

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FOREST GLEN SECOND FILING - REPLAT C,  
A REPLAT OF FOREST GLEN SECOND FILING - LOT 45  
CITY OF BOULDER, COUNTY OF BOULDER,  
STATE OF COLORADO

THIS DECLARATION, is made on the date hereinafter set forth by Cunningham Farms, Inc., a Colorado corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property located in the City of Boulder, County of Boulder, State of Colorado, as set forth and described on Exhibit A attached hereto and incorporated herein by reference, hereinafter referred to as the "Properties".

NOW, THEREFORE, Declarant hereby declares that the Properties herein shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, use, and obligations all of which are to be for the purpose of protecting the value and desirability of the Properties described and which shall be binding upon all persons having any right, title, or interest in the described Properties or any part thereof, their heirs, grantees, successors, representatives, and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE 1 DEFINITIONS**

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

**Section 1.1. Association.**

"Association" shall mean the homeowners association known as SPRING LEAF OWNERS ASSOCIATION, a Colorado Non-profit Corporation, its successors and assigns.

**Section 1.2. By Laws.**

"By Laws" shall mean any instrument designated as By Laws which is adopted by the Association for the regulation and management of the Association, including any amendments to said instrument.

**Section 1.3. Common Elements.**

"Common Elements" shall mean Outlots A, B, C and D, and all improvements located thereon, together with all roads, streets, fences, rights-of-way, and easements located within the Properties which are owned by the Owners as tenants in common, are required to be maintained by the Association or dedicated to the City of Boulder or the public but are to be maintained by the Association.

**Section 1.4. Common Expenses.**

“Common Expenses” means any expenditures, costs or expenses and all liabilities incurred by or on behalf of the Association for all of the Units, together with any allocation to reserves.

**Section 1.5. Common Expense Assessment.**

“Common Expense Assessment” means the assessment made against each Unit in the Properties by the Association for the Common Expenses.

**Section 1.6. Declarant.**

"Declarant" shall mean Cunningham Farms, Inc., a Colorado corporation, its successors or assigns, if such successors or assigns shall acquire any portion of the Properties described for the purpose of development and be designated by the Declarant or a successor Declarant by a duly recorded written instrument.

**Section 1.7. Declaration.**

"Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions of Forest Glen Second Filing - Replat C, a Replat of Forest Glen Second Filing - Lot 45, City of Boulder, County of Boulder, State of Colorado as may be amended from time to time.

**Section 1.8. Executive Board.**

"Executive Board" shall mean the Executive Board of the Association duly elected pursuant to the By Laws of the Association or appointed by the Declarant as provided in this Declaration.

**Section 1.9. First Mortgagee.**

"First Mortgagee" shall mean any person, corporation, partnership, trust, company, association, or other legal entity which owns, holds, insures, or is a governmental guarantor of a mortgage or deed of trust, which mortgage or deed of trust is a first lien encumbering a Unit or parcel within the Properties described.

**Section 1.10. Lot.**

"Lot" shall mean and refer to any plot of land shown upon the recorded subdivision plat or later amended plats of the Properties and which is subject to this Declaration, with the exception of the Common Elements, public streets, or other public property. Lot shall include any dwelling unit or structure constructed thereon.

**Section 1.11. Master Association.**

"Master Association " shall mean and refer to Forest Glen Recreational Association.

**Section 1.12. Master Declaration.**

“Master Declaration” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Forest Glen Recreational Association.

**Section 1.13. Member.**

"Member" shall mean all those who are members of the Association as provided in this Declaration.

**Section 1.14. Owner.**

"Owner" means the Declarant or other person or entity that owns a Unit, but does not include a person having an interest in a Unit solely as security for an obligation. The Declarant is the Owner of any Unit created by the Declaration until that Unit is conveyed to a third party.

**Section 1.15. Parking Space.**

“Parking Space” means and refers to any Parking Space located within Outlot B, all of which Parking Spaces shall be for the sole use of the Owners of Townhouses and their invitees and guests on a non-exclusive, first come, first served basis. The Association reserves the right, but not the obligation, to apportion use of the Parking Spaces to individual Owners of Townhouses. No Parking Space shall be used by any Owner of a Residential Lot or their invitees or guests.

**Section 1.16. Party Wall.**

“Party Wall” means each wall of a Townhouse which is built as a part of the original construction within the Properties and which wall constitutes the dividing wall between the living space of any other Townhouse.

**Section 1.17. Properties.**

"Properties" shall mean the entire real property and the improvements located thereon which is the subject of this Declaration, as more fully described on Exhibit A attached hereto.

**Section 1.18. Residential Lot.**

“Residential Lot” means any of Lots 1 through 6, Block 2 of the Properties and the residential dwelling and other improvements located thereon.

**Section 1.19. Security Interest.**

"Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership

interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

**Section 1.15. Parking Space.**

“Parking Space” means and refers to any Parking Space located within Outlot B, all of which Parking Spaces shall be for the sole use of the Owners of Townhouses and their invitees and guests on a non-exclusive, first come, first served basis. The Association reserves the right, but not the obligation, to apportion use of the Parking Spaces to individual Owners of Townhouses. No Parking Space shall be used by any Owner of a Residential Lot or their invitees or guests.

**Section 1.21. Townhouse.**

“Townhouse” means any of Lots 1 through 6, Block 1 of the Properties and the improvements located thereon.

**Section 1.22. Townhouse Expenses.**

“Townhouse Expenses” means all expenditures, costs or expenses and all liabilities incurred by or on behalf of the Association solely for the Townhouses and not the Units as a whole, together with any allocation to reserves.

**Section 1.23. Townhouse Expense Assessment.**

“Townhouse Expense Assessment” means the assessment made against each Townhouse in the Properties by the Association for the Townhouse Expenses.

**Section 1.24. Unit or Units.**

“Unit or Units” means a Residential Lot or Townhouse within the Properties and which is subject to this Declaration. Unit shall include any structure constructed or contained thereon.

**ARTICLE 2. SUBMISSION DEFINED TERMS.**

**Section 2.1. Submission of Real Estate.**

Declarant hereby declares that all the real property set forth and described in Exhibit A hereto shall be held or sold and conveyed subject to the Declaration and 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 real estate or any part thereof, their heirs, legal representatives, successors, and assigns, and shall inure to the benefit of each Owner.

**ARTICLE 3. NAMES: DESCRIPTION OF REAL PROPERTY.**

**Section 3.1. Names.**

(a) Properties. The name of the Properties is Forest Glen Second Filing - Replat C, a Replat of Forest Glen Second Filing - Lot 45, City of Boulder, County of Boulder, State of Colorado.

(b) Association. The name of the Association is Spring Leaf Owners Association, a Colorado non-profit corporation.

**Section 3.2. Real Property.**

The Properties are located in the City of Boulder, County of Boulder, State of Colorado. The real estate of the Properties is described on Exhibit A.

**ARTICLE 4. UNITS**

**Section 4.1. Number of Units.**

The Declarant reserves the right to create a maximum of twelve (12) Units on the Properties.

**Section 4.2. Residential Lots and Townhouses.**

(a) The Properties are hereby divided into two types of Lots: Residential Lots and Townhouses, each being a Unit. Each Unit is a fee simple absolute estate.

**Section 4.3. Common Elements.**

The Common Elements shall be owned by the Owners as tenants in common, with each Owner of a Unit owning an undivided one-twelfth (1/12) interest in the Common Elements.

**Section 4.4. Title to a Unit.**

Title to a Unit may be held or owned by any person or entity in any manner in which title to real estate may be held or owned in the State of Colorado.

**Section 4.5. Transferability.**

Except as hereinafter expressly provided to the contrary, title to any Unit shall be freely transferable in accordance with applicable law; and sale thereof shall not be subject to any right of first refusal, first option to purchase, or other similar restriction in favor of any Owner, the Association or Declarant.

**Section 4.6. Inseparability.**

No part of a Unit or of the legal rights comprising ownership thereof may be separated from any other part thereof during the period of ownership hereby prescribed. Each Unit and the undivided interest in the Common Elements appurtenant thereto shall always be conveyed, devised, encumbered, and otherwise affected as a Unit only. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Unit, or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, conveyance, or disposition, respectively, of the entire Unit or of an undivided interest therein, together with all appurtenant rights created by law or by this Declaration.

**Section 4.7. Nonpartitionability.**

The Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements.

**Section 4.8. Use of Common Elements.**

(a) Each Owner shall be entitled to exclusive ownership and possession of the Owner's Unit. Each Owner has the non-exclusive right to use the Common Elements in accordance with the purposes for which any such elements are intended without hindering, impairing, diminishing or encroaching upon the lawful rights of the other Owners.

(b) The Parking Spaces in Outlot B and the Solar Electric Equipment located on Outlot B shall be for the non-exclusive use of the Owners of the Townhouses, their guests and invitees. The Association reserves the right, but not the obligation, to apportion use of the Parking Spaces and Solar Electric Equipment to individual Owners of Townhouses.

**Section 4.9. Easements for Utilities and Encroachments.**

(a) An easement is hereby created for the installation, maintenance, repair and replacement of all utilities and service lines, including, but not being limited to, electricity, gas, water, sewer, telephone, internet and cable television over, under, on, through and across each Lot and each Outlot in the location as installed by Declarant.

(b) In the event any portion of a Townhouse encroaches upon any other Townhouse as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, or any encroachments resulting from repair, or reconstruction after damages, partial or full destruction of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Such encroachments and easements shall not be considered or determined to impair or otherwise adversely affect the marketability of title to any Townhouse.

**Section 4.10. Owner's Right to Ingress and Egress and Support.**

Each Owner shall have the right to ingress and egress over, upon, and across the Common Elements necessary to access each Owner's Unit, and if a Townhouse, to access any Parking Space or Solar Electric Equipment appurtenant to an Owner's Townhouse, and shall have the right to horizontal and lateral support of each Unit.

**Section 4.11. Reservation of Development Easement.**

The Declarant, for itself, its successors and assigns, reserves a non-exclusive easement on, over, across, through and beneath the Properties for utilities, access, ingress, and egress for the development, construction, repair and maintenance of the Units and the Common Elements.

**Section 4.12. Townhouse Easements of Access for Repair, Maintenance, and Emergencies and for Utilities:**

(a) The Owners of the Townhouses shall have the irrevocable right, to be exercised by the Association, to have such access to each Townhouse from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair, or replacement of any Party Wall therein, to prevent damage to the Party Wall or to another Townhouse or Townhouses. The Association shall have an irrevocable right to have access to each Townhouse at all times in the event of the necessity for emergency inspection, maintenance, repair, or replacement of any Party Wall to prevent damage to the Party Wall or to another Townhouse.

(b) Damage to any part of a Townhouse resulting from the maintenance, repair, emergency repair, or replacement of any Party Wall or as a result of emergency repairs on or within another Townhouse at the instance of the Association shall be a Townhouse Expense allocated to all of the Townhouse Owners; provided, however, that if such damage is the result of the negligence of a Townhouse Owner, then such Townhouse Owner shall be responsible for all of such damage, which costs, fees and expenses incurred to repair any such damage shall become an individual assessment and a lien against the Owner's Townhouse as described in Sections 7.1 and 7.8 hereof if not paid by the Owner. Restoration of the damaged improvements shall be to substantially the same condition as that of such improvements prior to the damage.

(c) An easement for the installation, maintenance, repair and replacement of all utilities and service lines, including, but not being limited to, electricity, gas, water, sewer, telephone, internet and cable television is hereby created over, under, on, through and across each Lot of a Townhouse.

**Section 4.13. Association's Right to Use of Common Elements.**

The Association shall have a non-exclusive right and easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

**Section 4.14. Owner's Maintenance Responsibility of Unit.**

(a) Each Owner of a Unit shall keep the Unit in good repair and in a safe, clean, attractive and slightly condition so as to assume an attractive appearance to the Properties as a whole. Each Owner of a Unit shall be responsible for the maintenance, repair, restoration, alteration and remodeling of the interior of any and all improvements, fixtures and equipment constructed or located in each Owner's Unit. No Owner shall be deemed to own any utilities running through the Owner's Unit or through or under any Common Element appurtenant to such Owner's Unit which serve more than one Unit, except as a tenant in common with the other Owners. The right to repair, alter, maintain and remodel as set forth herein shall carry the obligation upon each Owner to replace any finishing materials removed, repaired, restored, altered or remodeled with similar or other types or kinds of materials of equal or better quality than originally used by Declarant.

(b) No Owner shall do any act or any work which will impair the structural soundness, integrity or attractiveness of the Properties or Townhouses or impair any easement or hereditament.

(c) In the event any Owner of a Unit fails to adequately maintain any portion of the Owner's Unit in the reasonable opinion of the Executive Board of the Association, then the Association may, after thirty (30) days' prior notice of deficiency, enter onto said Owner's Unit to repair, replace or maintain said Unit. The Owner shall reimburse the Association for its expenses so incurred, including, but not being limited to, its reasonable attorney's fees and costs for such Owner's failure to comply, which costs, fees and expenses shall become individual assessments and a lien against the Owner's Unit as described in Sections 7.1 and 7.8 hereof if not paid by the Owner.

#### **Section 4.15. Owner's Duty of Compliance.**

Each Owner shall strictly comply with the provisions of this Declaration, the provisions of the Articles of Incorporation and By Laws of the Association, and the decisions, Rules and Regulations and Resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the managing agent, the Executive Board or the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner. In the event that the Association must expend any sums for clean up, repair or failure to comply with this Declaration, the Owner shall reimburse the Association for its expenses, including, but not being limited to, reasonable attorneys' fees and costs for such Owner's failure to comply, which shall be individual assessments under Section 7.8 below. Such items may become a lien as described in Sections 7.1 and 7.8 below.

#### **Section 4.16. Common Access Easement – Lots 3 and 4, Block 2.**

Lots 3 and 4, Block 2 of the Properties share a Common Access Easement as shown on the recorded plat for the Properties. Only the Owners of said Lots shall have the non-exclusive

right to use said Common Access Easement. No Owner of either of said Lots shall obstruct the Common Access Easement. The cost to maintain said Common Access Easement shall be shared equally between the Owners of Lots 3 and 4, Block 2 of the Properties.

**Section 4.17. Pedestrian Access Easement.**

A Pedestrian Access Easement is hereby created for Owners of Units within the Properties over and across that portion of Lot 3, Block 2 of the Properties as shown on the recorded plat. The Association shall maintain said Pedestrian Access Easement, and the cost to maintain the Pedestrian Access Easement shall be a Common Expense.

**Section 4.18. Easements Deemed Created.**

All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give full effect to Sections 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.16 and 4.17 herein above, even though no specific reference to such easements or to those Sections appear in any such documents of conveyance.

**ARTICLE 5. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION**

**Section 5.1. Mechanic's Liens.**

Subsequent to the completion of the construction to be performed by Declarant, no labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Owner thereof or the Owner's agent, contractor or subcontractor shall be the basis for filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services, or other products incorporated in or otherwise attributable to the Owner's Unit at such Owner's request.

**ARTICLE 6. THE ASSOCIATION**

**Section 6.1. Authority.**

The business affairs of the Properties shall be managed by the Association, a Colorado non-profit corporation. The Association shall be governed by its By Laws as amended from time to time.

**Section 6.2. Membership.**

Every Owner shall be entitled and required to be a member of Spring Leaf Owners Association. An Owner shall be entitled to one membership for each Unit owned. Where

ownership of a Unit is held by more than one person, the membership corresponding to that Unit shall be held by such persons in accordance with their respective ownership interests in the Unit. No person or entity other than an Owner may be a member of the Association, and memberships may not be transferred except in connection with the transfer of a Unit; provided, however, that the rights of membership may be assigned to the mortgagee of a Unit as security for a loan secured by a deed of trust on the Unit.

### **Section 6.3. Voting Rights.**

The Association shall have one class of membership. Each Member shall be entitled to vote all of the votes allocated to the Unit as set forth in Exhibit B hereof and as specifically limited as follows:

- (a) If only one of several Owners of a Unit is present at a meeting of the Association, the Owner present is entitled to cast all the Votes allocated to the Unit. If more than one of the Owners is present, the Votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts the Votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Unit.
- (b) Votes allocated to a Unit may be cast under a proxy duly executed by an Owner. If a Unit is owned by more than one person, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. An Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.
- (c) The vote of a corporation or other entity may be cast by any officer of that corporation or entity in the absence of express notice of the designation of a specific person by the Executive Board of directors or by laws of the owning corporation or entity. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or other entity Owner is qualified to vote.
- (d) Votes allocated to a Unit owned by the Association may not be cast.

### **Section 6.4 Powers of Association; Management and Control of Common Elements:**

- (a) The Association shall, subject to the rights and duties of the Owners set forth in Article 4 hereof, have all the powers, authority and duties permitted pursuant to the Properties,

except as herein set forth, necessary and proper to manage the business and affairs of the Properties and shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon, and shall keep the same in good, clean and attractive condition, order, and repair. The Association must have the approval of sixty-seven percent (67%) of the votes entitled to be cast by Owners of the Units for any single maintenance and repair expense of over \$10,000.00. The Association shall not be responsible for the maintenance and repair of the Units or appurtenant Limited Common Elements which is the obligation of each Owner as set forth in Article 4, Section 4.14 hereof. The cost of such management, operation, maintenance and repair shall be borne by the Owners as provided in Article 7 hereunder.

(b) The Association shall have the right to sell, grant and convey easements for utility purposes over, under, upon or through any portion of the Common Elements, and is hereby irrevocably appointed as attorney-in-fact, coupled with an interest, for each Owner for such purposes.

(c) The Association shall not have the right to stop, hinder, delay, block or in any manner impair the right of ingress and egress of the Declarant, its successors and assigns, over and across the roadways and sidewalks, or other Common Elements of the Properties in order to allow Declarant to complete construction of any Unit, the Common Elements and for the repair or replacement of any improvements thereon.

(d) The Association shall be responsible for the following periodic maintenance items on Outlots A, C and D:

i. Mowing the detention ponds located within any Outlot at least two times per month during the months of April through November.

ii. Clearing any debris near and immediately around the three detention pond outlet structures on the Outlots.

iii. Hiring a Vac-Truck to clean out the debris trapped in the concrete bottom of the grated inlet on Outlot D (near the entrance of Broadway) two times per year.

(e) The Association shall be responsible for the maintenance and upkeep of Outlot B and the Pedestrian Access Easement as shown on the Plat. The cost and expense of maintenance of Outlot B shall be a Townhouse Expense and shall be shared equally among the Owners of the Townhouses. The Owners of the Residential Lots shall not be charged for maintenance of Outlot B.

**Section 6.5. Public disclosures required – Identity of Association – Agent – Manager – Contact information:**

(1) The Association shall make the following information available to Unit Owners upon reasonable notice in accordance with Subsection (3) of this Section. In addition, if the

Association's address, designated agent, or management company changes, the Association shall make updated information available within ninety days after the change:

- (a) The name of the Association;
- (b) The name of the Association's designated agent or management company, if any;
- (c) A valid physical address and telephone number for both the Association and the designated agent or management company, if any;
- (d) The name of the Properties;
- (e) The initial date of recording of the Declaration; and
- (f) The reception number for the main document that constitutes the Declaration.

(2) Within ninety days after the end of each fiscal year, the Association shall make the following information available to unit Owners upon reasonable notice in accordance with Subsection (3) of this Section:

- (a) The date on which its fiscal year commences;
- (b) Its operating budget for the current fiscal year;
- (c) A list, by Unit, of the Association's current assessments, including both regular and special assessments;
- (d) Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (e) The results of its most recent available financial audit or review;
- (f) A list of all Association insurance policies, including, but not limited to, property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.
- (g) All the Association's By Laws, Articles, and Rules and Regulations;
- (h) The minutes of the Executive Board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (i) The Association's responsible governance policies.

(3) It is the intent of this Section to allow the Association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to unit Owners at their convenience. Disclosure shall be accomplished by one of the following means: Posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a Common Expense liability.

#### **Section 6.6. Responsible governance policies:**

(1) To promoted responsible governance, the Association shall:

- (a) Maintain accurate and complete accounting records; and
- (b) Adopt Policies, Procedures and Rules and Regulations concerning:
  - (I) Collection of unpaid assessments;
  - (II) Handling of conflicts of interest involving Board Members;

- (III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
- (IV) Enforcement of Covenants and Rules, including Notice and Hearing Procedures and the Schedule of Fines;
- (V) Inspection and copying of association records by Owners;
- (VI) Investment of reserve funds;
- (VII) Procedures and adoption and amendment of Policies, Procedures, and Rules; and
- (VIII) Procedures for addressing disputes arising between the Association and Owners.

**Section 6.7. Miscellaneous Services.**

The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation for the Properties whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may arrange with others to furnish, trash collection and other common services to each Unit. The cost of such services shall be borne as provided in Article 7.

**Section 6.8. Termination of Management Agreements.**

Any agreement for management of the Properties or for any other services to be performed by the Declarant shall provide for termination by either party without cause or payment of any termination fee or other penalty to the Association. Any such contract shall be subject to renegotiation by the Association.

**Section 6.9. Personal Property for Common Use.**

The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Elements. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

**Section 6.10. Rules and Regulations.**

The Association may make reasonable Rules and Regulations governing the use of the Units, and the Common Elements, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. No such Rule or Regulation shall be adopted which shall unreasonably interfere with or limit the use of a Unit. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such Rules and Regulations, or with any other obligations of such Owner under this Declaration and the By Laws of the Association. The Association may also take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law.

**Section 6.11. Inspection of Books and Records.**

All Owners shall have reasonable access to inspect the books, records, and financial statements of the Association. Any mortgagee or insurer of any mortgage affecting a Unit shall be entitled, upon request, to: (a) inspect the books and records of the Association during normal working hours; (b) require the preparation of and, if preparation is required, receive an annual audited financial statement of the Association, except that such a statement need not be furnished earlier than ninety (90) days following the end of the Association's fiscal year; and, (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

**Section 6.12. Implied Rights.**

The Association may exercise any other right or privilege given to it expressly by this Declaration and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Notwithstanding the above, unless at least eighty percent (80%) of the first mortgagees of Units (based on one vote for each first mortgage owned or held) have given their prior written approval, the Association shall not be empowered or entitled to:

- (a) by act or omission, seek to abandon or terminate the Properties;
- (b) change the pro rata interest of any Unit in order to levy assessments, allocate distribution of insurance proceeds or condemnation awards or determine the pro rata share of ownership of Units or the Common Elements;
- (c) partition or subdivide any Unit;
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements;
- (e) use hazard insurance proceeds for losses to the improvements or property for other than the repair, replacement, or reconstruction of such improvements or property.

**Section 6.13. Vote Required For Assignment of Future Income.**

The Association may assign its future income, including its rights to receive Common Expense Assessments, only by the affirmative vote of the Owners of Units to which at least eighty percent (80%) of the votes of the Association are allocated, at a meeting called for that purpose.

**Section 6.14. Architectural Control.**

(a) Except for the improvements originally constructed by Declarant, no construction which affects the structure of any Unit shall be commenced, erected or maintained within any Unit or the Common Elements, nor shall any exterior addition, change or alteration thereto be made to any Unit, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to design and structural soundness of the proposed improvement by the Master Association and by the Executive Board of the Association or by an Architectural Control Committee composed of two (2) representatives appointed by the Executive Board. In the event the Master Association, the Executive Board, or its designated committee, fails to approve or disapprove such design, within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and this Section shall be deemed to have been fully complied with, subject to the requirement set forth in subsection (c) below.

(b) Neither Declarant, nor its successors or assigns, the Master Association, the Executive Board nor the Architectural Control Committee, if so appointed, shall be liable in damages to anyone submitting plans to them for approval, or to any Owner affected by this Declaration, or any third party, by reason of mistaken approval, judgment, negligence or non-feasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every person who submits plans for approval, by submission of said plans and specifications, and every Owner of a Unit, by acquiring title thereto or an interest therein, agrees that no action, suit or claim will be brought against Declarant, its successors or assigns, the Executive Board or the Architectural Control Committee to recover any damages, and any right to bring any such action, claim or suit by an Owner is hereby waived.

(c) Notwithstanding anything to the contrary as set forth above, any such improvements or alterations constructed within the Properties shall comply with the requirements which may be imposed from time to time by the City of Boulder, State of Colorado, regardless of whether the Master Association, the Executive Board of the Association or the Architectural Control Committee has approved such plan.

**Section 6.15. Executive Board Member Education:**

The Executive Board may authorize, and account for as a Common Expense, reimbursement of members of the Executive Board for their actual and necessary expenses

incurred in attending educational meetings and seminars on responsible governance of Owners' Associations. The course content of such education meetings and seminars shall be specific to Colorado, and shall make reference to applicable Sections of this Article.

**Section 6.16. Owner education:**

The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Executive Board under Colorado law. The criteria for compliance with this Section shall be determined by the Executive Board.

**ARTICLE 7. COVENANT FOR COMMON EXPENSE ASSESSMENTS AND TOWNHOUSE EXPENSE ASSESSMENTS**

**Section 7.1. Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.**

(a) Declarant, for each Unit, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the annual Common Expense Assessments, which assessments, including fees, charges, late charges, attorney's fees, fines and interest charged by the Association shall be the personal obligation of the Owner at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due to the Association shall not pass to a successor in title unless expressly assumed by them.

(b) Declarant, for each Townhouse, shall be deemed to covenant and agree, and each Owner of a Townhouse, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the annual Townhouse Expense Assessments, which assessments, including fees, charges, late charges, attorney's fees, fines and interest charged by the Association shall be the personal obligation of the Owner of a Townhouse at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due to the Association shall not pass to a successor in title unless expressly assumed by them.

(c) The Common Expense Assessment and the Townhouse Expense Assessment of the Association shall be a continuing lien upon the Unit against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Unit except:

- (1) liens and encumbrances recorded before the recordation of the Declaration;
- (2) a first lien Security Interest on the Unit recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent, (notwithstanding

the foregoing, the lien for assessments is also prior to a first lien Security Interest to the extent of an amount equal to the Common Expense Assessment based on an annual budget adopted by the Association pursuant to Section 7.4 hereof which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action to enforce the lien); and

(3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Association's lien except that a sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the Act. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Common Expense Assessments thereafter becoming due, nor from the lien thereof.

### **Section 7.2. Apportionment of Common Expenses.**

(a) Common Expenses shall be assessed against all Units in accordance with their ownership interest in the Common Elements shown on Exhibit B of this Declaration.

(b) Townhouse Expenses shall be equally assessed against all Townhouses.

### **Section 7.3. Purpose of Assessments.**

(a) The Common Expense Assessments levied by the Association through its Executive Board shall be used for the purposes of promoting the health, safety, and welfare of the residents in the Properties, for the repair and replacement of the Common Elements and for payment of dues for each Unit to Forest Glen Recreational Association for its annual homeowners' dues, for payment to the City of Boulder and RTD for annual Eco-Passes for each Unit, snow removal, trash removal, landscaping, insurance for the General Common Elements and such other purposes as shall be deemed appropriate by the Executive Board.

(b) The Townhouse Expense Assessments levied by the Association through its Executive Board shall be used for the purposes of promoting the health, safety, and welfare of the residents of the Townhouses in the Properties, for the repair and replacement of Outlot B and any structures used thereon solely by the Owners of Townhouses, the maintenance, repair and replacement, including reserves, of the roof for the Townhouses, exterior maintenance of the Townhouses and such other purposes as shall be deemed appropriate by the Executive Board.

### **Section 7.4. Annual Assessment/Commencement of Common Expense Assessments and Townhouse Expense Assessments.**

(a) The Common Expense Assessment shall be made on an annual basis against all Units and shall be based upon the charges imposed on all Units within the Properties by the Master Association, together with the Association's advance budget of the cost requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments may be collected in the manner as determined by the Executive Board. Common Expense Assessments shall begin on the first day of the month in which the conveyance of the first Unit to a Unit Owner other than Declarant occurs.

(b) Within ninety (90) days after adoption of any advance budget or proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider ratification of the budget within a reasonable time after mailing or other delivery of the summary. Unless at that meeting sixty-seven percent (67%) of the votes entitled to be cast by Owners of Units are cast to reject the budget, the budget shall be ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(c) Townhouse Expenses shall be assessed to each Townhouse as part of each Townhouse Expense Assessment. The Townhouse Expense Assessment shall be made on an annual basis against all Townhouses and shall be based upon the charges imposed on all Townhouses within the Properties by the Association's advance budget of the cost requirements needed by it to provide for the administration and performance of its duties to only the Townhouses during such assessment year. Townhouse Expense Assessments may be collected in the manner as determined by the Executive Board. Townhouse Expense Assessments shall begin on the first day of the month in which the conveyance of the first Townhouse to a Townhouse Owner other than Declarant occurs.

#### **Section 7.5. Notice of Annual Assessments and Time for Payment Thereof.**

The Association shall give written notice to each Owner as to the amount of the annual Common Expense Assessment and Townhouse Expense Assessment with respect to such Unit on or before December 1 each year for the fiscal year commencing on the following January 1<sup>st</sup>. Upon request, a first mortgagee of any Unit shall also be given such written notice. Such assessments shall be due and payable in equal monthly installments, due and payable by the first day of each month. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Unit for such assessment, but the date when payment shall become due in such a case shall be deferred to a date thirty (30) days after such notice shall have been given. The monthly installment shall be deemed to be in default if payment is not received by the Association by the tenth (10<sup>th</sup>) day of the month in which the installment became due. The unpaid installment shall bear interest at such rate as may be determined by the Executive Board, however, in no event shall interest exceed eighteen percent (18%) per annum from the first day of the month in which it became due until paid in

full. Any default upon an installment obligation may, at the election of the Association, be deemed to be a default on the entire remaining balance of the annual assessment of the respective Unit, and in such case, the Association may declare the remaining balance immediately due and payable and obtain satisfaction therefore as hereinafter provided or by any other legal means. Such assessment shall first commence on the date that the first Owner received the deed for the Owner's Unit. Such assessment shall be based on an annual budget prepared for the Declarant prior to such first closing. Such budget shall be submitted by Declarant to any mortgagee, insurer or guarantor requesting such budget prior to the first annual assessment. Such budget shall remain in effect until the first annual assessment shall be made by the Association. Both annual and special assessments shall be allocated to each Unit as set forth in Article 8 hereof.

#### **Section 7.6. Increases To Assessments.**

Except for any assessment imposed by the Master Association, the Common Expense Assessment and the Townhouse Expense Assessment in any one year imposed by the Association may not be increased by more than fifteen percent (15%) of the previous year's assessment without the approval of sixty-seven percent (67%) of the votes entitled to be cast by Owners of Units at a regular or special meeting of the Association. Within fifteen (15) days after making its determination, the Association shall give written notice to each Owner of the amount of the annual assessment for each Unit. Only Owners of Townhouses shall be entitled to vote on the Townhouse Expense Assessment.

#### **Section 7.7. Special Assessments for Capital Improvements or other purposes.**

(a) In addition to the annual assessments authorized by this Article, the Association, upon approval of sixty-seven percent (67%) of the votes entitled to be cast by Owners of Units at a regular or special meeting of the Association, may levy in any assessment year a special assessment, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of the Common Elements or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be allocated to Unit Owners. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

(b) Owners of the Townhouses, upon approval of sixty-seven percent (67%) of the votes entitled to be cast by Owners of such Townhouses, at a regular or special meeting of said

Townhouse Owners called in the same manner as a meeting of the Association, may levy in any assessment year a special assessment, payable over such a period as the Owners of the affected Townhouses may determine, for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of the any portion of the Townhouses relating solely to said Townhouses or any part thereof, or for any other expenses incurred or to be incurred as determined by said Owners and as otherwise permitted in this Declaration. This Section shall be construed as an independent source of authority for the Townhouse Owners to incur expenses, and shall be construed to prescribe the manner of assessing for expenses authorized by this Section upon only the Townhouses affected. Any amounts assessed pursuant hereto shall be allocated solely to the Townhouse Owners affected thereby. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the affected Townhouse Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

**Section 7.8. Individual Assessments/Fines.**

(a) The Executive Board or the Association shall have the right to assess against any Owner individually the amount as provided for in this Declaration, including, but not being limited to, charges assessed under Sections 4.14(a)-(c), 4.15, 5.1, 6.10 and Article 10 hereof.

(b) Any individual assessment or fine shall become a lien upon the Owner=s Unit pursuant to the procedures provided in Section 7.1 above.

**Section 7.9. Working Fund.**

The Association or Declarant shall require the first Owner of each Unit (other than Declarant) and each subsequent Owner to make a non-refundable payment to the Association in an amount equal to one-sixth (1/6) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a Working Fund. Said Working Fund shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit as aforesaid and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due.

**ARTICLE 8. ALLOCATED INTERST**

**Section 8.1. Allocated Interests.**

(a) The undivided interests in the Common Elements; the Common Expense liability and the number of votes allocated to each Unit are set forth in Exhibit B hereof.

(b) Each Owner of a Townhouse shall pay an equal amount of any Townhouse Expense.

**Section 8.2. Determination of Allocated Interests.**

The interests allocated to each Unit shall be calculated as follows:

(a) Each Unit shall have one vote and each Unit shall be responsible for 1/12 of the Assessments. In addition each Owner of a Townhouse shall be responsible for 1/6 of any Townhouse Expense.

**ARTICLE 9. RESTRICTION ON USE, ALIENATION, AND OCCUPANCY.**

**Section 9.1. Use and Occupancy Restriction.**

The following use restrictions shall apply to all Units:

(a) Each Unit shall be used for residential purposes only, and no trade or business of any kind may be carried on therein except that a professional or home occupation, shall be allowed if permitted by applicable zoning restrictions; if not outwardly visible; and if no visitors or deliveries to a Unit are generated or permitted. Lease or rental of a Unit for residential purposes shall not be considered to be a violation of this Covenant.

(b) Owners shall be prohibited from leasing a Unit for a term of less than one (1) month or leasing less than all of a Unit, except as renting to a roommate; provided, however, that these prohibitions shall not apply to leases of Units by a mortgagee in possession of a Unit following a default in a first mortgage, a foreclosure proceeding, or any deed to a mortgagee in lieu of foreclosure. All leases shall be in writing. All leases shall incorporate by reference and be subject to the provisions of this Declaration, the By Laws and the Rules and Regulations of the Association.

**Section 9.2. Animals.**

No animals, livestock or poultry of any kind shall be raised, bred or kept within the Properties except that a reasonable number of household pets, as determined by the Executive Board, may be kept in a Unit but not upon the Common Elements, subject to the Rules and Regulations as may be adopted and amended from time to time by the Association.

(a) In the event any dog, cat or other household pet shall constitute an unreasonable nuisance or inconvenience to an Owner or resident of any Unit, then the Executive Board shall have the right to direct that the animal or animals be permanently removed from the Properties after the Owner has been provided notice and a hearing on said issue before the Executive Board.

(b) Dogs, cats and other household animals shall not litter any portion of the Common Elements. It shall be the duty of the Association to keep the Common Elements free from litter caused by pets. The Owner of pets known to be at large shall be properly assessed by the

Executive Board for clean up expenses incurred, together with the cost of collection and enforcement thereof, including reasonable attorney's fees, and the same shall be assessed as an individual assessment against the Owner of any such pet causing such litter in accordance with Section 7.8 hereof.

(c) Dogs, cats or other household pets shall not be allowed to run at large within the Properties or any part thereof, but shall at all times be restrained on a leash while such animal is outside an Owner's Unit. It shall be the duty of the Association, or its representatives, to notify the City Animal Control of pets found at large within the Properties in violation of any applicable City Ordinances.

**Section 9.3. Rules and Regulations.**

No Owner shall violate the Rules and Regulations for the use of the Units, and of the Common Elements as may be adopted from time to time by the Association.

**Section 9.4. Trash.**

Subject to the duty of the Association to designate one single company as the sole entity for trash removal within the Properties, each Owner shall be responsible for his or her own trash disposal, and each Unit shall at all times be kept in a clean, sightly and healthy condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed on the Common Elements or on any Unit so as to be visible from any neighboring Unit or from any street, except as may be reasonably necessary during a period of construction. The Executive Board shall have the right and duty, through its agents and employees, upon thirty (30) days written notice to the Owner thereof, and after hearing before the Executive Board, to enter upon any Unit or the Common Elements and remove such unsightly objects and materials. The cost of removal shall be chargeable to such Owner by an individual assessment in accordance with Section 7.8 hereof.

**Section 9.5. Nuisances.**

No noxious or offensive activity shall be carried on upon any Unit or the Common Elements, nor shall anything be done or maintained thereon which shall become an annoyance or nuisance to any other Owner or detract from the value of the Properties as a whole. Unremoved excrement from any allowed pets and any excessive noise, including, but not being limited to, habitually barking, howling or yelping dogs and cats shall be deemed to be a nuisance. No activity shall be conducted on or within any Unit or the Common Elements which is or might be unsafe, unsightly, unhealthy or hazardous to any person.

**Section 9.6. Outlot B Parking Spaces and Solar Electric Equipment.**

(a) Outlot B shall be reserved for the non-exclusive use for the Owners of the Townhouses. No Owner of a Residential Lot shall have the right to use Outlot B. Parking

Spaces or carports may be created on Outlot B for the use of Owners of Townhouses on a first come, first served basis.

(b) Solar Electric Equipment may be installed on Outlot B, and if so, the electricity generated by the Solar Electric Equipment shall be shared only among the Owners of the Townhouses.

**Section 9.7. Regulation of Masts, Antennas and Dishes.**

All exterior aerial masts and radio antennas shall be prohibited. Direct broadcast service (DBS) and multi-channel - multi-point distribution service (MMDS) satellite dishes less than one meter in diameter shall be allowed, after appropriate review and approval of the location and screening of such devices by the Architectural Control Committee or Executive Board as set forth in Article 6, Section 6.14 hereof. All such DBS, MMDS and satellite dishes less than one meter in diameter shall be concealed from view as much as reasonably possible without limiting their effectiveness.

**ARTICLE 10. PARTY WALLS APPLICABLE TO TOWNHOUSES**

**10.1 Party Walls - General Rules of Law to Apply.**

Each wall of a Townhouse which is built as a part of the original construction within the Properties and which constitutes the dividing wall between the living units of a Townhouse 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.

**10.2 Sharing of Repair and Maintenance.**

The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners of the Townhouses who make use of the Party Wall equally, which costs, fees and expenses shall become individual assessments and a lien against the Owner's Townhouse as described in Sections 7.1 and 7.8 hereof if not paid by the Owner.

**10.3 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 Party Wall may restore it, and if the other Owner thereafter makes use of the Party Wall, they shall contribute one-half of the cost of restoration thereof 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 negligence or willful acts or omissions.

**10.4 Weatherproofing.**

Notwithstanding any other provision of this Article, an Owner who, by such Owner's 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.

#### **10.5 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.

#### **10.6 Owner's Right to Ingress and Egress and Support.**

Each Owner of a side of a Townhouse shall have the right to ingress and egress over, upon, and across the other sides of the Townhouse as necessary to access such Owner's sides, and each Owner of a side of a Townhouse shall have the right to horizontal and lateral support of each side.

#### **10.7 Encroachment Easements.**

In the event any portion of one side of a Townhouse encroaches onto the other side as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, or any encroachments resulting from repair, or reconstruction after damages, partial or full destruction of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Such encroachments and easements shall not be considered or determined to impair or otherwise adversely affect the marketability of title to either side of any Townhouse.

#### **10.8 Easements of Access for Repair, Maintenance, and Emergencies and for Utilities.**

(a) Each Owner of a Townhouse shall have the irrevocable right to have such access to each side from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair, or replacement of any improvements and to prevent damage to the improvements of said Owner's Townhouse.

(b) Damage to any part of the interior or exterior of a Townhouse resulting from the maintenance, repair, emergency repair, or replacement of another Owner's Townhouse or as a result of emergency repairs on or within an Owner's Townhouse shall be paid for by the Owner causing said damage. Restoration of the damaged improvements shall be to substantially the same condition as that of such improvements prior to the damage.

(c) An easement for the installation, maintenance, repair and replacement of all utilities, including, but not being limited to, electricity, gas, water, sewer, telephone and cable television is hereby created over, under, on, through and across each of the Townhouses for the other Townhouses.

## **10.9. Insurance.**

Each Owner of a Townhouse shall at all times be required to obtain and maintain identical policies of homeowners insurance for full replacement value of each Townhouse and with a deductible not to exceed One Thousand and NO/100ths Dollars (\$1,000.00). In the event of a casualty or damage to a Townhouse which is covered by insurance, the Townhouse shall be repaired and restored to its condition immediately before such casualty or damage using the insurance proceeds. Each Owner of adjacent Townhouses shall be responsible to pay the deductible amount and one-half of any cost and expense of the repair and reconstruction which is not covered by the insurance proceeds. No Townhouse may be demolished unless all Owners of the Townhouses agree to do so in writing.

## **10.11 Arbitration.**

In the event of any dispute arising concerning a Party Wall, or under any other provision of this Article 10, then each Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. Each Owner shall be entitled to present its case to the three arbitrators under such rules as the arbitrators shall determine. The decision shall be by majority of all the arbitrators and shall be final and binding on the Townhouse Owners.

## **ARTICLE 11. INSURANCE**

### **Section 11.1. Coverage.**

The Executive Board shall obtain and maintain insurance policies relating to the Common Elements which are required to be maintained by the Association at all times to the extent obtainable. Said policies shall be written with companies licensed to do business in the State of Colorado. The Executive Board and the Declarant shall not be liable for failure to obtain any coverage required if such failure is due to the unavailability of such coverage or if such coverage is available only at unreasonable cost. If requested in writing by an Owner or a First Mortgagee, the Executive Board shall furnish a certificate of insurance or notices of termination of coverage or changes in coverage. Each such policy shall provide that:

11.1.1. Such policy shall not be canceled, invalidated, or suspended because of the conduct of any Owner (including said Owner's guests, tenants, or agents) or of any officer, agent, or employee of the Association without a prior demand in writing to the Association that the conduct or defect be cured and the Association shall not have so cured within sixty (60) days of said demand;

11.1.2. The Declarant, so long as Declarant shall continue to own any Unit or portion of the Properties, shall be protected by all such policies; and

11.1.3. Notwithstanding any provisions thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercised without prior approval of the Association.

Said policy shall not provide that:

11.1.4. Under the terms of the insurance company's charter, bylaws, or rules, contributions or assessments may be made against the Association, the Owner, a First Mortgagee, or said mortgagee's designee or assignee;

11.1.5. Under the terms of the insurance company's charter, bylaws, or rules, any loss payments are contingent upon action by the insurance company's board of directors, shareholders, policy holders, or members; or

11.1.6. Any limiting clauses which could prevent a First Mortgagee or said mortgagee's designee or assignee from collecting proceeds paid.

All policies, to the extent obtainable, shall contain waivers of subrogation against the Declarant, the Association, the Executive Board, Members, Owners, and their guests and assignees. The named insured under the policies shall be the Association for the use and benefit of the individual Owners. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Executive Board and the insurance proceeds for that loss shall be payable to the Association as attorney-in-fact for each Owner and such Owner's First Mortgagee. Said insurance policies shall contain the standard mortgagee clause or equivalent endorsement in which the First Mortgagee and its successors and assigns are named additional insured, if applicable.

## **Section 11.2. Liability Insurance.**

The Executive Board shall obtain and maintain comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements required to be maintained by the Association with such limits as the Association determines appropriate with respect to property of the Association and insuring the Executive Board, Association, management agent, and their respective employees and agents, as well as each officer, Executive Board member, Association Member, and each Owner including the Declarant in its capacity as an Owner, against any liability to the public or to Owners and their invitees, agents, and employees arising out of, or incident to, ownership and use of such property. Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be acquired to include protection against such other risks including, but not limited to, Host Liquor Liability, Contractual and All-Written Contract Insurance, Worker's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance, and such other coverages as the Executive Board deems necessary. The Executive Board shall review such coverages and the policy limits thereunder once each year, but in no event shall such insurance coverage be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or death and property damage arising out of one (1) occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained at the discretion of the Executive Board.

**Section 11.3. Other Insurance.**

The Association may obtain and maintain adequate fidelity insurance coverage to protect against dishonest acts on the part of the Executive Board members, officers, trustees, employees, or volunteers of the Association and all others who handle or are responsible for handling funds. Such fidelity coverage shall name the Association as the named insured. Coverage shall not be less in aggregate than two (2) months' current assessments plus reserves, as calculated from the current budget of the Association. In addition, the fidelity insurance coverage must contain waivers of any defense based upon the exclusion of persons who serve without compensation.

If required by a governmental or quasi-governmental agency, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the Association shall obtain flood insurance in accordance with said requirements.

The Association may obtain Worker's Compensation and Employer's Liability Insurance and other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law.

The Association may obtain such other insurance of a similar or dissimilar nature as the Executive Board shall deem appropriate.

If it is reasonably determined by a First Mortgagee that the existing coverage does not adequately protect the Properties, the Executive Board shall obtain such additional coverage.

**Section 11.4. Payment of Insurance Premiums.**

The cost of the insurance obtained by the Association in accordance with this Article, shall be paid from Association funds and shall be collected from the Owners as part of the annual Common Expense Assessment as provided for in this Declaration.

**Section 11.5. Coverage on Owners' Units.**

Insurance coverage on any Unit owned by an Owner shall be the sole responsibility of the Owner. The Declarant, the Association, and the Executive Board shall have no responsibility to provide insurance for an Owner's Unit.

**ARTICLE 12. RIGHTS OF THE FIRST MORTGAGEES**

**Section 12.1. Entitlement.**

A First Mortgagee, upon written request to the Association, shall be entitled to receive any of the following:

- 12.1.1 Budgets, notices of assessments, or any other notices provided for under this Declaration by the Association to an Owner in which a First Mortgagee has a security interest;

12.1.2. Financial statements of the Association which are distributed to its Members;

12.1.3. Notices of meetings of the membership and the right to be represented at any meeting by a designated representative;

12.1.4. Notice of any default in the performance of any obligations under this Declaration, the Articles of Incorporation, and/or Bylaws of the Association by an Owner of a Unit in which a First Mortgagee has a security interest, which remains uncured for a period of thirty (30) days;

12.1.5. Notice of the decision of the Members to make any material amendment to this Declaration, the Bylaws, and/or the Articles of Incorporation of the Association;

12.1.6. Notice of any lapse, cancellation, or material modification of any hazard or liability insurance policy or fidelity bond maintained by the Association;

12.1.7. Notice of any condemnation action or any casualty loss which affects a material portion of the Properties or any Unit in which a First Mortgagee has a security interest; and/or

12.1.8. Notice of any proposed action in which this Declaration requires notice and consent of First Mortgagees.

## **Section 12.2. Payment of Charges.**

First Mortgagees may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage because of a lapse of a policy and also may pay taxes and other charges which are in default or which may or have become a charge against the Common Areas owned by the Master Association. If such payment is made, reimbursement from the Association shall be due and owing immediately.

## **Section 12.3. Restrictions.**

The consent of the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of those First Mortgagees holding security interests on Units which have at least fifty-one percent (51%) of the votes of the Units subject to first mortgages within the Properties, shall be required to amend any material provisions of the Declaration, Bylaws, and/or Articles of Incorporation which establish, provide for, govern, or regulate any of the following:

12.3.1. Increases in assessments that raise the previously assessed amounts over 25%, assessment liens, or the priority or subordination of such assessment

12.3.2. liens;

- 12.3.3. Reductions in reserves for the maintenance, repair, and replacement of the Common Elements;
- 12.3.4. Insurance or fidelity bonds;
- 12.3.5. Right to use of Common Elements or reallocation of interests in the Common Elements;
- 12.3.6. Conversions of Units into Common Elements or vice versa;
- 13.3.7. Responsibility for maintenance and repair of the Common Elements;
- 12.3.8. Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey a Unit;
- 12.3.9. Any provisions of this Declaration, the Articles of Incorporation, or By Laws which specifically grants rights to First Mortgagees thereunder;
- 12.3.10. Voting rights;
- 12.3.11. Redefinition of Lot boundaries;
- 12.3.12. Expansion of the maximum number of Units specified in Article 3, withdrawal of real estate from the Properties, or annexation of real estate not specifically described herein;
- 12.3.13. Hazard or fidelity insurance requirements; and
- 12.3.14. Restoration or repair of the Properties after damage or partial condemnation in a manner other than specified.

Nothing in this Section shall be deemed to deny or delegate control over the general administrative affairs of the Association by the Owners or Executive Board or prevent the Executive Board from commencing, intervening in, or settling any solicitation or proceeding, or prevent the Association from receiving and distributing any insurance proceeds.

**Section 12.4. Special Agency Provisions.**

If required by the Federal Home Loan Mortgage Corporation, Federal Housing Authority, the Veterans Administration, or similar agency the following requirements apply. Unless sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) give their prior written approval, the Association shall not be entitled to:

- 12.4.1. Seek (by act or omission) to abandon, partition, subdivide, encumber, sell, or transfer property owned directly or indirectly by the Association, except as specifically allowed in this Declaration;

12.4.2. Fail to maintain hazard and extended coverage insurance on Common Areas owned by the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value;

12.4.3. Use hazard insurance proceeds received for losses to any part of the insured areas and improvements thereon for other than repair, replacement, or reconstruction of such property;

12.4.4. Change the method of determining the assessments which may be levied against an Owner; or

12.4.5. Change, waive, or abandon (by act or omission) any scheme of regulation or the enforcement thereof, pertaining to the architectural design or exterior appearance of the dwelling units or the maintenance of the Common Elements.

## **ARTICLE 13. GENERAL PROVISIONS**

### **Section 13.1. Enforcement.**

The covenants, conditions, restrictions herein contained and amendments made hereunder shall run with the land and be binding upon and inure to the benefit of the Association, the Declarant, and property Owners and may be enforced as provided hereinafter. Violation of these protective covenants shall give the Association, the Declarant, the Owners, or any of them, the right to bring proceedings in law or equity against the party or parties violating or attempting to violate any terms of this Declaration, the Articles of Incorporation, or Bylaws of the Association; to enjoin them from so doing; to cause any such violation to cease; or to recover damages resulting from such violation. In any legal or equitable proceedings to enforce the provisions hereof or to enjoin any violation, the party or parties against whom judgment is entered shall pay the attorneys' fees of the party or parties for whom judgment is entered. Such remedies shall be cumulative and not exclusive.

Notwithstanding the foregoing, except as specifically modified by the Colorado Common Interest Ownership Act, it is understood that the breach of any of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith and for value, provided, however, the covenants, conditions, and restrictions shall at all times remain in full force and effect against said premises or any part thereof notwithstanding any foreclosure of any mortgage. No assent, expressed or implied, to any breach of any one or more of the covenants, conditions, and restrictions shall be deemed to be a waiver of any succeeding or other breach.

### **Section 13.2. Damages.**

An Owner shall be liable and responsible for payment of any loss or damage to any person or property caused by the act or negligence of the Owner or such Owner's guests which occurs within the Properties or any Common Element. Any such loss or damages together with reasonable attorneys' fees and costs of collection may be recovered from the Owner by means of an Individual Assessment or by any other legal means.

**Section 13.3. Duration.**

The covenants, restrictions, and reservations set forth in this Declaration, unless properly amended shall run with and bind the entire described Properties, 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. In the event any of these covenants, restrictions, and reservations would be held to be void because they are in violation of the Rule Against Perpetuities or similar rule of law, these covenants shall then continue to be in effect for a period of twenty-one (21) years after the death of the last surviving descendant of Terrence Britton.

**Section 13.4. Amendments.**

This Declaration may be amended by execution of a written document by the Owners of not less than sixty-seven percent (67%) of the Units actually in existence at the time of such amendment. In the event prior approval of an amendment is required by the Federal Housing Authority, the Veterans Administration, or similar agency, said approval shall also be required.

**Section 13.5. Scope of This Declaration.**

The undersigned Declarant, as Owner of fee simple title to the Properties, expressly intends to subject the Properties to the provisions of this Declaration upon recording of this document. The ownership of each Lot shall be subject to the provisions of this Declaration. Any instrument recorded subsequent to this Declaration purporting to affect an interest in the Properties shall be subject to the terms of this Declaration despite failure to make reference thereto.

**Section 13.6. No Representation.**

Except as expressly set forth herein, Declarant makes no representations regarding use of any Unit. Declarant makes no representations as to the existence, preservation, or permanence of any view from any Unit.

**Section 13.7 Successors and Assigns.**

This Declaration shall be binding upon and shall inure to the benefit of the Declarant and each Owner and to the heirs, representatives, Personal Representatives, successors, and assigns of each of them.

**Section 13.8. Severability.**

If any portion of this Declaration becomes invalidated in any manner whatsoever, it shall not affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and in such event, all other provisions of this Declaration shall continue in full force and effect.

**Section 13.9. Numbers and Genders.**

Whenever used herein, unless the context provides otherwise, the singular number shall include the plural, the plural shall include the singular and the use of any gender shall include both genders.

IN WITNESS WHEREOF, the Declarant caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

DECLARANT:  
Cunningham Farms, Inc.  
a Colorado corporation

By: \_\_\_\_\_  
Terence Britton, President

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Terence Britton, as President of Cunningham Farms, Inc., a Colorado corporation.

WITNESS my hand and official seal.

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

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

## **EXHIBIT A**

### **Legal description of the Properties**

Lots 1, 2, 3, 4, 5, and 6, and Outlots A, B and C, Block 1; and Lots 1, 2, 3, 4, 5 and 6, and Outlot D, Block 2; Forest Glen Second Filing – Replat C, a Replat of Forest Glen Second Filing - Lot 45, City of Boulder, County of Boulder, State of Colorado.

## **EXHIBIT B**

### **Allocated Interests**

1. Each Unit shall have one vote.
2. Each Owner of a Unit shall own an undivided 1/12 interest as a tenant in common with all other Owners of the Common Elements.
3. Each Owner of a Unit shall be responsible for paying 1/12 of the annual Common Expense Assessments.
4. Each Owner of a Townhouse shall also be responsible for 1/6 of the annual Townhouse Expense Assessment.

**EXHIBIT C  
EASEMENTS**

The Properties are subject to the following easements:

1. Easements as created and reserved in this Declaration.
  
2. Easements as shown on the Final Plat of FOREST GLEN SECOND FILING – REPLAT C, A REPLAT OF FOREST GLEN SECOND FILING – LOT 45, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO.