

**FIRST AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS  
OF  
EMERALD VISTA ESTATES**

THIS FIRST AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS OF EMERALD VISTA ESTATES (this "Declaration"), is made as of \_\_\_\_\_, 2000 by M. Peter Schrepfer and Lisa M. Schrepfer **[CONFIRM]** (collectively, "Declarant")

**RECITALS**

A. This Declaration concerns certain real property located in portions of Sections 7, 18 and 19, Township 33 South, Range 62 West of the 6th P.M., Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 24, Township 33 South, Range 63 West of the 6th P.M., and Section 34, Township 32 South, Range 63 West of the 6th P.M., County of Las Animas, State of Colorado, as more particularly described on Exhibit A attached hereto and incorporated herein (the "Property").

B. The Property is encumbered by and subject to that certain Declaration of Restrictive Covenants of Emerald Vista Estates recorded at Reception No. 600615 on May 15, 1993 **[CONFIRM]** in Las Animas County, Colorado (the "Prior Declaration").

C. Pursuant to Section 13 of the Prior Declaration, Declarant and Owners representing at least fifty-one percent (51%) of the surface acres included in the Property have elected to amend and restate the Prior Declaration. Accordingly, Declarant and Owners representing at least fifty-one percent (51%) of the surface acres included in the Property have approved this Declaration, which supercedes in its entirety and replaces for all purposes the Prior Declaration.

D. From and after the recording of this Declaration in the real property records of Las Animas County, Colorado, the Prior Declaration shall be vacated from title to the Property and shall carry no further force or effect.

E. The easements, covenants, conditions and restrictions contained in this Declaration shall, in the same manner and to the same extent as initially established by the Prior Declaration, continue to run with the land and be binding on all parties now or in the future having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and their tenants, employees, guests and invitees, and shall inure to the benefit of each Owner thereof.

NOW, THEREFORE, after recordation of this Declaration, all of the Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants and conditions set forth in this Declaration, which are for the purpose of protecting the value and desirability of the Property.

## ARTICLE 1

### Definitions

1.1 “**ACC**” means the Architectural Control Committee to be established by Declarant pursuant to Section 5.1 below, which shall have and exercise the powers set forth in this Declaration.

1.2 “**Association**” means the owners association that Declarant may establish pursuant to Section 4.5 below, which shall have and exercise the powers set forth in this Declaration as amended pursuant to Section 4.6 below.

1.3 “**Building**” means any habitable or non-habitable Improvement which is used or capable of being used for the shelter, enclosure or storage of persons, animals, chattel, personal property or substances of any kind.

1.4 “**Building Setback**” means the area within each Tract that is within a prescribed distance from the property line of the Tract or the boundary of a Road, as described in Section 2.6 below, and which establishes the areas within which Buildings may be construed and within which no Buildings may be constructed.

1.5 “**County**” means the County of Las Animas, State of Colorado.

1.6 “**Declarant**” means, collectively, M. Peter Schrepfer and Lisa M. Schrepfer [CONFIRM], and any of their heirs, successors or assigns to which either has specifically assigned all or any part of their Declarant rights in accordance with Section 6.7 below.

1.7 “**Declaration**” means this First Amended and Restated Declaration of Restrictive Covenants of Emerald Vista Estates.

1.8 “**Guest**” means any guest, invitee, licensee, tenant, employee or agent of any Owner.

1.9 “**Improvement**” means all structures, improvements and appurtenances on or to real property of every type and kind including, without limitation, Buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, grading, drainage facilities, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone or other utilities, as well as those construction activities necessary to build such items.

1.10 “**Improvement Setback**” means the area within each Tract that is within a prescribed distance from the property line of the Tract or the boundary of a Road, as described in Section 2.7 below, and which establishes the areas within which Improvements other than Buildings may be construed and within which no Improvements may be constructed.

1.11 “**Owner**” means each record owner of the fee simple title to any Tract, including Declarant, whether one or more persons or entities, but excluding any person or entity holding such interest merely as security for the performance of a debt or other obligation.

1.12 “**Prior Declaration**” means the Declaration of Restrictive Covenants of Emerald Vista Estates recorded at Reception No. 600615 on May 15, 1993 [CONFIRM] in Las Animas County, Colorado.

1.13 “**Property**” means the real property which is subject to this Declaration and which is legally described in Exhibit A of this Declaration.

1.14 “**Road**” means any improved or unimproved easement or right of way within the Property established pursuant to this Declaration for the purpose of ingress and egress between the Tracts and any public ways, whether owned and maintained by a public entity, by or one or more Owners, by Declarant, or by the Association.

1.15 “**Tract**” means each parcel of thirty five (35) acres or more within the Property, whether owned by Declarant or by another Owner, which Declarant has designated as a separate and distinct parcel for purposes of conveyance, ownership and/or development.

## ARTICLE 2

### Permitted Uses and Improvements

#### 2.1 Prior Approval Required for All Uses and Improvements.

No Improvements shall be constructed and no use shall be commenced or maintained without the prior written approval of Declarant and/or the ACC. Any Owner constructing Improvements, or allowing the same to be constructed, shall comply with all state and local laws and regulations, especially those requiring permits for such construction. No Building shall exceed two stories above ground or a maximum height of thirty feet (30') above the ground. All such construction shall be completed within one year of beginning site preparation or construction, whichever occurs first.

#### 2.2 Permitted Uses.

##### (a) *Generally.*

All Tracts shall be used exclusively for residential purposes and such accessory uses and recreational purposes as may be permitted by state and local law. Not more than one primary residence and one guest or “mother-in-law” house shall be built on any one Tract. No use, however, whether initial, change or additional use, shall be commenced on or made of any portion of a Tract or any Improvements thereon until Declarant and/or the ACC have approved such use in writing as provided in this Agreement. No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or which is hazardous by reason of danger of fire or explosion, or injurious to persons or to property, or in violation of the laws, ordinances, resolutions and policies of any city or town having jurisdiction, Las Animas County, the State of Colorado or the United States.

(b) *Business Activities.*

No Owner shall conduct any business or trade or home occupation in or from any Tract without prior written approval of the Declarant and/or ACC, except that the Declarant and his agents and assigns shall be permitted to conduct reasonable business activities and maintain temporary sale offices, install reasonable signs and billboards, and perform reasonable construction and maintenance of any Improvements on Tracts owned by Declarant.

(c) *Nuisances, Noxious Activities Prohibited.*

No Owner or Guest shall do anything or keep anything in or on the Property which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body having jurisdiction over the Property. No noxious or offensive activity shall be carried on or upon any part of the Property nor shall anything be done or placed on or in any part of the Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Property and no Improvements shall be made or constructed on any part of the Property which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Property which is unreasonably loud or annoying. No odor shall be emitted on any part of the Property which is noxious or offensive to others. No light shall be emitted from any part of the Property which is noxious or offensive to others. Declarant and/or the ACC shall have authority, in their sole discretion, to determine whether particular activities comply with the foregoing restrictions and to require the abatement of any non-complying activities.

(d) *Vehicles.*

No motor vehicles of any kind shall be parked on any Road. No stripped down, partially wrecked, or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any Road or on any Tract except in an enclosed Building approved by Declarant and/or the ACC. Off road, three-wheel and all terrain vehicles are allowed provided that they are driven by Owners or Guests only on the Owner's Tract and that they are not operated in such a manner as to be destructive to the Tract or to constitute a nuisance. Off road, three-wheel and all terrain vehicles are otherwise prohibited on any part of the Property unless they are mounted on a trailer designed for their transport. This subparagraph shall not apply to four-wheel drive vehicles designed primarily for normal highway usage. Motorcycles and motorbikes designed primarily for normal street and highway usage may be used on the maintained or graded roadways on the Property, provided the sound emitted from such machines is properly muffled so as not to unreasonably disturb Owners or otherwise constitute a nuisance.

(e) *Livestock and Animals.*

The number of livestock on a Tract at any given time shall not exceed two (2) animals. Livestock includes, by way of example and not limitation, horses, cows, sheep, goats, pigs, llamas, chickens and similar species of non-household animals. No commercial breeding, boarding, feeding or similar uses shall be permitted on any Tract. A reasonable number of dogs, cats or other usual and common household pets may be kept on a Tract. The livestock and household pets must be kept in accordance with applicable law and subject to the following

provisions. All livestock shall be properly cooped, corralled or otherwise contained on the Tract at all times. All household pets shall be kept under the control of their Owner at all times, whether on or off the Tract. Any animal which endangers the health of or constitutes a nuisance or inconvenience to the Owners of other Tracts shall be removed upon request of the Declarant and/or ACC.

(f) *Wood Harvesting and Mining.*

Commercial wood harvesting and mining shall be prohibited. Mining includes the removal of soil, gravel and rock. In addition, there shall be no unnecessary removal of trees and bushes, other than that reasonably necessary for construction and lawns.

2.3 Trash and Debris.

Each Owner shall provide for the prompt collection and removal of trash and debris from such Owner's Tract at Owner's expense. No trash, ashes or other refuse or debris may be thrown or dumped on the Property. The burning of refuse out-of-doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used by any person except as approved by the Declarant and/or ACC. Waste materials, garbage and trash shall be kept in sanitary containers and shall be enclosed and screened from public view and protected from disturbance and shall be disposed of with reasonable promptness. The Owner of any Tract shall keep the premises free of trash, refuse, noxious weeds or debris of any kind, whether said Tract is improved, vacant or occupied.

2.4 Fences.

Owners are permitted to fence their Tracts, subject to prior approval of Declarant and/or the ACC, but no gate or closure device shall be erected across any Roads. Additionally, all fences constructed on the Property shall comply with all statutes of the State of Colorado and any regulations of any administrative agencies having jurisdiction over the Property or over the construction of fences on the Property. Each Owner shall maintain all decorative fences on such Owner's Tract in a functional and attractive condition. Until each Tract is fenced, the Declarant shall retain all grazing rights on all the Property. **[Is this necessary?]**

2.5 Buildings.

No mobile, trailer and/or modular homes, campers, motor homes or similar Building, structure or vehicle shall be permitted on any portion of the Property as permanent structures or housing. None of such vehicles, Buildings or structures, nor any Building or other structure of a temporary character, recreational vehicle, tow trailer, tent, and the like, shall be placed on any Tract for a period exceeding thirty (30) days, cumulatively, in each calendar year, except in an enclosed garage or other Building approved by Declarant and/or the ACC. Notwithstanding the foregoing, upon obtaining the prior written approval of Declarant and/or the ACC, the following may be permitted:

(a) necessary appurtenances for and during actual construction and trailers and structures of a temporary nature used during the construction of an approved and allowed Improvement, but for no longer period than twelve (12) months; and

(b) temporary uses for promotional purposes consistent with the general purposes or standards of the Property, subject to such reasonable restrictions as the Declarant and/or ACC may impose.

Further, no basement, tent, shack, garage, barn or other outbuilding erected on any of the Property shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence. No signs, billboards, posterboards, or advertising structure of any kind shall be erected or maintained for any purpose whatsoever except signs which have been approved by the Declarant and/or ACC, except that the entrance arches for each Tract may identify the name of the Owner or the nickname of the Tract.

## 2.6 Building Setbacks.

No Building shall be located on any Tract in such a manner as to be within **one hundred eighty feet (180) feet** of any Property boundary line or within **sixty feet (60')** of the boundary of any Road or utility right-of-way or easement (collectively, the "Building Setback"). Notwithstanding the foregoing, any existing Building that, as of the date of this Declaration, does not comply with the Building Setback may be maintained as a permitted nonconforming structure; provided, however, that if it is subsequently destroyed or damaged so that the cost of repair or reconstruction is greater than or equal to fifty percent (50%) of its original cost of construction, the Building shall not be reconstructed in the same location and, if reconstructed, must comply with the Building Setbacks prescribed in this Section 2.6.

## 2.7 Improvement Setbacks.

No Improvement (other than Buildings, which are addressed in Section 2.6 above) shall be located on any Tract in such a manner as to be within **sixty (60) feet** of an Property boundary line or within **thirty (30) feet** of the boundary of any Road or utility right-of-way or easement (collectively, the "Improvement Setback"). Notwithstanding the foregoing, fences and mailboxes shall be permitted to be located within the Improvement Setback, subject to review by the Declarant and/or ACC. Additionally, any existing Improvement that, as of the date of this Declaration, does not comply with the Improvement Setback may be maintained as a permitted nonconforming structure; provided, however, that if it is destroyed or damaged so that the cost of repair or reconstruction is greater than or equal to fifty percent (50%) of its original cost of construction, the Improvement shall not be reconstructed in the same location and, if reconstructed, must comply with the Improvement Setbacks prescribed in this Section 2.7.

## 2.8 Sewer.

Except for a maximum of two (2) temporary privies used in conjunction with the construction of a primary residence approved by Declarant and/or the ACC pursuant to this Declaration, no outside toilets or privies shall be permitted on any Tract at any time. All toilet facilities must be of a modern type connected to a proper sanitary system approved by the appropriate governmental entity. No Owner may use his Tract for any purpose which would result in the draining of dumping into any channel or upon the Property of any refuse, sewage or the like. Each Owner shall be responsible for the provision and maintenance of his own sewerage disposal system.

## 2.9 Exterior Maintenance and Open Storage.

All portions of a Tract outside of enclosed areas shall be kept in a neat and clean condition at all times. Open storage is prohibited. Without limitation of the foregoing, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored or permitted to remain on any Tract outside of a Building approved by Declarant and/or the ACC. All surplus lumber or other miscellaneous equipment must be hidden from view by at least a solid fence and storage in an enclosure. No trucks larger than 3/4 ton trucks, trailers, trailer houses, recreational vehicles and campers, mobile homes, motor homes, boats, or tractors shall be kept or stored on a Tract, except in a Building approved by Declarant and/or the ACC. No rebuilding of any vehicle engine shall be permitted except in a Building approved by Declarant and/or the ACC. Abandoned or inoperable vehicles shall not be stored or parked on any portion of the Property, except in a Building approved by Declarant and/or the ACC. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of one week or longer.

## ARTICLE 3 Easements

### 3.1 Easements and Rights-of-Way.

Declarant specifically reserves to itself, its successors and assigns, easements and access ways for, to and over each and every Tract over and across the entirety of the Property to a public way for purposes of access and utility placement. In the case of an existing improved Road, said easement and access way shall be thirty feet (30') on each side of the centerline. In the case of Tracts over which no improved Road exists at the time of recording of this Declaration, said easement and right-of-way shall be sixty feet (60') wide, the exact location and course of said easement and access way to be later determined in Declarant's sole discretion, provided that no such easement shall unreasonably impair an Owner's use of a Tract for a purpose permitted under this Declaration. Until such determination, said easement and right-of-way shall be across the entirety of said Tracts. Further, Declarant specifically reserves to itself, its successors and assigns, any further easements which may be required to place anchors and guy wires outside of the sixty foot (60') easement area to properly and reasonably support utility poles within the sixty foot (60') area.

### 3.2 Road Easements and Conveyances.

If the Declarant should decide to deed or otherwise dedicate and convey all or any part of the Roads to the County or any other governmental or quasi-governmental entity, or to the Association, then each and every Owner whose legal description includes such Roads shall convey to the applicable grantee all of their right, title and interest in and to the portion of their Tracts represented by the Road.

### 3.3 General Easement.

There is hereby created a general easement upon, across, over, in and under the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone and electrical. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical

and telephone services to install and maintain electrical, communications, and telephone wires, circuits and conduits underground on the Tracts. No water, sewer, gas, telephone, electrical or communications lines, systems or facilities may be installed or relocated on the Property unless approved by Declarant and/or the ACC pursuant to the terms and conditions of this Declaration. Such utilities temporarily may be installed above ground during construction, if approved by the Declarant and/or the ACC as stated above. Any utility company using the general easement created herein shall use its best efforts to install and maintain the utilities provided for herein without disturbing the uses of the Owners, the Association, and the Declarant, shall prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible, and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 3.3 shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property.

#### 3.4 Emergency Access.

An emergency vehicle easement is hereby granted over the Roads, private driveways, and undeveloped areas of the Property to all police, sheriff, fire protection, ambulance and all other similar emergency vehicles or persons to enter upon all Roads and upon such portions of the Property in the proper performance of their duties.

#### 3.5 Maintenance Easement.

An easement is hereby reserved to the Declarant and/or Association, and their respective officers, agents, employees and assigns in the performance of duties specified herein (or such duties as the Association's Articles of Incorporation or Bylaws may establish), upon, across, over, in and under the Tracts and a right to make such use of the Tracts as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Declarant and/or Association is obligated or permitted to perform pursuant to this Declaration, including the right to enter upon any Tract as required or permitted by this Declaration.

#### 3.6 Easements Deemed Created.

All conveyances of Tracts hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 3, even though no specific reference to such easements or to this Article 3 appears in the instrument for such conveyance. All easements created, granted or reserved by the Prior Declaration and not expressly vacated by this Declaration are incorporated herein and shall continue in effect in the same manner and to the same extent as under the Prior Declaration.



## ARTICLE 4

### Declarant's Reserved Rights

#### 4.1 Withdrawal of Property.

Prior to creation of the Association pursuant to Section 4.4 below, Declarant reserves the right to amend this Declaration to withdraw all or any portion of any Tract from this Declaration, whether prior or subsequent to conveying such Tract to an Owner, by recording a written document to that effect in the real property records of the County. Such withdrawals shall not require the consent of any person other than Declarant and the Owner of the Tract to be withdrawn, if other than the Declarant.

#### 4.2 Additional Property.

Prior to creation of the Association pursuant to Section 4.4 below, the Declarant reserves the right to amend this Declaration to subject additional Property to this Declaration by the recording of a statement to that effect in the real property records of the County. Said statement shall set forth the exact legal description of the Property to be annexed to this Declaration, and shall state that all Property annexed shall be subject to the terms of the Declaration.

#### 4.3 Partition, Subdivision or Combination of Tracts.

No part of a Tract may be partitioned, subdivided or separated from any other part thereof except as provided herein. Whether partitioned, subdivided, combined or unchanged, each Tract shall be conveyed, transferred, gifted, devised, bequeathed or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration. If, after formation of the Association pursuant to Section 4.4 below, the Association owns any common area, no Owner shall bring any action for partition or division of the common area. By acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the common area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association, and hereby agrees to reimburse the Association for its costs, expenses and reasonable attorneys' fees in defending any such action. A Tract may be subdivided or two or more Tracts may be combined into one Tract only with the written consent of Declarant and full compliance with all County zoning and subdivision regulations, and the Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses thereof, including legal and accounting fees. Nothing herein shall be deemed to prohibit or restrict Declarant from combining, subdividing or re-subdividing any portion of the Property owned by Declarant.

#### 4.4 Reserved Rights.

Nothing in this Declaration shall limit, and no Owner shall do anything to interfere with, the right of the Declarant to grant utility easements or easements of ingress and egress upon, or to subdivide or resubdivide, Tracts owned by Declarant or other real property owned by the Declarant which is contiguous or adjacent to any part of the Property.

#### 4.5 Formation of Association.

At any time after Declarant has conveyed twenty five percent (25%) of the surface area of the Tracts to Owners other than Declarant, Declarant may, without obligation to do so, establish a property owners association ("Association"). Prior to establishing the Association, the Declarant shall bear all costs for maintaining the improved Roads within the Property and any other Improvements on any portion of the Property that are established for the common use and benefit of the Owners. Prior to formation of the Association, no Owner other than Declarant shall have any obligation for the cost of improving or maintaining any Road or other Improvement for the common benefit of the Owners, and no Owner other than Declarant shall have any obligation whatsoever for any cost associated with any real property other than such Owner's Tract, including any costs associated with improving, maintaining, insuring, operating, or otherwise related to any Road, Tract or other interest in the Property that provides a common benefit to the Owners. After formation of the Association, each Owner shall be a member and shall have one (1) vote (or fractional vote) for each acre (or fraction of an acre) within the Tract(s) owned by such Owner; provided, however, that Declarant shall have ten (10) votes (or fractional votes) for each acre (or fraction of an acre) within the Property owned by Declarant, or such lesser number of votes as specified in an amendment to this Declaration pursuant to Section 4.6 below. The members of the association shall elect its officers and shall determine the matters over which the Association shall act for the common good of the members, including but not limited to the establishment and ownership of common areas for which each Owner may be responsible for a pro rata share of the costs of maintenance, insurance, taxes and other obligations.

#### 4.6 Colorado Common Interest Ownership Act.

Unless and until Declarant forms the Association, the provisions of the Colorado Common Interest Ownership Act, C.R.S. §-38-33.3-101, et seq., shall not apply to this Declaration, the Association, the Property, or any Tract. After Declarant forms the Association, or in conjunction therewith, Declarant shall cause this Declaration to be amended to the extent necessary to comply with the Colorado Common Interest Ownership Act and to describe the structure, responsibilities, voting rights and assessment allocations of the Association and its members.

### ARTICLE 5 Architectural Control

#### 5.1 The ACC.

The ACC shall consist of one or more, but no more than five (5), members who shall be designated by the Declarant and serve at Declarant's pleasure until the occurrence of the earlier of the following events: (a) the Declarant no longer owns an interest in any Tract; (b) Declarant has formed the Association; or (c) voluntary relinquishment of such right by Declarant as evidenced by a written instrument duly recorded. During the period that Declarant has the right to appoint the members of the ACC, Declarant may (but shall not be required to) appoint one or more persons designated to serve on the ACC. Until Declarant appoints the initial member(s) of the ACC, Declarant shall perform the functions of the ACC. Following termination of Declarant's right to appoint members of the ACC, the Owners (or the members of

the Association, if Declarant has formed the Association) shall designate the number of and shall appoint the members of the ACC. The members of the ACC shall be designated by the Declarant or the Owners (or members of the Association), as the case may be, by recording a written instrument setting forth the names and addresses of the member(s) of the ACC. The ACC shall review, study and approve, approve with conditions, or reject the proposed Improvements upon the Property subject to these covenants and restrictions. Further, the ACC shall have the right to grant exceptions to any specific requirements if the ACC in its sole discretion determines such an exception to be justified under the particular circumstances presented.

#### 5.2 Rules.

The Declarant and/ or ACC may make and promulgate such rules and regulations as it may deem appropriate to govern its proceedings.

#### 5.3 Architectural Control.

All Buildings and any other Improvements erected or placed on any portion of the Property shall be harmonious in architectural design, material and appearance with the aesthetics of the environment. No Buildings or other Improvements shall be commenced, erected or maintained upon any part of the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, elevation, material, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Declarant and/or the ACC. The ACC is specifically directed, through its actions and decision making, to encourage Tract owners to utilize alternative energy sources and to take advantage of the climate for passive solar energy.

#### 5.4 Approval Required.

No Improvements shall be constructed upon the Property, nor shall any exterior addition to or change or alteration to an existing Improvement be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the proposed Improvement or alteration to an existing Improvement have been submitted to the Declarant and/or ACC and approved by the Declarant and/or ACC in writing. Each Owner, including Declarant, shall hire competent architectural and engineering advisors who will coordinate the review of the plans and specifications for the construction of each structure, addition, change or alteration with the Declarant and/or ACC. The Declarant and/or ACC reserves the right to require reasonable additional information in order to make its decision.

#### 5.5 Criteria.

The Declarant and/or ACC will reasonably endeavor to prevent any Improvements in the Project from impairing the monetary and aesthetic values of the Property. The Declarant and/or ACC shall consider the suitability of the Improvements and the materials of which they are to be constructed with respect to the other Improvements constructed or to be constructed on the Property; the quality of materials to be utilized in any proposed Improvement; the location of each proposed Improvement with respect to the Property, Building Setbacks, Improvement Setbacks and Tract boundary lines, giving due consideration to the location of

existing and proposed Improvements on adjacent properties; the location, color, size and appropriateness of landscaping; the location and character and method of utilization of all utility lines; adequacy of site dimensions; conformity and harmony of external design and of location with neighboring structures and sites; relation of drainage patterns, finished grades and elevations to neighboring sites; and conformity to both the specific and general intent of this Declaration.

5.6 Waiver.

The approval or disapproval by the Developer and/or ACC of any plans, drawings or specifications for any work done or proposed or any other matter requiring their approval under the Declaration, or the granting by the Declarant and/or ACC of any exception to any specific requirement, shall be deemed final, and no approval shall be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, request for exception or any other matter subsequently submitted for approval.

5.7 Limitation of Liability.

Neither the Declarant, the Association (including its Board of Directors and individual Directors), the ACC, nor the members of the ACC shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner or third party by reason of mistake of judgment, negligence or nonfeasance, or for any other reason arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

5.8 Regulatory Approvals.

Each Owner constructing an Improvement shall obtain all necessary zoning approvals, building permits and appropriate inspections of completion by the County or other appropriate agencies. Approval by any such agency shall not eliminate, however, the requirement for Declarant and/or ACC approval, nor shall Declarant and/or ACC approval eliminate the requirement for approval by any governmental or quasi-governmental agency. No Owner shall amend the zoning of any Tract or further subdivide any tract without obtaining prior written consent from Declarant and/or the ACC.

## **ARTICLE 6**

### **Miscellaneous Provisions**

6.1 Revocation and Amendment.

Except as otherwise expressly provided in this Declaration, no amendment or revocation of this Declaration shall be effective unless approved in writing by Declarant and thereafter recorded in the real property records of Las Animas County, Colorado. Prior to formation of the Association, Declarant may unilaterally amend this Declaration. Following formation of the Association, the procedures for amendment shall be as set forth in this Declaration as amended pursuant to Section 4.6 above.

## 6.2 Enforcement.

The ACC, the Association, any Owner, and/or the Declarant, regardless of whether Declarant owns any of the Property, shall have the right to enforce the provisions of this Declaration. Failure of any Owner, the ACC, the Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any action is brought in a court of competent jurisdiction to enforce this Declaration, the prevailing party shall be entitled to receive an award of its reasonable attorneys' fees and costs incurred in the legal action and for any legal services required after judgment to enforce the court's orders and decrees. Failure to comply with any of the terms of this Declaration by an Owner, his family or Guests shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, private nuisance or any combination thereof. Each remedy provided for in this Declaration or otherwise available at law or in equity shall be cumulative and not exclusive or exhaustive.

## 6.3 Severability.

The provisions of this Declaration shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof. If a court of competent jurisdiction enters a final judgment determining that any provision of this Agreement is invalid, unenforceable, or causes this Declaration to be subject to or in violation of the Colorado Common Interest Ownership Act, the provision determined to be invalid or to implicate the Colorado Common Interest Ownership Act shall be judicially reformed in a manner that most closely effectuates the intent of the invalidated provision and/or the intent of Section 4.6 above.

## 6.4 Covenants Cumulative.

Each of these covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subjective matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

## 6.5 Action in Writing.

Notices, approvals, consents, extensions, applications and other action provided for or contemplated by these covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, application or other action. Permission, consent or approval of Declarant or any other person or entity under these covenants is not effective unless in writing.

## 6.6 Notices.

Any communication from Declarant to an Owner shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situate on the Tract owned by that Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to Declarant and if the Owner has not furnished an address, then to the address listed in the records of the County Tax Assessor at the time of mailing. Any communication from an Owner to Declarant and/or the

ACC shall be sufficiently served if delivered by mail or otherwise to [advise correct address for service of notices]

6.7 Assignment, Conveyance or Transfer of Declarant's Interest.

By recording a written instrument to that effect in the real property records of Las Animas County, Declarant shall have the full right, without approval of the other Owners, to assign, transfer and convey all or any part of its rights, title, interest and obligation pursuant to this Declaration to any third party or entity of Declarant's choosing.

6.8 Perpetuities Saving Clause.

As to any provision in this Declaration, the Declarant does not intend that there shall be any violation of the Rule against Perpetuities or any related rule. If any such violation should inadvertently occur, it is the wish of the Declarant that the appropriate court shall reform such provision in such a way as to approximate most closely the intent of the Declarant within the limits permissible under such Rule or related rule.

**IN WITNESS WHEREOF**, the undersigned Declarant has executed this Declaration as of the date first set forth above.

**DECLARANT:**

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M. Peter Schrepfer

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Lisa M. Schrepfer

STATE OF COLORADO )  
 ) ss:  
\_\_\_\_\_ COUNTY )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by M. Peter Schrepfer.

Witness my hand and official seal.

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

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

STATE OF COLORADO )  
 ) ss:  
\_\_\_\_\_ COUNTY )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Lisa M. Schrepfer.

Witness my hand and official seal.

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

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

**EXHIBIT A**  
**Legal Description of the Property**

**[Note: Need confirmation that no property has been added to or excluded from the legal description in the original recorded covenants – that we can use the same legal description here.]**