declaration or Rules is solely a dispute between neighbors involving an alleged nuisance or offensive behavior, not involving the Common Areas and not involving a violation of the Association’s architectural or maintenance standards. In any dispute between neighbors, residents must first work in good faith with each other to resolve their differences before the complaining Owner reports an alleged violation of the governing documents to the Association. An Owner’s complaint to the Association about a neighbor must: (a) be in writing; (b) give as much detail as possible concerning the dispute; (c) provide specific information about what informal efforts to resolve the matter were undertaken by the complaining resident; and (d) provide the name, address, phone number(s) and email address of the complaining resident.
- R. Vehicles. No house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, motor driven cycle or recreational vehicle, truck (larger than  $\frac{3}{4}$  ton) self-contained motorized vehicle or other type of recreational vehicle or equipment, shall be parked or stored on a Lot unless such parking or storage is within a garage or behind a six (6) foot privacy fence. Any such vehicle may, however, be temporarily parked for a period not exceeding 72 hours for purposes of loading, unloading or emergency purposes. This section shall not apply to the parking of motor vehicles if the vehicle is required to be available at designated periods by an occupant of a Dwelling Unit as a condition of the occupant’s employment and all of the following criteria are met:

- i. The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- ii. The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency firefighting, law enforcement, ambulance, or emergency vehicle services;
- iii. The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- iv. Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other unit owners or occupants to use streets, driveways, and guest parking spaces within the common interest community.

S. Lot Setbacks. No building shall be located, erected, placed or altered on any lot that is less than:

- i. Twenty-five (25) feet from the front property line of any Lot;
- ii. Five (5) feet from any side street property line; or
- iii. Five (5) feet from any building located on any other Lot, provided that in no event shall such structure be located less than five (5) feet from any other Dwelling Unit lot line. In determining the five (5) foot separation between such structures, the location of the first structure receiving a building permit shall exclusively control the minimum distance between it and the adjoining Lot.

T. Dwelling Sizes. Ranch or single level dwellings shall contain at least 1,800 square feet of finished living area. Bi-level or raised ranch style dwellings shall have a minimum finished living area of 1,950 square feet, with a main floor of at least 1,200 square feet. Multi-level dwellings shall have a minimum finished living area of 1,950 square feet, with a ground floor area of at least 1,100 square feet. Two story dwellings shall contain at least 2,000 square feet of living area.

In determining whether a dwelling meets the minimum square footage as required, only stories or portions of stories with a grade level below that of full-sized windows shall be included. Bathrooms, storage rooms, and basements below grade level shall not be included.

U. Sight Distances at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them 25 feet from the intersection of the street line, or in case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitation

shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

- V. Fences. No fence, wall, hedge, or other barriers shall be erected or planted beyond the front façade of the nearest edge of the dwelling; and no such fence, wall, hedge or other barrier shall exceed six (6) feet in height. No chain link fences shall be constructed. A side fence may be placed on the property line and serve as a joint fence upon agreement together with the adjoining property owners. Any such improvements, however, shall require the prior written approval of the Architectural Committee as required in this Declaration.
- W. Foundations and Dwelling Facings. No foundation cinderblock or poured concrete walls shall be exposed. Dwelling Units shall be faced with brick or stone on four sides at grade level. Wood, steel or aluminum siding is acceptable for upper stories. No artificial stone facing, painted brick or any other manufactured product of this nature shall be allowed unless approved in writing by the Architectural Committee.
- X. Sewage Disposal. All Dwelling Units shall use the existing public sewer system.
- Y. Discharge of Firearms. No discharge of firearms, fireworks, explosives, arrows, air rifle, or any similar devices shall be permitted on any part of any Dwelling Unit or Common Area.
- Z. Oil and Mining Operations. No oil or mining operations shall occur on the Dwelling Units or Common Areas. Further, the installation of wells, septic tanks or other tanks are strictly prohibited.
- AA. Yard Lights and Mailboxes. All Dwelling Units shall be illuminated with front yard lights in accordance with the specifications adopted from time to time by the Architectural Committee. Mailboxes shall be the “traditional” style as defined by the United States Postal Service and shall be maintained and mounted on a 4x6” cedar post with corbels (consistent with originally installed posts). Mailboxes in Rowley Downs are located between residences and generally share posts and separating mailboxes from shared posts is not permitted.

Section 8.3 Leasing. Any Owner shall have the right to lease or allow occupancy of a Dwelling Unit upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

- A. Transient Use and Lease Terms. An Owner may lease his or her Dwelling Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however that (i) no initial lease term shall be made for less than one (1) year; (ii) no lease shall be for less than the entire Dwelling Unit and shall

specifically include the garage space; (iii) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association's governing documents; (iv) no Dwelling Unit may be sublet; (v) a Dwelling Unit may be leased only for the uses provided herein; and (vi) any failure of a lessee to comply with the terms of this Declaration or any other Association governing documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision. As used herein, the term "lease" shall mean any agreement or arrangement for occupancy of the Dwelling Unit by persons other than the Owner. "Leasing" shall not include occupancy of the residence by the child or parent of an Owner, and shall also not include occupancy by a roommate of an Owner when the Dwelling Unit is also occupied by such Owner as his or her primary residence. Short-term sublets of rooms or Dwelling Units including, but not limited to, Airbnb, VRBO or similar are not permitted..

## ARTICLE IX INSURANCE

Section 9.1 Coverage. To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, or if any policy is cancelled, or not renewed, without a replacement policy having been obtained, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners at their respective last known addresses.

### Section 9.2 Duty to Maintain Casualty Insurance.

- A. Common Areas. The Association shall obtain and keep in full force and effect, property insurance on the Common Areas and any additional real property or personal property owned by the Association for broad form covered causes of loss including casualty, fire and extended coverage insurance and including, if available at reasonable cost, coverage for vandalism and malicious mischief and coverage for flood, earthquake, and war risk. The property insurance will be for an amount (after application of any deductions for depreciation) equal to one hundred percent (100%) of the full insurable replacement cost of the insured property less applicable deductibles, exclusive of land, foundations, excavations and other items normally excluded from property policies. The Board of Directors is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the property, and the cost of such appraisals shall be a Common Expense.

Section 9.3 Liability Insurance. Commercial General Liability insurance will be maintained in an amount determined by the Board of Directors, but in no event shall it be less than one million dollars (\$1,000,000). Reasonable amounts of umbrella liability insurance in excess of the primary limits may also be obtained. This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in



connection with the use, ownership or maintenance of the Common Areas and the activities of the Association.

Section 9.4 Fidelity Bonds. The Association shall obtain and maintain, to the extent reasonably available, fidelity bond insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The bond or insurance shall name the Association as obligee, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. If reasonably available, the bond or coverage shall be the sum of two (2) months of Common Expense Assessments for all Dwelling Units plus up to one hundred percent (100%) of the reserve funds as calculated from the current budget of the Association. The bond or coverage shall include a provision that calls for ten (10) days written notice to the Association, before the bond can be cancelled or substantially modified for any reason. The Association shall also require any independent contractor who manages the Association to obtain and maintain fidelity bond insurance coverage in the amount required by law or to the extent that it is reasonably available, unless they are covered under the Association's fidelity bond insurance coverage.

Section 9.5 Workers Compensation Insurance. The Board of Directors shall obtain and maintain Workers Compensation Insurance if required to meet the requirements of the laws of the State of Colorado.

Section 9.6 Directors' and Officers' Liability Insurance. The Board of Directors shall obtain and maintain directors' and officers' liability insurance, if reasonably available, covering all of the directors and officers of the Association. This insurance will have limits determined by the Board of Directors.

Section 9.7 Other Insurance. The Association may carry other insurance which the Board of Directors considers appropriate to protect the Association. If any parcels of real property which the Association has an obligation to repair or reconstruct is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then the Board may obtain a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

- A. The maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or
- B. One hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

Section 9.8 Premiums. Insurance premiums for insurance carried by the Association shall be a Common Expense.

Section 9.9 Deductibles. The Board of Directors may adopt written nondiscriminatory policies and procedures for claims adjustment and responsibility for deductibles. To the extent

the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or Owners benefiting from such repair or restoration, whether or not they were negligent, all deductibles paid by the Association

## ARTICLE X DAMAGE OR DESTRUCTION

Section 10.1 Lots. Any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner(s) thereof. "Repaired and reconstructed" as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner of a Dwelling Unit does not commence repair or reconstruction activities within a reasonable time and diligently pursue the same in conformance with the plans approved by the Architectural Committee, then the Association may, in its reasonable discretion, after providing the notice to the affected Owner, enter upon the Lot and complete such repair or reconstruction at the Owner's expense.

## ARTICLE XI EASEMENTS AND LICENSES

Section 11.1 Easements and Licenses. Easements or licenses to which the Dwelling Unit and the Community are presently subject are noted on the Plat Map and as may be of record.

Section 11.2 Easements for the Board of Directors. Each Dwelling Unit shall be subject to an easement in favor of the Board of Directors, and its agents, employees and contractors, to perform its obligations pursuant to this Declaration. For routine maintenance and non-emergency repairs, entry shall be made only after notice in writing is given to the Owner. In case of emergency, entry may be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

Section 11.3 Emergency Easements. A nonexclusive 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 Property, to enter upon any part of the Community in the performance of their duties.

Section 11.4 Easement for Encroachments. If any Lot, Dwelling Unit or Common Area encroaches on any other Lot, Dwelling Unit or Common Area, a valid easement for the encroachment exists. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve any other Person of liability for failure to adhere to the plans. If any portion of any Dwelling Unit on a Lot encroaches upon an adjoining Lot, or adjoining Common Areas, whether as a result of construction of any Improvements (including, without limitation, as a result of architectural design or errors in construction), or reconstruction, repair, shifting, settlement, or movement of such Improvements, a valid non-exclusive easement for the encroachment and for the maintenance of the same (each an "Encroachment Easement") shall

exist for so long as such Dwelling Unit exists.

Section 11.5 Easements for Drainage and Utilities. Easements for the installation and maintenance of utilities, drainage facilities, Association, public or private improvements and access thereto are reserved as shown on the recorded plats and other documents affecting the Dwelling Units and any amendments to such plats and documents or as established by any other instrument of record. No Improvements other than approved landscaping shall be placed or permitted to remain on any Dwelling Unit nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within front, rear and side yard drainage easements.

Section 11.6 Easements Deemed Created. All conveyances of any Dwelling Unit hereafter made, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

## ARTICLE XII ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article XI, (b) purchasing and maintaining insurance pursuant to Article IX, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article IX upon their damage or destruction as provided in Article IX, (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article XVII, or (d) acting in another capacity on behalf of the Owners when approval by the Owners is required and has been obtained. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact for the purposes stated herein, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

## ARTICLE XIII DURATION, ANNEXATION, AMENDMENTS AND MERGER

Section 13.1 Duration. This Declaration shall run with and bind the land perpetually, unless terminated as may be permitted by Colorado law.

Section 13.2 Amendment. Owners may amend the covenants and restrictions of this Declaration at any time, as follows:

- A. By written approval of Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated.
- B. Any amendment shall be effective upon being properly recorded in the records of the Clerk and Recorder of Douglas County.
- C. Upon instruction from the Board of Directors, the President and Secretary of the Association may certify to their receipt and review of the necessary number of written approvals and that the appropriate number of Owners approved the amendment, in lieu of recording individual signatures.
- D. Where a Dwelling Unit is owned by more than one (1) person, the approval of any amendment or revocation shall be valid if approved by any one (1) Owner. Where a Dwelling Unit is owned by an entity, the entity may approve the amendment through action of a duly authorized representative. Signatures need not be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person. The records verifying approval by the Owners, including originals of all signatures, shall be retained for a period of three (3) years after the date of recording the amendment.
- E. No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one (1) year after the effective date of the amendment.

Section 13.3 Recordation of Amendments. Each amendment to the Declaration must be recorded in every county in which any portion of the Association is located and is effective only upon recordation.

#### ARTICLE XIV SECURITY INTEREST PROTECTION

The following provisions are for the benefit of Security Interest Holders. To the extent permitted under Colorado law and as applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 14.1 Title Taken by Security Interest Holders. Any Security Interest Holder who obtains title to the Dwelling Unit pursuant to remedies exercised in enforcing the Security Interest, including foreclosure of the Security Interest or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Dwelling Unit (1) is acquired or (2) could have been acquired under the statutes of Colorado governing foreclosure, whichever is earlier. Except as provided in the Act, such holder of a Security Interest

will not be liable for any unpaid Common Expense Assessments, dues, and charges attributable to the Dwelling Unit which occurred prior to the date such title vests in the holder of the Security Interest.

Section 14.2 Security Interest not Affected by Violations. Any violation of the provisions set forth in the Association's Governing Documents shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any Dwelling Unit.

Section 14.3 Right to Pay Taxes and Charges. First Security Interest Holders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas, and may pay overdue premiums on insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Areas, and First Security Interest Holders making such payments shall be owed immediate reimbursement therefor from the Association.

Section 14.4 Notice of Action. Any Eligible Mortgagee which holds, insures or guarantees a First Security Interest, upon written request to the Association (which shall include the Agency's name and address and Dwelling Unit number), will be entitled to timely written notice of:

- A. Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Dwelling Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Areas (c) the number of votes in the Association relating to any Dwelling Unit, or (d) the purposes to which any Dwelling Unit or the Common Areas are restricted as set forth in Article X;
- B. Any proposed termination of the common interest community;
- C. Any condemnation loss or any casualty loss which affects a material portion of the Common Areas;
- D. Any delinquency in the payment of Assessments owed by a Dwelling Unit Owner subject to the Mortgage when such delinquency has continued for a period of sixty (60) days;
- E. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article IX.

Section 14.5 Action by First Security Interest Holder. If this Declaration or any Association Documents require the approval of any First Security Interest Holder then, if any Security Interest Holder fails to respond to any written proposal for such approval within thirty (30) days after such Security Interest Holder receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Security Interest Holder shall be deemed to have approved such proposal provided that the notice was delivered to the Security Interest Holder by certified or registered mail, return receipt requested at the address provided by the Security Interest Holder to the Association, and if none, at the address in the document creating

the Security Interest recorded at the County Clerk and Recorder.

ARTICLE XV  
CONDEMNATION

If part or all of the Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 38-33.3-107 of the Act.

ARTICLE XVI  
MISCELLANEOUS

Section 16.1 Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

Section 16.2 Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 16.3 Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 16.4 Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

Section 16.5 Conflict. The Documents are intended to comply with the requirements of the Act as applicable to planned communities created prior to July 1, 1992 and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

Section 16.6 Registration of Mailing Address. Each Owner and Eligible Mortgagee shall, and each Security Interest Holder, insurer or guarantor of a Security Interest may register their mailing address with the Association, and except for assessment statements and other routing notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be either delivered to them or sent by first class mail, postage prepaid, addressed in the name of such person or entity at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board or the Association shall be sent by registered or certified mail, postage prepaid, to the Association's Manager or Registered Agent.

Section 16.7 Indemnification. The Association shall indemnify every present and former Director, officer, committee member, agent or employee against loss, costs, and expense, including attorneys' fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such Director, officer, committee member, agent or employee of the Association, except for wanton or willful acts or omissions or if such person shall be finally adjudged to be liable for: any breach of the Director's duty of loyalty to the Association or its members; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; acts specified in C.R.S. 7-129-102, as now in effect or hereafter amended; or any transaction from which the Director derived an improper personal benefit. Any such indemnification may be limited to and paid out of the insurance proceeds provided by an insurer furnishing officers and directors errors and omissions insurance coverage or similar protection and any other insurance protecting the Association from liability because of the negligent acts of its servants, including insurance covering motor vehicles or public liability, property damage, medical and other similar coverage. In the event of an insurance settlement, the settlement shall be approved by the Board of Directors and paid for by the insurance carrier out of the insurance proceeds.

Section 16.8 No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association, the Board, the Architectural Committee, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 16.9 Disclaimer Regarding Safety. THE ASSOCIATION, THE BOARD AND THE ARCHITECTURAL COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SAFETY, SECURITY OR PROTECTION OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO A DWELLING UNIT WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD AND THE ARCHITECTURAL COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES

ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY SET FORTH IN THE DOCUMENTS, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY, SECURITY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

Section 16.10 Controlling Declaration. This Declaration supersedes and replaces in its entirety the Amended and Restated Declaration of Covenants, Reservations and Restriction recorded in the public records of Douglas County, Colorado.

The Association has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Association:

Rowley Downs Homeowners Association

By: \_\_\_\_\_

\_\_\_\_\_  
Title

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of Rowley Downs Homeowners Association.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public