

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BRIARGATE

THIS DECLARATION, made on the date hereinafter set forth by Benchmark Communities, Ltd., an Ohio partnership hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Mesa, State of Colorado, which is more particularly described as:

Briargate, a replat of Block Two and Block Three of Eastgate Filing No. 1

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to BRIARGATE HOMEOWNERS ASSOCIATION, INC., a Colorado corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including improvements thereto) owned by the Association and operated and maintained by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Briargate, a replat of Block Two and Block Three of Eastgate Filing No. One, EXCEPT Lots 1 through 20

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Benchmark Communities, Ltd., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Association Water" shall mean and refer to all water of the Grand Valley Irrigation Company appurtenant to the Properties and any other water or water rights, ditch or ditch rights acquired by the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right of easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to adopt reasonable rules and regulations for the use of the Common Area;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members and all first mortgagees have been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. General Restrictions. The following restrictions are hereby placed on all Lots in Briargate Subdivision (hereinafter called "Subdivision").

(a) Antennae. No exterior antennae shall be erected or maintained on any Lot or improvement thereon in said Subdivision.

(b) Insurance Rates. Nothing shall be done or kept in said Subdivision which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept in said Subdivision which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

(c) No Further Subdivision. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Board for the transfer or sale of any lot to more than one person to be held by them as tenants in common or joint tenants.

(d) Signs/Air Conditioners. No sign of any kind shall be displayed to the public view without the approval of the Architectural Committee, except such signs as may be used by Declarant in connection with the development of said Subdivision and sale of residences and Lots and except such signs of customary and reasonable dimensions as set forth by the Committee as may be displayed on or from a residence advertising the residence for sale or lease. All signs, except such signs as may be used by Declarants, shall be placed on the exterior of the residence parallel to the exterior wall. Any "For Sale" or "For Lease" signs not more than three (3) feet by two (2) feet, plain white with black letters, shall not require Committee approval. No window or wall mounted or other sleeve type air conditioners shall be installed on any Lot. Exceptions to the prohibitions contained in this Section may be permitted by resolution of the Board of Directors in circumstances prescribed and limited therein.

(e) Animals. No animals of any kind shall be raised, bred or kept, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. A "Reasonable Number" as used in the Section shall ordinarily mean no more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may from time to time designate) may determine that a Reasonable Number in any instance may be more or less.

(f) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within said Subdivision and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any such property without the prior written approval of the Board of Directors of the Briargate Homeowners' Association, Inc.

(g) Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, mail boxes, parking area lighting, trees, shrubs, grass, Common Area fences, fences between lots, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guest or invitees of the owner of the lot needing such maintenance or repair,

the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

(h) Appearance of Lot. It shall be the responsibility of each unit owner to contract with a trash removal service for the disposition of the owner's trash.

(i) Utilities. All utilities including electric, telephone and television cable lines shall be underground.

(j) Fences. No fences shall be erected on any homeowner's property without the prior approval of the Architectural Committee.

(k) Gardens. Garden plots must be properly screened and shall not be within two (2) feet of any property line.

(l) Violation of Association Rules. There shall be no violation of the said Association Rules once adopted by the Board after Notice and Hearing. If any Owner, his family, or any licensee, lessee or invitee violates the Association Rules, the Board may suspend the right of such person to use the Common Area facilities, if any, under such conditions as the Board may specify, for a period not to exceed sixty (60) days for each violation. Before invoking any suspension, the Board shall give such person Notice and Hearing. In the event any Owner of any Lot shall violate any Association Rule or Regulation which shall result in damage to any part of the Common Area, the Board of Directors shall have the right after Notice and Hearing and to the extent allowed by the laws of the State of Colorado to assess the cost of repair of such damages against the Lot of the Owner or Owners responsible for such damages. Such assessment shall be added to and become part of the Assessment to which such Lot is subject. Notwithstanding anything to the contrary in this Declaration, the Board shall not have the power to bar any Owner from use of the Common Area necessary to allow the Owner free access to and from his Lot.

(m) Drainage. There shall be no interference with the established drainage pattern over any property within said Subdivision unless adequate provision is made for proper drainage and is approved by the Architectural Committee. For the purposes hereof, "Established Drainage" is defined as the drainage which exists at the time the overall grading of any Association Property is completed, or which is shown on any plans approved by the Architectural Committee. A permanent easement across the Common Area for drainage purposes is hereby granted.

(n) No Hazardous Activities. No activities shall be conducted on any Property and no Improvements constructed to any property which are or might be unsafe or hazardous to any Person or Property.

(o) Separate Structures. Any structure erected on the premises other than the dwelling house, shall conform architecturally to the dwelling house and the plans shall be submitted, prior to starting construction, to the Architectural Committee for approval.

(p) Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any Improvement within said Subdivision, nor removal of any Improvement in said Subdivision (other than repairs or rebuilding pursuant to Section 4(g) hereof without the prior approval of the Architectural Committee pursuant to Article V hereof.

(q) Residential Use: Rental. No residence shall be used for any purpose other than single-family residential purposes. No gainful occupation, profession, trade or non-residential use shall be conducted on any such Residential Area, provided, however, that nothing in this Declaration shall prevent the rental of property within a Residential Area by the Owner thereof for residential purposes, subject to all the provisions of said Subdivision Restrictions.

Any Owner who leases his Lot or the improvements constructed thereon shall be required to provide in his lease that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Association's Articles of Incorporation and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases are required to be in writing and shall be for a minimum of three (3) months.

(r) Vehicle Storage and Repair. No house trailer, camping trailer, hauling trailer, running gear or boat or accessories thereto, truck or pickup or van or camper in excess of three-fourth (3/4) ton size, shall be parked, stored, repaired, or maintained on any Lot or in the parking area for a period not to exceed seventy-two (72) hours. No automotive repairs shall be conducted and no commercial vehicle, mobile home, trailer or recreational vehicle, including, but not limited to boats, snowmobiles, motorcycles or minibikes shall be parked habitually on or adjacent to any Lot or in the parking area. Use and operation of such recreational vehicles within said Subdivision shall be subject to regulation by the Board of Directors. This restriction shall not apply to commercial or other vehicles making business or service calls or deliveries to the residents or Owners of Lots or to the Association or to contractors within the Properties.

(s) Exemption of Declarant. Nothing in the said Subdivision restrictions shall limit the right of Declarant to complete excavation, grading and construction of Improvements to any property within said Subdivision owned by Declarant, or to alter the foregoing or to construct such additional Improvements as Declarant deems advisable in the course of development of said Subdivision so long as any Lot in said Subdivision remains unsold, or used as construction office, or real estate sales or leasing office. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Declarant on any property in said Subdivision owned by Declarant so long as the Improvement constructed or placed by Declarant does not substantially deviate from the general architectural scheme and does not materially alter the average unit valuation. The rights of Declarant hereunder and elsewhere in these restrictions may not reasonably interfere with the rights of lot owners and may be assigned by Declarant.

(t) Snow Removal. When necessary the Homeowners' Association has the authority and responsibility to contract with the snow removal service to maintain the common walks and streets not the responsibility of the Owner. The Owner has responsibility for his front porch and the rear patio of his Lot.

(u) Parking Spaces. Each Owner shall have the right to use one (1) assigned parking space and one (1) unassigned parking space for his Lot and shall also have co-equal right to use the community parking for Guests and any additional Owners' parking. All parking shall be located in the Common Area and assigned by and be under the control of the Association, and the use thereof shall be subject to the rules and regulations adopted by the Board of Managers of the Association.

Without limiting the generality of the powers of the Associations with respect to parking, the Association is hereby specifically authorized to have any vehicle parked in an area not designated for parking immediately removed at the expense of the Owners of the Lot who own such vehicle or whose guests, tenants or invitees own such vehicle. The expenses incurred by the Association in accomplishing such removal (and storage, if necessary) shall become a portion of the Common Expenses levied against such Owners and their Lot.

Section 4 Easements.

(a) Reciprocal Easements. The Declarant hereby reserves for itself so long as it shall own one or more Lots, and for the Association, without limitation, their successors and assigns, a right of way and easement for maintenance and repair of the Common Area and exterior maintenance assigned to the Association in Article II, Section 3 (g) of the Declaration, and the installation, inspection and replacement of utility lines, including but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines and such other utility lines and incidental equipment thereon, over, under and across the Common Area and that portion of any Lot situated between any Lot Improvement and the street adjacent thereto. Declarant or Association shall, except in cases of emergency, furnish to all affected Owners twenty-four (24) hours notice before exercising the rights granted by this Article. Perpetual reciprocal easements for the aforementioned purposes shall exist both for the benefit and burden of all of the Owners.

(b) Easements for Encroachments. If any portion of a Lot Improvement encroaches upon the Common Area, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist provided such encroachments do not exceed one foot within the boundaries of the Common Area and such encroachments do not interfere with the enjoyment of the Common Area. If any portion of the Common Area encroaches upon a Lot a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to the encumbrances either on the Common Area or the Lot.

(c) Reservation of Easements. Declarant reserves for itself and the purchasers of the existing and additional Subdivision property the use of the easements set forth in this Article II which are intended to and shall be for the benefit of all Owners, and no reference thereto need be made in any Deed, instrument of conveyance or any other instruments.

(d) Easement of Utilities. The Declarant hereby grants a right-of-way and easement for utility purposes including, but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines and such other utility lines and incidental equipment over, under and across the Common Area and the unimproved portion and exterior walls of adjoining residences. Such utility easements and rights-of-way shall be binding upon the Declarant and the Association and their respective successors and assigns. In the event any portion of the easement for utility purposes is vacated, any party entering upon the easement to install, service or repair any utility on said easement shall not be liable or responsible for damage to any improvements constructed on the vacated portion.

Section 5. Management of Association Water.

(a) Right to Manage. Declarant, as owner of the Property, hereby grants and delegates to the Association the right to manage, distribute and control all Association Water. Each Owner, by accepting a deed or any form of title to a Lot or to any portion of the property, shall be deemed to have ratified and reaffirmed that grant and delegation. The Association shall have the power to establish rules and regulations governing the use of Association Water, and it is expressly granted the right to:

1) Dedicate or transfer all or any part of the Association Water to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

2) Combine with Association Water any water rights appurtenant to any property which may subsequently be annexed to these covenants, and to manage the combined water and water rights.

3) Contract with adjacent property owners for joint use of irrigation water delivery systems.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Lot Owner. Every Owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Classes of Membership. The Association shall have two classes of voting membership.

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled

to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. At such time as the Class B membership is converted to Class A membership in the manner described below the Class A membership shall obtain and shall permanently retain exclusive control over the activities of the Association. The Class B membership shall cease and be converted to Class A membership when the following shall occur:

(1) The total votes outstanding in the Class A membership attributable to the lots included within the property described in Exhibit "A" equal the total votes outstanding in the Class B membership attributable to the same property; which shall be the equivalent of the Class A members owning seventy-five percent (75%) of the Lots and the Class B members owning twenty-five percent (25%) of the Lots.

(2) No new unit construction has been initiated for a period of six months.

Notwithstanding anything to the contrary written above, the Class B membership shall in any event cease and be converted to Class A membership five (5) years after the date of recording of the Declaration.

Section 3. Voting Rights and Limitations.

(a) Suspension of Voting Rights. If any Owner, his family or any licensee, lessee or invitee violates the Association Rules once adopted by the Board after Notice and Hearing, the Board may suspend the right of such person to vote his membership interest, under such conditions as the Board may specify, for a period not to exceed sixty (60) days for each violation. Before invoking any such suspension of voting rights, the Board shall give such persons Notice and Hearing.

(b) Limitation of Amendment. The provisions of Article III, IV, and this Article V and this Article II of these Articles shall not be amended without the approval of seventy-five percent (75%) of the Members, plus (until completion of the Subdivision) the written consent thereto of Declarant.

(c) Additional Voting Requirements. Prior to the completion of the Subdivision any reduction in the amount of regular annual assessments levied in any year upon the Owner of each Lot in the Subdivision, shall require the consent of Declarant in addition to any other vote, consent or approval required.

(d) Upon the written asset of two-thirds of each class of members, the Briargate Homeowners' Association and its properties may be annexed by a municipality, merged or

consolidated with another or similar organizations, or be dissolved entirely. In no event, however, will the Members ever obtain individual ownership of any of the Association interests.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: annual assessments or charges or special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The Owner further agrees by his acceptance of title to a Lot that the Association shall be vested with the right and power in its own name and to take and prosecute all suits which may, in the opinion of the Association, be necessary or advisable for the collection of such delinquent assessments.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the exterior maintenance of the homes situated on the properties. Declarant will not construct any recreational improvements on the Common Area so long as it owns one or more lots within the Properties.

Also, a portion of the annual assessments, which are payable monthly, shall be used to provide an adequate reserve fund for the replacement, repair, and maintenance of those portions of the Common Area which must be replaced on a periodic basis, and the Board of Directors shall be obligated to establish such reserve fund.

Section 3. 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 \$ _____ per Lot.

(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 Owners either (i) in conformance with the rise, if any, of All Items category of the latest publication of the Denver Consumer Price Index (published by the Department of Labor, Washington, D.C.) or (ii) not more than five percent (5%) above the maximum annual assessment for the previous year, whichever is greater.

(b) 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 above that established by Sub-paragraph Section 3 (a) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Special Assessments for Insurance. The Briargate Homeowners' Association Board of Directors shall have the authority to assess each townhouse unit owner for its equal pro-rata share of liability, fire and extended coverage monthly assessment or by separate billing to the unit owner's mortgage for payment from Owner's escrow account at the sole discretion of the Board of Directors.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be on a monthly basis.

Assessments on unimproved and improved Lots owned by Declarant shall, notwithstanding anything to the contrary in the preceding sentence, be at a rate equal to twenty-five percent (25%) of the assessment rate applicable to lots owned by Owners other than Declarant. After any lot under the Declarant's control becomes occupied, the Declarant shall be required to be charged at a rate equal to the full assessment on that lot. Declarant shall also, however, underwrite any difference between actual expenses of the Association and assessments levied (subject to annual assessment increases as determined in Section 3(a)) until Association control passes to Class A members.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence within the property described on page 1 as to all Lots on the first day of the month following the conveyance on the first lot within such property. No lot shall be conveyed, nor assessment made until after the Common Area has been deeded to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon

demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot has been paid. A properly executed certificate of the Association as to the status of the assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Notwithstanding the foregoing any first mortgagee who takes title to a lot pursuant to the remedies provided in its deed of trust or mortgagee will not be liable for such lot's unpaid dues, charges, or liens which accrue prior to the acquisition of title to such lot by such mortgagee.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs or the Federal Housing Administration is seller, whether such contracts owned by the Veterans Administration or the Federal Housing Administration, or its assigns, and whether such contract is recorded or not. Sale or transfer of any lot shall not affect the lien for said assessment charges except that sale or transfer of any lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract, shall extinguish the lien of such charges as to payments which became due prior to the completion of such foreclosure or any proceeding in lieu thereof, or the taking of a deed in lieu thereof or cancellation or forfeiture of executory land sales contract. No such sale, transfer, foreclosure nor cancellation or forfeiture of any such executory land sales contract shall relieve any lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 10. Exempt Property. The following Property shall be exempt from the lien for assessments created herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

Section 11. Assessment Reserves. Each Owner, other than the Declarant shall be required to deposit at closing and thereafter to maintain with the Association an amount equal to three (3) times the monthly installment of the current annual monthly assessment as a reserve. Such reserve account shall not relieve an Owner from his obligations to pay his monthly installment of the annual assessment.

Section 12. Notice to Mortgagee. Upon request of a first Mortgagee of any Lot and upon payment of reasonable compensation therefore, the Association shall report to such first Mortgagee any unpaid assessment or other defaults under the terms of this Declaration which are not cured by said Mortgagee's mortgage within thirty (30) days.

Section 13. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of any taking action authorized under Section 3 and 4 shall be sent to all Members 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 Members or of proxies entitled to cast two-thirds (2/3) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 14. Homestead The lien of the association assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to any lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 15. Public Service Company Tariffs. All lots are subject to and bound by public service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting of this Subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and charges thereto. The Owner or Owners shall pay as billed a portion of the cost of public street lighting in the subdivision according to Public Service Company rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Review of Plans. No building, fence, wall, canopy, awning, structure or improvement shall be commenced, erected, altered, moved, removed or maintained upon the Project or any portion thereof, nor shall any exterior addition to, or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee composed of three (3) or more representative appointed by the Board.

Section 2. Architectural Control Committee. The Architectural Control Committee shall be appointed by the

Board and shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the Project conform to and harmonize with existing surroundings and structures. The Committee shall consist of three (3) persons.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Architectural Control Committee fails to have any action within thirty (30) days after requests have been submitted, approval will not be required, and this Section 3 will be deemed to have been fully complied with. To seek approval, plans and specifications must be submitted in writing or drawn form to one designated as chairman of the committee at the chairman's residence or other address in Mesa County, Colorado, ratified in the records of the committee.

Section 4. Majority Vote. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed amendments.

Section 5. Written Records. The Architectural Control Committee shall maintain records of all applications submitted to it and of all actions it may have taken.

Section 6. No Liability. Each Owner hereby agrees that the Architectural Control Committee shall not be liable for damages to ny person submitting requests for approval or to any Owner with the Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

Section 7. Reservation of Right to Exercise by Declarant. Notwithstanding any other provision expressly or impliedly to the contrary contained in this Declaration, the Articles, the By-Laws, the Rules and Regulations or the Regulatory Agreement, Declarant reserves the right to exercise the rights, duties and functions of the Association's Architectural Control Committee until such time as all of the Lots situated on the Property, including any Property and Lots annexed thereto and made subject to this Declaration, have been sold and conveyed by Declarant.

ARTICLE VI

POWERS AND DUTIES OF THE ASSOCIATION

Section 1. Association Duties. The Association shall have the obligation, subject to and in accordance with the Subdivision Restrictions, to perform each of the following duties for the Owners of each Lot within the Subdivision:

(a) Association Property. To accept and exercise jurisdiction over all property, real and personal, conveyed free and clear of all liens and encumbrances to the Association by Declarant, including, (1) The Common Area, (2) easements for operation and maintenance purposes over the Common Area, and (3) easements for the benefit of Association Members within the Common Area, and (4) to manage the Association Water.

For purposes of this paragraph, any easement in favor of the general public or portions thereof over roads or sidewalks conveyed to the Association for ingress to and egress from any sales office or model home complex of Declarant, shall not constitute a lien or encumbrance, and shall not preclude the acceptance by the Association of such property.

(b) Title to Property Upon Dissolution. To convey, upon dissolution of the Association, the assets of the Association to an appropriate public agency or agencies to be used for purposes similar to those for which the Association was created, or to a non-profit corporation, association, trust or other organization organized and operated for such similar purposes.

(c) Operation of the Common Area. To maintain, or provide for the maintenance of the Common Area designated by Declarant on the Subdivision map.

(d) Payment of Taxes. To pay all real property taxes and assessments levied upon any property conveyed, leased or otherwise transferred to the Association; to the extent not assessed to the Owners thereof. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring the payment is posted to the sale of other disposition of any property to satisfy the payment of such taxes.

(e) Insurance:

(1) The Board of Directors of the Association shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates established by the Colorado Insurance Commission, and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of Class VI or better, covering the risks set forth below. The Board of Directors of the Association shall not obtain any policy where: (i) under the terms of the insurance company's charter, by-laws or policy, contributions of assessments may be made against the mortgagor, Mortgagee, or Mortgagee's designee; or (ii) by the terms of carrier's charter, by-laws or policy, loss payments are contingent upon action by the company's Board of Directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or the mortgagor from collecting insurance proceeds. The types of coverages to be obtained and risks to be covered are as follows, to wit:

(a) Fire insurance with extended coverage and all-risks endorsements, which endorsements shall include endorsements for vandalism, malicious mischief, sprinkler leakage, debris removal, cost of demolition, windstorm and water damage. Said casualty insurance shall insure all loss in the Briargate Subdivision and any Property, the nature of which is a Common Element by not including furniture, furnishings or other personal property supplied by or installed by Lot Owners together with all service equipment contained therein to an amount equal to the full replacement value, without deduction for depreciation. The policy shall have an agreed Amount Endorsement or its equivalent, if available, or an

Inflation Guard Endorsement. All policies shall be in amounts satisfactory to all first Mortgagees, and shall contain a standard non-contributory mortgagee clause in favor of each first Mortgagee of a Lot, which shall provide that the loss, if any, thereunder, shall be payable to the Briargate Homeowners' Association for the use and benefit of first First Mortgagees as their interest may appear. All policies of property insurance must provide that, despite any provisions giving the insurance carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association.

(b) Comprehensive public liability and property damage insurance in such limits as the Board of Directors of the Association may from time to time determine, but not in an amount less than \$500,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operations of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Subdivision. Said policy shall also contain a "severability of interest endorsement."

(c) Worker's compensation and employer's liability insurance and all other similar insurance with respect to the employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) The Association shall purchase, in an amount not less than one hundred fifty percent (150%) of the Association's estimated annual operation expenses and reserves, fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation, and shall name the Association as an obligee.

(e) The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Common Area, including plate or other glass insurance, and insurance against loss to any personal property of the Association located on the Common Area.

(2) All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Lot Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the insured, including Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all first Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact and trustees for all of the Lot Owners, which policy or policies shall identify Lot Owners (Owner's name and Lot number designation) and first Mortgagee.

(3) Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors of the Association shall obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the entire Briargate Subdivision, without deduction for depreciation, for the purpose of determining the amount of the insurance to be affected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than ninety percent (90%) of the full replacement cost. Determination of maximum replacement value shall be made at least bi-annually by one or more appraisals to be furnished by a person knowledgeable of replacement cost, each Mortgagee shall be furnished by a person knowledgeable of replacement cost, each Mortgagee shall be furnished with a copy thereof, within thirty (30) days after receipt of such appraisals. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

(4) Lot Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any additional insurance carried by any Lot Owner.

(5) Insurance coverage on furnishings, including carpet, draperies, over, range, refrigerator, wallpaper, disposal and other items of personality or other property belonging to an Owner, and public liability coverage on each Lot, shall be the sole and direct responsibility of the Lot Owner thereof, and the Board of Directors, the Association and/ or the Managing Agent shall have no responsibility thereon.

(6) The Briargate Homeowners' Association Board of Directors shall have the authority to assess each townhouse unit owner for its equal pro-rata share of liability, fire and extended coverage insurance either through monthly assessment or by separate billing to the unit owner's mortgagee for payment from owner's escrow account at the sole discretion of the Board of Directors.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association Properties, enforcement of the Subdivision Restrictions, or in performing any of the other duties or rights of the Association.

(g) Association Property Services. To pay for maintenance and other necessary services for the Association Properties.

(h) Contracts. Neither Declarant nor any agent of Declarant shall enter into any contract which would bind the Association or the Board thereof for a period in excess of one (1) year, unless reasonable cancellation provisions are included in such contract.

(i) Rule Making. To make, establish, promulgate, amend and repeal the Subdivision Rules.

(j) Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by the Subdivision Restrictions, as may be reasonably necessary to enforce any of the provisions of the Subdivision Restrictions and the Architectural Committee Rules.

(k) Other. To carry out the duties of the Association set forth in the Subdivision Restrictions, the Articles and By-Laws.

Section 2. Rules. The Board may adopt such rules as it deems proper for the Association Property. A copy of said rules, as they may from time to time be adopted, amended or repealed, must be mailed or otherwise delivered to each Owner, but need not be recorded. Upon such mailing, delivery or recordation, said rules shall have the same full force and effect and may be enforced against each Owner.

Section 3. Liability of Board Members and Manager. Neither any Member of the Board nor the Manager shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, the Manager, or any other representatives or employees of the Association, or the Architectural Committee, provided that such Board Member, or the Manager has, upon the basis of such information as may be possessed by him acted in a reasonable and prudent manner. Nothing contained herein shall be construed to limit the liability of the Association.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may destroy it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the

elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators.

ARTICLE VIII

DAMAGE OR DESTRUCTION

Section 1. Destruction of Improvements on Lot.

(a) In the event of damage or destruction to a Residence due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Residence, shall be deposited into a bank account which requires, for withdrawals, the signature of an officer of the Association and the Owner. The Owner shall then promptly authorize the necessary repair and reconstruction work, and the insurance proceeds will be applied by the Owner to defray the cost thereof. "Repair and Reconstruction" of the Residences, as used herein, means restoring the improvements to substantially the same conditions in which they existed prior to the damage, with each Residence having the same boundaries as before.

(b) If the insurance proceeds are insufficient to repair or reconstruct any damaged Residence, such damage or destruction shall be promptly repaired and reconstructed by the Owner using the insurance proceeds and other personal funds.

(c) Notwithstanding the above, the Owners and first Mortgagees of any or all of the destroyed or damaged Residences may agree that the destroyed or damaged Residences shall forthwith be demolished and all debris and rubble caused by such demolition be removed and the Lot(s) regraded and landscaped to the satisfaction of the Architectural Control Committee of the Association. The cost of such landscaping and demolition work shall be paid for by any and all insurance proceeds available. Any excess insurance proceeds shall then be disbursed to such Owner and his first Mortgagee jointly and said Owner shall convey his Lot to the Association for its fair market value as determined by an MAI appraisal, with the appraiser making such appraisal to be named by the Association. Upon acquisition of said Lot, the same shall become part of the Common Area. The above shall in no way be construed as meaning that one lot owner and mortgagee may cause the demolition of the adjacent lots. The decision to demolish and landscape each damaged lot shall be decided by the owner of the Lot and his mortgagee and shall not effect or be effected by the decision of other damaged lot owners.

Section 2. Damage to Common Area. In the event of damage or destruction to all or a portion of the Common Area

due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Areas, the Association shall present to the Members a notice of a special assessment for approval by the membership in accordance with Article V, Section 4. If such assessment is approved, the Association shall make such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of seventy-five percent (75%) of the Owners other than Declarant, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the first Mortgagees of their respective Lots, if any. The assessment as to each Owner and Lot shall be equal to the assessment against every other Owner and Lot. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than sixty (60) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration.

ARTICLE IX

CONDEMNATION

If at any time or times during the continuance of ownership pursuant to this Declaration all or any part of the Common Areas shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

Section 1. Proceeds. All compensation damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

Section 2. Complete Taking.

(a) In the event that all of the Common Areas are taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners equally and payment of said apportioned amounts shall be made payable to the Owner and the first Mortgagee of his Lot jointly.

(b) On the basis of the principal set forth in the last preceding paragraph, the Association shall determine as soon as practicable the share of the Condemnation Award to which each Owner is entitled.

Section 3. Partial Taking. In the event that less than the entire Common Area is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall first be applied by the Association

to the rebuilding and replacement of those improvements on the Common Area damaged or taken by the condemning public authority, unless seventy-five percent (75%) of the Owners and the first Mortgagees of each Lot agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be used by the Association for the future maintenance of the Common Area and exterior maintenance of the Residences situated on each Lot.

Section 4. Mortgagee Notification. The Association shall give any first Mortgagee of a Lot timely written notice of any condemnation proceedings or threat thereof or damage and destruction.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation by Declarant. Declarant, for itself, its successors and assigns, expressly reserves, until seven (7) years from the date of the recording of this Declaration, the right to enlarge this Property by annexing additional real property. All additional Common Area and Lots shall be of comparable quality and similar appearance to those previously erected upon the Real Property. The reference to the Declaration in any instrument shall be deemed to include any supplements to the Declaration without specific reference thereto. As long as there is a Class B membership, all annexations to this Property must have the prior approval of the Federal Housing Administration or the Veterans Administration.

Such supplements to this Declaration shall provide for a division of such annexed real property and improvements into Lots and Common Elements similar in method and form to the division made of the Real Property and Improvements in

this Declaration.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Miscellaneous. The first Mortgagee of any Lot within the Subdivision may jointly or singularly pay taxes or other charges which are in default and which may be or become a charge against the Common Area. Further, said first Mortgagees may also pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of any policy insuring the Common Areas. Upon the making of such payment by any such Mortgagee, the Association shall immediately reimburse said Mortgagee for the cost thereof.

ARTICLE XI

PROFESSIONAL MANAGEMENT

This Project may be managed by a professional real estate management company licensed to do business in the State of Colorado and the Association's Board of Directors shall be allowed to retain the services of such a company, provided, however, that the term of any such contract shall not be in excess of one (1) year and shall be terminable on thirty (30) days' written notice, with or without cause or the payment of a termination fee. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declaration or other developer controls the Association shall terminate absolutely, and in any event, no later than thirty (30) days after the termination of control by the Declarant or other developer of the Association. All such management contracts entered into by the Association with a manager or managing agent during the period of control by the Declarant or developer shall be subject to review and approval by the Veterans Administration and/or Federal Housing Administration if they have insured or guaranteed any loan secured by a Lot within the Properties. Provisions of this paragraph shall be contained, verbatim, in each of such management contracts.

ARTICLE XII

ENFORCEMENT

The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any rights hereunder shall in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF, the undersigned, being the Declarant

