

NOTICE TO CLOSING AGENTS: THIS IS A FEE-ASSESSED P.U.D. CHECK WITH THE HOMEOWNERS' ASSOCIATION FOR FEE SCHEDULE.

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
THE HOMESTEAD PUD 2ND FILING P.L.D. AND P.D.
(a Common Interest Community)**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE HOMESTEAD PUD, 2ND FILING P.L.D. AND P.D. is made and entered into this _____ day of _____, 2003, by LEGACY DEVELOPMENT CORPORATION, a Colorado corporation, hereinafter referred to as "the Declarant."

RECITALS

A. The Declarant is the owner of that certain real property located in the County of Larimer, State of Colorado legally described on Exhibit "A" attached hereto and incorporated herein by reference ("the Real Estate").

B. The Declarant desires to create a Common Interest Community on the Real Estate, pursuant to the Colorado Common Ownership Act, Section 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time ("the Act"), in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be owned by an Association of Lot Owners and as provided herein.

C. The Declarant has caused to be created under the laws of the State of Colorado, THE HEARTHSIDE HOMEOWNERS' ASSOCIATION OF FORT COLLINS, INC., a Colorado nonprofit corporation, for the purpose of exercising the functions herein set forth.

D. The purposes of these covenants include, but are not limited to the establishment and preservation of a harmonious and integrated common interest community in which certain amenities and aesthetics are established, preserved and protected for the use of the members and as provided herein.

ARTICLE I. SUBMISSION OF REAL ESTATE

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased and occupied subject to the following easements, covenants, conditions and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors and assigns. Additionally, Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

ARTICLE II. DEFINITIONS

Section 1: "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Association.

Section 2: "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

Section 3: "Architectural Control Committee" shall mean and refer to the committee established to review and approve plans for the construction of improvements on Lots as set forth in Article IX of this Declaration.

Section 4: "Association" or "Lot Owners' Association" shall mean and refer to a unit owners' association organized and existing under Section 38-33.3-301 of the Act.

Section 5: "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

Section 6: "Common Elements" shall mean and refer to any real estate or associated personal property intended to be used in connection with or within the Common Interest Community owned or leased by the Association and so designated on the Plat, other than a Lot. Such Common Elements shall be as specified in the Plat, or hereinafter conveyed by deed or bill of sale to the Association. All construction and maintenance easements as shown on the Plat shall be deemed Common Elements and within the control of the Association.

Section 7: "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Lot pursuant to this Declaration, and as related to the use, enjoyment or

allocation of the beneficial use of the Common Elements, as the same shall hereafter be determined by the Association consistent with the terms of this Declaration and the Bylaws of the Association.

Section 8: "Common Expenses" shall mean and refer to expenditures made or liabilities properly incurred by or on behalf of the Association, together with any allocations to reserves.

Section 9: "Common Interest Community" shall mean and refer to the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference.

Section 10: "Dealer" shall mean and refer to a Person in the business of selling Lots for such Person's own account.

Section 11: "Declarant" (sometimes hereinafter referred to as "Developer") shall mean and refer to any Person or group of Persons acting in concert who:

(a) As a part of a common promotional plan, offers to dispose of to a Purchaser such Declarant's interest in a Lot not previously disposed of to a Purchaser; or

(b) Reserves or succeeds to any Special Declarant Right.

Section 12: "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats of the Real Estate recorded in the Clerk and Recorder's office of Larimer County, Colorado.

Section 13: "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Lot, but the term does not include the transfer or release of a security interest.

Section 14: "Executive Board" shall mean and refer to the Executive Board of the Association.

Section 15: "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Lot in the Common Interest Community.

Section 16: "Insurer" shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and who has provided written notice of such interest to the Association.

Section 17: "Mortgagee" shall mean and refer to any Person who has a security interest, mortgage or Deed of Trust in a Lot and who has provided written notice of such interest to the Association.

Section 18: "Person" shall mean and refer to a natural person, a corporation, a partnership, an association, a trust, or any other entity or combination thereof.

Section 19: "Plat" shall mean and refer to the Plat of the Real Estate recorded in the office of the Clerk and Recorder of Larimer County, Colorado on or about _____ at Reception # _____, and all recorded amendments thereto.

Section 20: "Purchaser" shall mean and refer to a Person, other than a Declarant or a Dealer, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

(a) A leasehold interest in a Lot of less than one (1) year, including renewal options; or

(b) A Security Interest.

Section 21: "Real Estate" shall mean and refer to the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference.

Section 22: "Residence" shall mean and refer to a single-family residential dwelling constructed on a Lot.

Section 23: "Residential Use" shall mean and refer to use for dwelling or recreational purposes but does not include Lots primarily used for commercial income from, or service to, the public.

Section 24: "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

Section 25: "Security Interest" shall mean and refer to 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. "First Security Interest" shall mean and refer to a Security Interest in a Lot prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

Section 26: "Single-family" shall mean and refer to any individual or group of persons related by blood or marriage or any unrelated group of not more than two (2) persons living together in a Residence.

Section 27: "Lot" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration and as further designated on the Plat of the P.U.D. The term "Lot" as used in this Declaration shall have the same meaning as the term "Unit" as used in the Act.

Section 28: "Lot Owner" shall mean and refer to the Declarant or other Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation. The Declarant is the Owner of any Lot created in the Declaration until that Lot is conveyed to another Person. The term "Lot Owner" as used in this Declaration shall have the same meaning as the term "Unit Owner" as used in the Act.

ARTICLE III. COMMON INTEREST COMMUNITY

Section 1: Name. The name of the Common Interest Community is The HOMESTEAD P.U.D., 2ND FILING P.L.D. AND P.D. of Larimer County.

Section 2: Association. The name of the Association is THE HEARTHSIDE HOMEOWNERS' ASSOCIATION OF FORT COLLINS, INC.

Section 3: Planned Community. The Common Interest Community is a planned community.

Section 4: County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

Section 5: Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth on Exhibit "A" attached hereto and incorporated herein by reference.

Section 6: Maximum Number of Lots. The maximum number of Lots that the Declarant reserves the right to create within the Common Interest Community is thirty (30) within the Hearthsides P.U.D.

Section 7: Boundaries of Lots. The boundaries of each Lot are set forth on the Plat of the Real Estate. The Plat sets forth each Lot's Identifying Number.

Section 8: Allocated Interests. The Common Expense Liability and votes in the Association shall be allocated among the Owners as follows:

(a) Each Owner's share of the Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community.

(b) Each Owner shall be entitled to one (1) vote for each Lot owned.

Section 9: Recording Data. All easements and licenses to which the Common Interest Community is presently subject are listed on Exhibit "B" attached hereto and incorporated herein by reference. In addition, the Common Interest Community shall be subject to other easements or licenses shown on the recorded Plat of the plat of the Planned Unit Development ("PUD") or granted by the Declarant pursuant to the terms of this Declaration.

Section 10: Notice. Notice of matters affecting the Common Interest Community may be given to Lot Owners by the Association or by other Lot Owners in the following manner: Notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address (including an electronic mail address) designated in writing by the Lot Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States mail or sent electronically to an authorized address with proper verification of attempted delivery.

ARTICLE IV. ASSOCIATION

Section 1: Authority. The business and affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by its Bylaws as amended from time to time. Such Bylaws shall provide for the establishment of appropriate officers and an Executive Board who shall have such duties as are provided herein or in the Bylaws.

Section 2: Powers. The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Community. The Association may assign its future income, including its rights to receive the Common Expense Assessments, only by the affirmative vote of the Lot Owners of Lots to which at least fifty-one percent (51%) of the votes in the Association are allocated at a meeting called for that purpose. The Association shall be authorized in connection with the Common Elements to provided for continuous safety inspections and immediate follow up maintenance to correct unsafe conditions, the receiving and processing of complaints, and the establishment and implementation of regular maintenance programs where required for the Common Elements.

Section 3: Declarant Control. The Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Association for a period of ten (10) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. Notwithstanding such provision, the period of Declarant control shall terminate no later

than the earlier of sixty days after the conveyance of seventy-five percent of the Lots (i.e. 23 Lots) to owners other than Declarant, two years after the last conveyance of a unit by the Declarant in the ordinary course of business, or two years after any right to add new members was last exercised. The period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5) of the Act. Notwithstanding any other provisions herein contained, Declarant may relinquish such control in writing to the Homeowner's Association at such earlier time and upon such conditions as it shall in its sole, good faith determination deem appropriate.

ARTICLE V. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 1: Special Declarant Rights. Declarant hereby reserves the right for a period of ten (10) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, to perform the acts and exercise the rights hereinafter specified ("the Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete improvements indicated on the Plat.

(b) Exercise of Development Rights. The right to exercise any Development Right authorized by CRS 38-33.3-101 et. seq.

(c) Sales Management and Marketing. The right to maintain signs advertising the Common Interest Community and to exhibit to potential purchasers and all interested persons all Common Elements and to provide copies of minutes, bylaws, budgets and other relevant data concerning the Association and Common Elements to such individuals or entities. This right shall specifically include, but not be limited to, the right to maintain signs and sales information in the Common Areas and/or on individual Lots which have not been conveyed to third parties.

(d) Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within Real Estate which may be added to the Common Interest Community.

(e) Control of Association and Executive Board. Consistent with the provisions of the Act, the right to appoint or remove any officer of the Association or any Executive Board member.

(f) Amendment of Declaration. The right to amend the Declaration in connection with the exercise of any Development Rights.

(g) Amendment of Plat. The right to amend the Plat in connection with the exercise of any Development Rights.

(h) Statutory Rights. The right to exercise any additional rights of a Declarant under the CRS 38-33.3-101 et. seq., as the same may hereafter be amended.

Section 2: Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 1 above, Declarant also reserves the following additional rights ("the Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across and upon and to the Common Elements for purposes including, but not limited to streets, paths, walkways, drainage, and to create other reservations, exceptions and exclusions over, across and upon the Common Elements for the benefit of and to serve the Lot Owners within the Common Interest Community.

(b) Use Agreements. The right to enter into, establish, execute, amend and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of Common Elements, which may or may not be a part of the Common Interest Community for the benefit of the Lot Owners and/or the Association.

(c) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration or as specifically authorized by the Act.

Section 3: Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE VI. CONFORMITY WITH LAW. It is intended that these covenants shall be interpreted with and in conformity with the Colorado Common Interest Ownership Act, as interpreted and amended. All terms shall be deemed revised to be in accordance therewith as to mandatory provisions which may not be waived; provided, however, that where such provisions are not mandatory or may be interpreted to be in conformity with the said Act, the provisions hereof shall be enforceable and effective without revision or amendment and to preserve the rights of the Declarant or its Successor. To the extent necessary to uphold and preserve the provisions hereof in conformity with law, a court of competent jurisdiction shall be authorized to amend or delete the offending provisions of these covenants, preserving the spirit and intent hereof to the maximum extent permissible.

ARTICLE VII. ASSESSMENT FOR COMMON EXPENSES

Section 1: Personal Obligation of Owners for Common Expenses. The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Common Expense Assessments imposed by the Association to meet the estimated Common Expenses.

Section 2: Purpose of Assessment. The Assessments levied by the Association shall be used to carry out the purposes of the organization, including, but not limited to the promotion of the recreation, health, safety and welfare of the Owners, for the improvement, operation and maintenance of the Common Elements, and to enforce the Covenants and protect property values within the Common Interest Community.

Section 3: Amount of Assessment. The amount of the Assessment for the estimated Common Expenses which shall be paid by each Owner shall be determined by dividing the aggregate sum the Association reasonably determines to be paid by all Owners by the total number of Lots within the Common Interest Community, and the Owner of each Lot shall pay his proportionate share of such aggregate sum. Notwithstanding any other provision herein contained, no portion of the Development Property shall be subject to assessments until the same shall have been finally platted and sold to third parties.

Section 4: Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment shall be Seven Hundred Fifty Dollars (\$750.00) per Lot. No Lot which has not yet been conveyed to an Owner (other than the Declarant) shall be subject to Assessment without the specific written consent of the Declarant.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment may be increased effective January 1 of each year without a vote of the membership by not more than ten (10%) percent.

(b) The limitations hereof shall not apply to any change in the maximum and basis of the Assessments undertaken as an incident to a merger or consolidation in which the Association participates.

(c) The Executive Board shall fix the annual Assessment at an amount not in excess of the maximum.

Section 5: Special Assessments for Capital Improvements. In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, a special Assess-

ment 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 Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6: Notice and Quorum for any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes of the Owners 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 7: Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for all Lots and be collected monthly or semi-annually, as shall be determined by the Executive Board.

Section 8: Date of Commencement of Annual Assessments; Due Dates. Except to the extent restricted by law, no annual Assessment provided for herein shall commence until conveyance of such Lot by the Declarant to a third party Purchaser. Thereafter, as to each such lot, the assessment shall commence on the first day of the month following conveyance to the Purchaser by the Declarant. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. In the event that the Executive Board does not establish an Assessment by specific action to that effect, then the annual Assessment for the immediately preceding year shall prevail for until changed. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. No notice of Assessment need be given unless the Assessment of the preceding period shall have been changed. The Executive Board may, at its discretion, permit annual assessments to be payable in twelve (12) equal monthly installments or quarterly.

Section 9: Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Colorado shall be exempt from the Assessments created herein, except no land or improvements devoted to residential use shall be exempt from said Assessments.

Section 10: County Authority to Maintain. In the event that the Association shall fail to maintain the Common Elements in a reasonable order and condition in accordance with the original plan submitted with the final subdivision plat, the Board of County Commissioners for Larimer County may serve written notice upon the Association or upon the residents of the PUD, setting forth the manner in which the Association has failed to maintain the Common Elements in a reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the time and place of a hearing thereon, which shall be held within fourteen (14) days of the notice. At such hearing, the County may modify the terms of its original notice as to the deficiencies, and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice, or in the modifications thereof, are not cured within said thirty days or any extension thereof, the County, in order to preserve the taxable values of the property contained within the subdivision, and to prevent the common facilities from becoming a public nuisance and public liability, may undertake to maintain the same for a period of one (1) year. Before the expiration of said year, the County, upon its initiative or upon the written request of the association theretofore responsible for the maintenance of the common facility, call a public hearing upon notice to such Association and to the residents of the subdivision involved, to be held by the Board of County Commissioners, at which hearing such Association or the residents of the subdivision shall show cause why such maintenance by the County Commissioners shall determine that such Association is ready and able to maintain said common facility in a reasonable condition, the County shall cease to maintain said common facility at the end of said year. If the Board of County Commissioners shall determine that such organization is not ready and able to maintain such common facility in a reasonable condition, the County may, in its discretion, continue to maintain such common facility during the next succeeding year subject to a similar hearing and determination in each year thereafter.

The cost of such maintenance by the County shall be paid by the owners of the properties within the PUD that have a right to enjoyment or use of the Common Elements involved and any unpaid assessments shall become a tax lien upon said properties. The County shall file a notice of such lien in the office of the County Clerk and Recorder upon the properties affected by such lien within the PUD and shall certify such unpaid assessments to the County Treasurer for collection, enforcement and remittance in the matter provided by law for the collection, enforcement and remittance of general property taxes.

ARTICLE VIII. LIEN FOR NONPAYMENT OF COMMON EXPENSES

Any Assessment, charge or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within twenty (20) days after the date due shall bear interest at a rate determined by the Executive Board, but in the absence of a specific determination of a different rate, the rate of Eighteen (18%) Percent per annum shall apply. In addition, the Executive Board may assess a reasonable late charge thereon, not in excess of the greater of Seventy

Five Dollars or 25% of the delinquent amount. Any Owner who fails to pay any Assessment, charge or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the Association, including reasonable attorney's fees in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid Assessments, fees, charges, fines, interest, late payment penalties, costs and attorney's fees, shall constitute a lien on the defaulting Owner's Lot as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association or monthly or other installments thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien.

ARTICLE IX. ARCHITECTURAL CONTROL

Section 1: Architectural Control Committee.

(a) Membership. The Architectural Control Committee shall consist of not fewer than three (3), nor more than five (5) persons. The members of the Architectural Control Committee shall be appointed by the Declarant. At such time as the Declarant is no longer the Owner of any Lots within the Common Interest Community, then the members of the Architectural Control Committee shall be appointed by the Executive Board from among the Owners. Initially, and until one or more successors shall be appointed, the Declarant appoints the following persons as the members of the Architectural Control Committee: Richard P. Splittgerber, Dr. Robert Homburg, and James E. Ringenberg. Declarant may also appoint non-voting advisors to the Committee in its sole discretion whose number shall not be considered in the maximum membership thereof.

(b) Purpose. The Architectural Control Committee is hereby established for the purpose of maintaining within the Common Interest Community a consistent and harmonious general character of development and a style and nature of building design and visual appeal. A majority of the members of the Architectural Control Committee may designate one or more representatives to act for it. In the event of a vacancy in the Architectural Control Committee subsequent to relinquishment of Declarant control, a majority of the remaining members shall have full authority to fill such vacancy. The members of the Architectural Control Committee shall not be entitled to any compensation for services rendered pursuant to this Declaration; provided, however, that members of the Architectural Control Committee shall be reimbursed by the Association for all costs and expenses incurred in performing their duties pursuant to the terms of this Declaration; and provided, further, that such prohibition shall not prevent compensation for professional services rendered to the Architectural Control Committee or the Association or by advisors to the Architectural Control Committee.

Section 2: Approval. No building, fence, wall or other structure shall be erected, placed or altered on any Lot until the plans and specifications, along with a plot plan, have been approved by the Architectural Control Committee, which plans and specifications shall, without limitation, show in detail satisfactory to the Committee, the size and height of the structure; the type of exterior material, color, and finish; exterior design and 360 degree perspective including all elevations, windows, size and type; roof type, color, texture and shingle type; existing structures, if any, and location of the structures with respect to utility lines and facilities, property lines, streets, topography, and finished grade. The Architectural Control Committee shall have the right to hire an architect, engineer or qualified building contractor (who may also be a member of the committee) to assist the committee in reviewing any plans or specifications submitted to the committee and the applicant shall be obligated to pay the fee of such architect, engineer, or contractor, not to exceed Three Hundred Fifty Dollars (\$350.00) for a given plan or submission. Approval by the Architectural Control Committee shall not supercede or control over any Plat Restriction or local or State law or ordinance. To promote efficiency and cost effectiveness, Lot Owners are strongly encouraged to present preliminary design or conceptual drawings prior to the submission of final proposed house plans. While such preliminary designs shall not be considered as sufficient plans and specifications for final approval, it is believed that staged depictions may be helpful in arriving at satisfactory final approval without incurring unnecessary expense. All depictions intended as final shall show a full 360 degree perspective of the dwelling unit with all proposed color selections, materials and elevations.

Approval by the Architectural Control Committee shall be in writing or indicated by endorsement on the final plans and specifications submitted for approval. In the event the Architectural Control Committee fails to approve or disapprove the final plans and specifications submitted to it by the Owner of a Lot within thirty (30) days after submission of the plans and specifications, then such approval shall not be required and shall be deemed to have been given; provided, however, that in no event shall submittals be considered final unless and until in full conformity with the above and in the detail referenced above. Notwithstanding any other provision herein contained, no building or other structure shall be erected or allowed to remain on any Lot which violates any of the covenants or restrictions herein contained. The issuance of a building permit or license by Larimer County, the City of Fort Collins, Colorado, or other governmental authority having jurisdiction over the Common Interest Community shall not prevent or prohibit the Architectural Control Committee or an Owner from enforcing the terms and provisions of this Declaration; and approval by the Architectural Control Committee of plans and specifications submitted to it shall not constitute any representation or warranty that such plans and specifications comply with applicable zoning ordinances or building codes or is properly engineered, designed or fit for any intended purpose. Each Lot Owner is solely responsible for the proper design and construction of all improvements, additions or modifications to the Lot and neither the Architectural Control Committee, Declarant, Developer nor any other person acting by, through or on behalf of same shall have any liability therefor.

Section 3: Construction. Construction of a Residence or other structure approved by the Architectural Control Committee shall commence within three (3) months after approval of the plans and specifications, and the Owner shall thereafter proceed diligently with such construction. In the event that construction has not commenced within such period, the approval shall be deemed waived, released and of no further force and effect. The exterior of any such structure shall be completed within seven (7) months of the date of commencement of construction. The Architectural Control Committee may grant an extension of the foregoing time periods for good cause and when such extension is requested by the Owner. Such extension shall in no event be deemed a waiver or release of the provisions of this paragraph for such Lot Owner or any other Lot Owner. Upon approval of plans and specifications for the construction of a Residence on a Lot, the Owner of the Lot shall deliver to the Architectural Control Committee an amount equal to Four Hundred Fifty Dollars (\$450) to be held by the Architectural Control Committee as a clean-up deposit ("the Deposit"). The Deposit shall be returned to the Owner within thirty (30) days after the Residence has been completed and all excess debris removed from the Lot and adjacent sidewalks, streets, and Common Elements. If the exterior of the Residence is not completed within seven (7) months after the date of commencement of construction, then the Owner shall forfeit the Deposit. If the Residence is completed within ten (10) months of commencement of construction, but all excess debris has not been removed from the Lot and adjacent streets, sidewalks and Common Elements within such time period, then the Architectural Control Committee shall have the right, but not the obligation, to enter upon the Lot if necessary and remove such excess debris and deduct the cost of such removal from the Deposit. The balance of the Deposit, if any, shall be returned to the Owner within thirty (30) days after all excess debris has been removed from the Lot and adjacent streets, sidewalks, and Common Elements. In the event that the deposit shall be insufficient to reimburse the Association for the full cost of the cleanup and removal of debris, there shall be an additional charge against the Owner and the Lot for all supplemental costs and expenses which shall constitute an assessment subject to lien on the Lot. Construction of the Residence shall, except for good cause shown, be commenced within 24 months of the acquisition of the Lot. The Architectural Control Committee may, in its discretion, grant reasonable extensions of the commencement of construction upon such terms and conditions as it shall deem appropriate. Prior and subsequent to commencement of construction, the Owner shall maintain the Lot, control weeds and avoid the creation of a nuisance.

Section 4: Builder Selection. It is specifically understood and agreed that it is in the best interest of the Members that only highly qualified builders with established public reputations be authorized to act as contractors for the construction of a Residence. To this end, no Owner shall be authorized to construct a residence unless and until the particular builder is approved in writing by the Developer. The determination of qualifications of a builder inherently involves elements of established experience, character, skill, and proven ability to commence and complete a custom residence of the nature and quality compatible with the others in the Community and the adjacent Homestead PUD. The Developer shall maintain a list of approved builders among whom the Owner may select for the construction of a residence. Such list shall consist of not fewer than five

(5) nor more than ten (10) approved builders at any given time. The list shall be established by the Developer and updated from time to time to reflect currently qualified builders. The decision of the Developer shall be final and not subject to appeal. Owner, by accepting a deed to the Lot, acknowledges the fairness and enforceability of such provision and that it constitutes a reasonable restriction concerning the use and enjoyment of the Lot. Subject to the Developer's right to add or delete approved builders, at the date hereof, the following builders and entities owned by them are so approved: Brannen Design and Construction (Jay Brannen), Hagen Brothers, Hart Construction (Herb Hart), Lindholm Builders (Dale Lindholm), Masterpiece Builders (Ray Spencer), Spanjer Construction (Steve Spanjer), and Splittgerber Construction, Inc. (Richard Splittgerber). Developer, by accepting such or other builders, makes no warranty concerning the builder, the construction of the Residence or any matter pertaining thereto, but simply acknowledges thereby its belief that the public reputation of such person/entity is consistent with the desired quality of construction.

Section 5: Land Use and Building Type. No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family Residence per Lot, with attached garage. Provided, however, that the Architectural Control Committee may approve in its sole discretion reasonable outbuildings consistent with good taste, aesthetic harmony with other structures, preservation of scenic views to adjacent properties and the like. The Architectural Control Committee is specifically authorized to consider all views (i.e. a 360 degree perspective) of all buildings and improvements.

Section 6: Building Sites. No Residence shall be erected, altered or permitted to remain on any Lot of the Common Interest Community unless the ground floor thereof, exclusive of open porches and garages, is not less than 2,650 square feet for ranch style Residences, 1,400 square feet for split-entry or tri-level Residences, and 1,400 square feet for two-story Residences; provided, however, that in no event shall the total square footage of any Residence be less than 2,650 square feet, exclusive of basements. Minimum square footage restrictions on a given level may be altered in the sole discretion of the Architectural Control Committee, provided that the overall square footage requirements are met, but no waiver of such requirement shall be effective unless in writing and signed by all members of the Architectural Control Committee.

Section 7: Garages. Each Residence shall include an attached garage having space for not less than two (2) nor more than four (4) automobiles, unless approved in writing by the Architectural Control Committee.

Section 8: Height of Buildings. No building shall exceed two and one-half (2 1/2) stories in height above the ground.

Section 9: Roof. Unless waived in writing by the Architectural Control Committee, the roof of each Residence shall have a minimum 5/12 pitch and a minimum overhang of twelve (12) inches. The color and composition of roofing material shall be as is approved by the Architectural

Control Committee, but in all events shall the material be of high, first grade quality, including but not limited to tile, concrete, or aesthetic, long-life asphalt shingles with a minimum weight of 355 pounds per 100 square feet.

Section 10: Fences. Any fence to be constructed on a Lot must be approved by the Architectural Control Committee. No fence which is inconsistent with Plat restrictions or which in the judgment of the Committee fails to be in harmony with those placed on the Lots by the Declarant shall be approved. No fence shall be constructed which is in conflict with standards and conditions then in effect with the City of Fort Collins or as restricted by the Plat.

Section 11: Landscaping. Within three months of the commencement of construction of a residence on a Lot, the Owner shall submit a proposed landscaping plan for the Lot. In the discretion of the Architectural Control Committee, a landscaping plan may be required as a precondition to the approval of a building plan. The Landscaping Plan shall take into consideration the general plans provided by the Declarant and shall be in harmony with existing or proposed plans. The soils shall be properly prepared for planting using proper mulch, organic supplements and techniques and considerations of judicious use of water, irrigation and maintaining healthy, aesthetic lawns, trees and other plantings. Irrigation systems shall be installed which do not waste water, for example, by over-watering large impervious surfaces and the like. Substantial discretion shall be accorded to the Architectural Control Committee in the approval of such plans, without in any respect assuming the obligation for the proper functioning or design of same.

The Landscaping Plan for any Lot adjacent to a Common Area shall be in harmony with the contemplated use and aesthetics of such Common Area. Upon approval of the preliminary Plan by the Architectural Control Committee, the Owner shall submit final plans, including any proposed phasing of landscaping, including the contemplated time frames for installation and completion. All Plans shall, at a minimum, comply with written standards which may be hereafter established by the Architectural Control Committee, but compliance with the minimum standards stated therein shall NOT be deemed in lieu of Architectural Control Committee approval. All landscaping shall, unless a longer period is authorized in writing by the Architectural Control Committee, be completed within one year of completion of construction, except for good cause shown. The Architectural Control Committee shall specifically be authorized to take into consideration preservation of aesthetic views to the mountains and other desirable vistas for other Lots within the Common Interest Community in the establishment and maintenance of landscaping. The front, side and back yards of each Lot shall be suitably seeded or sodded with grass as further specified by the Architectural Control Committee and thereafter appropriately maintained.

Each Owner shall at a minimum plant and maintain as a streetscape that number, size and type of deciduous tree as is generally depicted on the Landscaping Plans filed by the Declarant with the County. It is understood that the actual placement of such trees may vary, by discretion of the Architectural Control Committee, based upon, for example, the siting of the Residence on the Lot, driveway location and other aesthetic considerations. The Architectural Control Committee shall have discretion as to the type and species of tree, but in no event shall the minimum caliper be less

nor the maximum spacing exceed Larimer County standards in effect at the date of the recording of these Covenants of Larimer County; provided, however, that Lots adjacent to Cornerstone and Hearthstone (i.e. Lots 1 through 10 of Block 1) shall not be subject to spacing requirements, but shall have at least that number of trees required by the County at the date of the recordation of these Covenants. All such trees shall be at the sole expense of the Lot Owner.

Section 12: Maintenance; Common Elements; Improvements to Common Elements. All Lots, including each residence thereon and any improvements, shall be well maintained, including, but not limited to, lawns, landscaping and improvements. Lawns and growing stock shall be suitably watered during growing seasons. It is intended that all lawns, trees, shrubs and other plantings be properly maintained, trimmed and watered so as to have aesthetically pleasing landscaping, but giving due consideration to actual or potential drought conditions and watering restrictions which may be imposed. Aesthetic, drought tolerant plantings and grasses are encouraged. Each Owner shall be responsible to maintain the irrigation system related to his own respective Lot in such a way so as not to interfere with or cause damage to the Common Elements or other Lots. Each Owner shall comply with the Rules and Regulations established by the Executive Board concerning use of the Common Elements, irrigation system or other issues affecting the preservation of same. The Executive Board may also establish reasonable standards for lawn maintenance so as not to cause excessive adverse effects on the pond from runoff, nitrogen or other fertilizer impacts. The Executive Board is specifically authorized to develop and enforce reasonable rules and regulations concerning utilization of the Common Elements in conjunction with the Architectural Control Committee. Unless and until the Home Owner's Association agrees to assume obligations of maintenance concerning same, in the case of Lots 2, 3, 16, 17, 18, 19 and 20 of Block 1 and Lots 5, 6, and 7 of Block 2 the adjacent lot owner shall be responsible for maintenance of _ of the adjacent outlots, as further depicted on the recorded Plat. The Developer shall be entitled, but not required, to place additional plantings, structures, sculptures and other enhancements on Common Elements temporarily or permanently as it shall in its sole discretion determine and which are not depicted on the recorded plat for a period of 10 years subsequent to the recordation of the final Plat.

Section 13: Siding. The front of each Residence shall include brick, stone or wood accent and such exterior design and appearance as shall be approved by the Architectural Control Committee.

Section 14: Setbacks. No building or other structure, except fences, shall be constructed within the following setbacks: Front yard, 20 feet; side yards, 15 feet; rear yard, 20 feet; provided, however, that the Architectural Control Committee shall be authorized to establish greater setbacks as it shall determine is appropriate. Eaves, steps and open porches shall not be considered part of a building for purposes of the foregoing setbacks, but shall remain in the discretion of the Architectural Control Committee. Notwithstanding the setback restrictions, the Architectural Control Committee shall be authorized to establish for each Lot a building envelope within the Lot

for the construction of any and all buildings, including residences. Such building envelope may include, but shall not require, consideration of view corridors and/or impacts on other Lots.

Section 15: Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, by example and not limitation, satellite dishes, shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Architectural Control Committee. The Architectural Control Committee shall, in its discretion, establish uniform guidelines for the installation of satellite dishes or other antennas and the decision of the Architectural Control Committee shall be final and non-appealable.

Section 16: Storage of Vehicles. Boats, campers, motor homes, trailers, machines and inoperative automobiles shall not be stored or permitted to remain on any Lot, except within fully-enclosed garages or within fenced areas approved by the Architectural Control Committee. For purposes of this provision, any disassembled or partially disassembled car, truck or other vehicle or any car, truck or other vehicle which has not been moved under its own power for more than two (2) weeks shall be considered an inoperable automobile subject to the terms of this provision.

Section 17: Maintenance of Lots and Improvements. Owners of Lots shall keep or cause to be kept all buildings, fences and other structures and all landscaping located on their property in good repair. Rubbish, refuse, garbage and other solid, semi-solid and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Lot and shall be disposed of in a safe and sanitary manner. No Lot shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean and sanitary condition and shall be stored inside a garage or other approved structure. No trash, litter or debris shall be permitted to remain exposed upon any Lot and visible from adjacent streets or other Lots. Burning of trash on any Lot shall be prohibited. No lumber or other building materials shall be stored or permitted to remain on any Lot unless screened from view from other Lots and from the streets, except for reasonable storage during construction.

Section 18: Nuisance. Nothing shall be done or permitted on any Lot which is or may become a nuisance. No obnoxious or offensive activities or commercial businesses or trades shall be conducted on any Lot, except home occupations as defined and permitted by the applicable zoning resolution of the governmental entity having jurisdiction over the Common Interest Community. Such business shall in no event include any retail business or trade.

Section 19: Household Pets; Animals. Household pets, such as dogs and cats, shall be permitted on any Lot, provided that said pets are restricted by leash or chain or confined by fence within the Lot or are properly trained and are at all times within the control of and controlled by the Owner. Use of "invisible fences" is encouraged. No more than a total of three (3) household pets

may be kept on any Lot. In no event shall goats, cattle, sheep, pigs or exotics be maintained on a Lot. In no event may animals be kept, bred or maintained on any Lot for commercial purposes. In no event shall a Lot Owner permit or allow any such pet to become a public or private nuisance.

Section 20: Damage or Destruction of Improvements; Owner Responsibility. In the event any Residence or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Residence or other structure shall be promptly rebuilt or remodeled to comply with this Declaration; or in the alternative, if the Residence or other structure is not to be rebuilt, all remaining portions of the damaged structure, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other structure. In the event that Improvements owned by the Association or dedicated for the benefit of the members of the Association shall be damaged or destroyed in part or in whole by the act or neglect of an Owner or a contractor, subcontractor or agent of the Owner, the Owner shall be liable for such damage and shall bear the full expense of repair or replacement of the damaged improvements, facilities or other structure. For purposes of this paragraph, the term "improvements" shall include, but not be limited to, landscaping, fences, water features, utilities, buried cables or underground ditches and pipelines. The Owner's said obligation to the Association is without prejudice to the right of the Owner to claim a right of contribution or indemnity from a person or entity causing damage to the improvements.

Section 21: Storage Tanks, Containers and Exterior Improvements. No elevated tanks of any kind shall be erected, placed or permitted to remain on any Lot. All air-conditioning, refrigeration, cooling, heating or other mechanical equipment or system which is located outside of a Residence or other structure on a Lot shall be suitably screened from view from other Lots and from the streets by fencing, landscaping or appropriate below grade installation approved by the Architectural Control Committee.

Section 22: Lighting. Each Lot shall be required to establish and maintain suitable exterior and adjacent street lighting, subject to the control of the Architectural Control Committee.

Section 23: Liability. The Architectural Control Committee shall not be liable to any Owner or third party for any loss, cost, expense or damage, including attorney's fees, suffered by such Owner or party as a result of any decision made by it unless such action is taken in bad faith, is malicious or clearly arbitrary and capricious and outside the scope of its authority. It is intended that the Committee be given broad aesthetic discretion in determining what is or may be in the best interest of the Common Interest Community and protecting and preserving property values to the Lot Owners. Any action taken upon the advice of legal counsel shall be conclusive of the good faith of the Committee.

ARTICLE X. DRAINAGE

Section 1: Acknowledgment. The soils within the state of Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of the Residence if the Residence and the Lot on which it is constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils. No fence or other structure may be placed on any lot which prevents or unreasonably interferes with storm drainage as established by Larimer County regulations which are in existence at the time of the recording or these covenants or as set forth in the engineering plans which are a part of the approval of the Final Plat. In particular, there shall be no substantial grade changes from the final approved engineering plans for storm drainage and the storm drainage pan at the rear of Lots 1-19 of Block 1.

Section 2: Moisture. Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence.

Section 3: Grading. Each Owner of a Lot shall maintain the grading and drainage patterns of the Lot as indicated by prudent engineering standards applicable to Larimer County, Colorado and the recorded Plat. Lot Owners are strongly encouraged to consult with a qualified engineer or soils expert prior to establishment of final Lot grades, particularly those in the immediate vicinity of improvements. No Owner shall interfere with or materially alter the general grades established by the Developer or provided in the Final Plat or engineering plans filed with Larimer County. As hereinabove provided, in particular, there shall be no substantial grade changes from the final approved engineering plans for storm drainage and the storm drainage pan at the rear of Lots 1-19 of Block 1.

Section 4: Water Flow. The Owner of a Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established for the Lot and the Common Interest Community or the easements of record.

Section 5: Action by Owner. To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

(a) **Not** to install improvements, including, but not limited to landscaping, items related to landscaping, walls, foundations, walks, driveways, parking pads, patios, fences, additions to the Residence, outbuildings or any other item or improvement which will change the grading of

the Lot so as to increase the burden on any adjoining Lot from its historic condition including that established by the Final Plat and grades established by the Developer. The installation of such improvements is acceptable so long as the manner of installation is consistent with, and does not change, the grading and drainage patterns of the Lot from that provided immediately hereinabove.

(b) To fill with additional soil any back-filled areas adjacent to the foundation of the Residence and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.

(c) **Not** to water the lawn or other landscaping on the Lot excessively and in such manner to cause substantial runoff on adjacent properties.

(d) **Not** to plant flower beds and vegetable gardens adjacent to or within three (3) feet of the foundation and slabs of the Residence, unless approved by the Architectural Control Committee.

(e) If evergreen shrubbery and grass is used within five (5) feet of the foundation walls, to water the shrubbery and grass by controlled hand watering, controlled drip irrigation or time controlled system and to avoid excessive watering.

(f) To minimize or eliminate the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs.

(g) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to nonperforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

(h) To maintain the irrigation system on such respective owner's Lot so as not to waste water or cause damage to an adjoining Lot owner.

(i) To maintain the gutters and down spouts which discharge water into extensions or splash blocks by assuring that (i) the gutters and down spouts remain free and clear of all obstructions and debris; (ii) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) the splash blocks are maintained under sill cocks.

(j) To re-caulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

(k) To maintain and preserve without obstruction roadside water routes or ditches and to refrain from planting any vegetation therein other than grass which would improperly impair

or impede the proper flow of water. All such plantings shall be as are acceptable to the Architectural Control Committee and the City of Fort Collins and/or County Drainage Administrator, provided, however, that neither the Committee, the City, nor the County assumes any liability to inspect or approve same.

Section 6: Disclaimer. The Declarant shall not be liable for any loss or damage to the Residence caused by, resulting from or in any way connected with soil conditions on any Lot or drainage or actions taken by Lot Owners or third persons. All improvements to the Lots should be constructed only after consultation, advice and utilization of competent soils engineers and qualified building contractors. All purchasers of a Lot, by acceptance of a deed to same, acknowledge that prior to that time they have made such investigation of the soils and subsurface conditions as they deem appropriate and that prior to construction of any structure and/or dwelling will conduct adequate soils testing and investigation to avoid or mitigate for the effects of expansive or other soil conditions.

ARTICLE XI. MORTGAGEE PROTECTION

Section 1: Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

Section 2: Notice of Actions. The Association shall give prompt written notice to each Mortgagee and Insurer of (and each Lot Owner hereby consents to and authorizes such notice):

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Lot in which there is a First Security Interest held, insured or guaranteed by such Mortgagee or Insurer, as applicable.

(b) Any delinquency in the payment of Common Expense assessments owed by a Lot Owner whose Lot is subject to a First Security Interest held, insured or guaranteed by such Mortgagee or Insurer, as applicable, which remains uncured for a period of sixty (60) days; provided, however, that such period may be extended unless otherwise prohibited by law.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Mortgagees as specified in Section 4 of this Article XI.

- (e) Any judgment rendered against the Association.

Section 3: Consent and Notice Required.

(a) Document Changes. Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any provision of this Declaration pertaining to the matters hereinafter listed by the Association or Lot Owners shall be effective without notice to all Mortgagees and Insurers, and the vote of at least sixty-seven percent (67%) of the Lot Owners (or any greater Lot Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Mortgagees (or any greater Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right:

- (1) Voting rights.
- (2) Assessments, assessment liens or priority of assessment liens.
- (3) Reserves for maintenance, repair and replacement of Common Elements.
- (4) Responsibility for maintenance and repairs.
- (5) Redefinitions of boundaries of Lots, except that when boundaries of only adjoining Lots are involved or a Lot is being subdivided, then only those Lot Owners and the Mortgagees holding Security Interests in such Lot or Lots must approve such action.
- (6) Convertibility of Lots into Common Elements or Common Elements into Lots.
- (7) Expansion or contraction of the Common Interest Community or the addition, annexation or withdrawal of property to or from the Common Interest Community, except expansion or contraction by exercise of Development Rights pursuant to Article VI.
- (8) Insurance or fidelity bonds.
- (9) Leasing of Lots.
- (10) Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot.

- (11) A decision by the Association to establish self-management when professional management had been required previously by the Declaration or any Mortgagee.
- (12) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than that specified in the Declaration.
- (13) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation of the Common Elements.
- (14) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights, without the notice to all Mortgagees and Insurers as required by Section 2 above and approval of at least fifty-one percent (51%) (or the indicated percentage) of the Mortgagees:

- (1) Convey or encumber the Common Elements or any portion thereof without approval by eighty percent (80%) of the Mortgagees. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause).
- (2) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation of the Common Elements without approval by sixty-seven percent (67%) of the votes of Mortgagees.
- (3) The granting of any permits, easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility, road or other easements serving or necessary to serve the Common Interest Community and excluding any leases, licenses, or concessions for no more than one [1] year).

- (4) The establishment of self-management when professional management had been required previously by the Declaration or by a Mortgagee.
- (5) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than specified in the Declaration.
- (6) The merger of the Common Interest Community with any other common interest community.
- (7) The assignment of the future income of the Association, including its right to receive Common Expense assessments.
- (8) Any action taken not to repair or replace the Common Elements.

(c) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than annually, semi-annually, quarterly or monthly without the consent of all Mortgagees.

(d) The failure of a Mortgagee or Insurer to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, return receipt requested, for approval of an addition or amendment to the Declaration wherever Mortgagee or Insurer approval is required shall constitute an implied approval of and waiver in connection with the addition or amendment.

Section 4: Development Rights.

(a) No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment or termination.

(b) In the event that Development Rights are exercised following ten (10) years after recording of the Declaration, they may not be exercised without consent to the extension of this period fifty-one percent (51%) of the Mortgagees of the Development Property at the time of the extension.

Section 5: Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules and Regulations, books and records and financial statements. The Association shall permit any Mortgagee or Insurer to inspect the books and records of the Association during normal business hours.

Section 6: Financial Statements. The Association shall provide any Mortgagee or Insurer who submits a written request a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

(a) The Common Interest Community contains fifty (50) or more Lots, in which case the cost of the audit shall be a Common Expense; or

(b) Any Mortgagee or Insurer requests it, in which case the Mortgagee or Insurer shall bear the cost of the audit.

Section 7: Enforcement. The provisions of this Article are for the benefit of Mortgagees and Insurers and their successors and may be enforced by any of them by any available means at law or in equity.

Section 8: Attendance at Meetings. Any representative of a Mortgagee or Insurer may attend and address any meeting which an Owner may attend.

Section 9: Appointment of Trustee. In the event of damage, destruction or condemnation of all or a portion of the Common Elements, any Mortgagee may require that such proceeds be payable to a trustee. Such trustee may be required to be a corporate trustee licensed by the State of Colorado. Proceeds will thereafter be distributed pursuant to the Act or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board, acting by majority vote through the president, may act as trustee.

Section 10: Payment of Delinquent Fees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance on the lapse of such a policy for such Association property, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE XII. GENERAL PROVISIONS

Section 1: Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner, by the Architectural Control Committee or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award

to the prevailing party in such litigation, in addition to such damages as the Court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration. The Executive Board, in addition to all other remedies which it may have, is specifically authorized and acting for the benefit of the Association to withhold the use of all Common Elements to the applicable Lot and Owner until all defaults shall be cured, including payment of delinquent dues or compliance with the terms of this Declaration. Voting rights of a delinquent member shall be subject to suspension until all defaults by a member shall have been cured. In the event of a conflict between any provision herein contained and any provision of law, including, but not limited to the Act, then these covenants shall be deemed amended so as not to be inconsistent with any mandatory provision of law.

Section 2: Duration. This Declaration shall run with the land, shall be binding upon all persons owning Lots and any persons hereafter acquiring said Lots, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 3: Amendment. Except as otherwise provided in this Declaration, this Declaration may be altered or amended at any time if the then record Owners of sixty-seven percent (67%) or more of the Lots so elect through a duly written and recorded instrument.

Section 4: Management of the Common Elements. The Association may obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper management, operation and maintenance of the Common Elements, provided, however, that any contract in regard to the hiring or employing of such a managing agent or other personnel shall not be for a term in excess of three (3) years and shall provide that the same shall terminate on sixty days' written notice, with or without cause, and without payment of any termination fee. The Association shall have authority to establish reasonable rules and regulations concerning the use of the Common Elements.

Section 5: Management Plan; Restricted and Reserved Use; Acknowledged License. It is recognized that there may be inevitable conflicts between alternate uses of the Common Areas. Such conflicts shall be resolved by the Executive Board and the Architectural Control Committees in a fashion that attempts to accommodate all appropriate interests, including aesthetics, preservation of the property and reasonable use by the Members. The determination of said Board and Committee shall be final. The Architectural Control Committee and the Executive Board shall develop a more detailed plan for maintenance and improvement of the Common Elements. All Common Elements shall be developed and maintained by the Association, subject to the approval of the Declarant until the Declarant no longer maintains any rights of development as hereinabove

provided. Notwithstanding any provision hereinabove contained, and in consideration of the licensed use of certain bronze statues erected or to be erected within the Common Elements, a personal license to utilize the Common Elements equivalent to that of a member of the Association is reserved and granted to the following individuals, their immediate families and guests for a period of 30 years from the date of recordation of these covenants: Richard P. Splittgerber, Dr. Robert Homburg and James E. Ringenberg. At the end of such period, the said bronzes shall be deemed fully conveyed to the Association. No such licensee shall have any obligation to maintain, insure or preserve the said bronzes. The Association shall reasonably maintain, insure and preserve such works of art, subject to a right of termination by the licensors or their assigns for breach of the license during the applicable period.

Section 6: Notice Concerning Homestead Homeowner's Association. No right of membership in the Homestead PUD 2nd Filing P.L.D and PD or the related Homeowner's Association shall confer any express or implied right, privilege or benefit related to the adjacent development known as the Homestead PUD or any of its Common Elements, including, but not limited to, the pond, open spaces or other amenities therein.

Section 7: Civility. Membership in the Association is acknowledged to carry both rights and responsibilities. Standards of courtesy to the concerns and thoughts of neighbors, particularly with regard to Common Elements, as well as civility in dealings and expression by, between and among the members shall be uniformly observed to the greatest extent feasible. It is strongly requested and advised that before matters of concern are brought to the Executive Committee for possible resolution, the interested persons attempt to approach their neighbors or third parties directly for discussion and resolution. This protocol shall not be in derogation or restriction of the authority of the Executive Committee or other appropriate body to act on behalf of the Association.

Section 8: Assumption of Obligations. By acceptance of conveyance of Common Areas by applicable deed, the Association expressly assumes all obligations of repair, maintenance and preservation of the Common Areas and all utilities, easements, underground ditch lines (including but not limited to the New Mercer Ditch, as depicted on the Plat and engineering drawings filed with the County) in, on or appurtenant to such Common Areas. The Association expressly indemnifies and agrees to hold Declarant and related parties harmless from such obligations and liabilities.

Section 9: Dissolution. The Association may not be dissolved without the prior permission of the Board of County Commissioners.

The Hearthside Homeowners' Association of Fort Collins, Inc. specifically consents to and agrees to be bound by all terms and conditions herein contained.

Dated this ___ day of _____, 2003.

THE HEARTHSIDE HOMEOWNERS' ASSOCIATION OF FORT COLLINS, INC.

By: James E. Ringenberg
Its: President

By: Richard P. Splittgerber
Its: Secretary

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was subscribed, sworn to and acknowledged before me in the County of Larimer, State of Colorado, by James E. Ringenberg as President and Richard P. Splittgerber as Secretary of The Hearthside Homeowners' Association of Fort Collins, Inc., this _____ day of _____, 2003.

WITNESS my hand and official seal.

Notary Public
My Commission Expires:_____

Consented to and approved this ___ day of _____ 2003, by The First National Bank, mortgagee.

By:_____

Its:_____

STATE OF COLORADO)
COUNTY OF LARIMER)

Acknowledged before me this _____ day of _____, 2003 by
_____ as _____ of the First National Bank, a national banking
association.

Notary Public

Witness my hand and official seal

My Commission Expires: _____

EXHIBIT "A"

Legal Description of the Real Estate

EXHIBIT "B"

Those easements as described, shown or illustrated on the recorded Plat of The Homestead PUD, 2nd Filing P.L.D. and P.D. as recorded at Reception Number _____ and rights reserved herein to the Declarant and/or Developer or conveyed to The Hearthside Homeowners Association of Fort Collins, Inc.