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Cheri  
Cheri Brunvand-Summit County Recorder 4/19/2001 12:40 DF:

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
FARMER'S GROVE

THIS DECLARATION is made this 9<sup>th</sup> day of April, 2001, by Farmers Grove, LLC, a Colorado limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in the County of Summit, State of Colorado, which is more particularly described in Exhibit A attached hereto and thereby incorporated herein, which property is hereinafter referred to as the "Property";

WHEREAS, Declarant desires to establish a residential community of up to fifty (50) residential units with open spaces and other common facilities for the benefit of the residents of that community and to subject the community and the Property to certain covenants, conditions, and restrictions; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Colorado, Farmer's Grove Association, a nonprofit corporation, for the purposes of exercising the functions as herein set forth.

NOW, THEREFORE, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.33-101, et seq., Colorado Revised Statutes, as it may be further amended from time to time (the "Act"); in the event the Act is repealed, the Act, on the effective date of the Declaration, shall remain applicable; and

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

ARTICLE I  
DEFINITIONS

Section 1.1 "Association" shall mean and refer to Farmer's Grove Association, a Colorado nonprofit corporation, its successors and assigns.

Section 1.2 "Board of Directors" or "Board" shall mean and refer to the duly elected and qualified members of the Board of Directors of the Association acting in an official capacity.

Section 1.3 "Building" shall mean and refer to all structures containing one or more Units now or hereafter constructed on the Property.

Section 1.4 "Common Elements" shall mean all of the Open Space and all improvements thereto.

Section 1.5 "Declarant" shall mean and refer to Farmers Grove, LLC, its successors and assigns.

Section 1.6 "Design Review Committee" or "DRC" means and refers to the design review committee established by the Association in accordance with this Declaration to perform the functions of the DRC with respect to the Property.

Section 1.7 "Easements" shall mean and refer to any Easements on the Property or providing for access or utilities to the Property, and for the storage of snow, including, but not limited to, the easements depicted and shown on the Plat as well as the easements created in Section 8.6 for the benefit of certain Lots.

Section 1.8 "Improvements" shall mean and refer to all improvements now or hereafter constructed on the Property, not including Units, but including, without limitation, parking areas, driveways, lights, signage, signage lighting, drainage/water quality control facilities, and other related improvements.

Section 1.9 "Lot" shall mean and refer to each separate parcel of property which is designated on the Plat with a number, and to each separate parcel of property created by the re-subdivision of any Lot designated on the Plat as a "Duplex" Lot, which may have constructed upon it a Unit, and title to which shall be held in fee simple.

Section 1.10 "Mortgage" shall mean and include all mortgages or deeds of trust which represent a first security interest on or in one or more Lots, but shall not include mortgages or deeds of trust junior to a first mortgage or first deed of trust or involuntary liens, such as mechanic's liens and judgment liens.

Section 1.11 "Mortgagee" shall mean and include the holder of any mortgage representing a first security interest in one or more Lots or the beneficiary of any deed of trust representing a first security interest in one or more Lots, but shall not include the holders of mortgages or beneficiaries of deeds of trust junior to a first mortgage or deed of trust or any claimant of an involuntary lien, such as a mechanic's lien or judgment lien.

Section 1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall also include the Declarant, or its successors and assigns, with respect to all Lots held in the name of Declarant.

Section 1.13 "Party Wall" shall mean and refer to each of the support and division walls, including footings, between certain Units constructed on the Lots.

Section 1.14 "Plat" shall mean and refer to the Subdivision Plat of Farmer's Grove, recorded on the in the records of the Clerk and Recorder of Summit County, Colorado, and such amended, additional or supplemental plats or maps as may be filed for the Property in the Office of the Clerk and Recorder for the County of Summit, State of Colorado.

Section 1.15 "Project" shall mean the Farmer's Grove subdivision.

Section 1.16 "Open Space" shall mean all real property and any improvements thereon or thereto owned by the Association for the common use and enjoyment of the Owners, their guests, invitees and tenants. The Open Space owned by the Association at the time of the recording of this Declaration includes those areas identified as such on the Plat and shall include any portion of the Property designated as Open Space on any amendments or supplements to the Plat, any and all real and personal property owned or controlled by the Association for the common use and benefit of both or all of the Owners, together with all improvements thereon, if any. Every Owner, and the successors and assigns thereof, shall be deemed to have consented to the use and control of said Open Space by the Association for the benefit and enjoyment of all Owners in accordance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations of the Association.

Section 1.17 "Rules and Regulations" means any instruments adopted by the Association or the DRC for the regulation and management of the property, as such instruments may be amended from time to time.

Section 1.18 "Standards" shall mean and refer to the Farmer's Grove Architectural and Development Standards approved and adopted by the Association as may be amended from time to time.

Section 1.19 "Unit" shall mean and refer to any individual residence constructed on a Lot.

## ARTICLE II DECLARATION OF PROPERTY RIGHTS

Section 2.1 Development of the Property. The development of the Property, which shall be known as Farmer's Grove, shall be under the control of the Declarant and shall be carried out according to the Subdivision Plat of Farmer's Grove, the Farmer's Grove Landscape Plan, the Water Service Agreement with the Town of Breckenridge, the Farmer's Grove Governmental Covenants and Agreements, the Farmer's Grove Architectural and Development Standards, and the Subdivision Improvements Agreement with Summit county filed for record on the 19<sup>th</sup> day of April, 2001 in the office of the Clerk and Recorder for the County of Summit, State of Colorado, at Reception No. 650390 and the Development Code of Summit County, State of Colorado. The maximum number of Lots that may be created within the Project is fifty.

Section 2.2 Plat. The Plat sets forth the following: (i) the legal description of the surface of the land subject to this Declaration; (ii) the linear measurements and location of the exterior boundaries of the Property, of all Easements, of the Lots and of the Open Space and (iii) the designation by number or other symbol of each Lot.

Section 2.3 Title to Lot. Title to a Lot may be held individually or in any form of concurrent ownership recognized in the State of Colorado. Any contract of sale, deed, lease, deed of trust, mortgage, security interest, will or other instrument affecting a Lot may describe it by its number as shown on the Plat, followed by the name of the development, and reference to the Plat and this Declaration. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect a Lot and all appurtenant rights, benefits and burdens thereto as created by the provisions of this Declaration, and each such description shall be so construed.

Section 2.4 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Open Space and Easements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use of any recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association to grant easements over the Open Space, or any part thereof, to any governmental entity or public agency, authority, or utility for such purposes and subject to such conditions as the Board determines are appropriate.

(c) The right of the Association to borrow money for the purpose of improving the Open Space and Easements, and in aid thereof to mortgage said Open Space, and to take such steps as may be reasonably necessary to protect the Open Space from foreclosure; provided that no such action shall be effective unless an instrument agreeing to such action signed by sixty-seven percent (67%) of the Owners has been recorded;

(d) The right of the Association to close or limit the use of the Open Space and Easements while maintaining, improving, or making replacements therein or thereto.

Section 2.5 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Open Space, Easements and facilities appurtenant to his Lot to the members of his family, his invitees, his tenants, or contract purchasers of his Lot.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.2 Voting. The Association shall have one class of voting membership. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, provided, however, that there shall be no more than one vote cast, with no fractional votes, for or with respect to any Lot and such vote shall be cast as the persons owning any Lot shall determine.

ARTICLE IV  
BOARD OF DIRECTORS OF THE ASSOCIATION

Section 4.1 Powers of the Board of Directors.

(a) Except as provided in this Declaration, the Articles and the Bylaws, or by law, the Board of Directors may act on behalf of the Association in all instances.

(b) The Board of Directors may not act on behalf of the Association to: (i) amend this Declaration; (ii) terminate the legal status of the Subdivision; (iii) elect members of the Board of Directors, other than to fill a vacancy for the unexpired portion of the term of a member of the Board of Directors as provided in the Articles and Bylaws; or (iv) determine the qualifications, powers and duties, or terms of office, of members of the Board of Directors.

(c) The Board of Directors shall consist of at least three members, one of whom shall be designated as chairperson. The term of each director shall be as set forth in the Articles and Bylaws. A member of the board of Directors may resign at any time by giving written notice to the Association, and such a resignation shall take effect upon receipt by the Association or such other date as is specified in such notice.

(d) The Board of Directors shall appoint all members of the Design Review Committee and shall have the authority to remove or replace such members, with or without cause, upon a majority vote of the members of the Board of Directors.

Section 4.2 Declarant Control Period.

(a) Subject to the terms and conditions of paragraphs 4.2(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. The phrase "Declarant Control

Period” means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

(i) the date that is sixty days after conveyance to Purchasers of 75 percent of the number of Lots created by Declarant under this Declaration;

(ii) the date that is two years after the last conveyance of a Lot by Declarant or a Successor Declarant in the ordinary course of business; or

(iii) the date that is two years after any right to add new Lots was last exercised.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(c) Notwithstanding anything to the contrary contained in paragraph 4.2(a) above, not later than sixty (60) days after conveyance to Owners other than Declarant of twenty-five percent (25%) of the maximum number of Lots Declarant has the right to create in the Project, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance to Owners others than Declarant of fifty percent (50%) of the maximum number of Lots Declarant has the right to create in the Project, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than Declarant. Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors at least a majority of whom must be Owners other than Declarant. A special meeting may be called by any Owner to elect the owner elected director(s) required, if such a meeting has not been called by the president or by a majority of the Board of Directors within the number of days required.

(d) Notwithstanding anything to the contrary contained herein, Declarant may not authorize nor cause the Board of Directors of the Association to authorize the distribution or lending of any funds from the Association to Declarant or any entity controlled by Declarant.

Section 4.3 Removal of Members of the Board of Directors. Notwithstanding any provision of this Declaration or any other Association Document to the contrary, the Owners, by a vote of at least 60 percent of the votes allocated to all Memberships represented in person or by proxy at any meeting at which a quorum is present, may remove any members of the Board of Directors, with or without cause, other than a members of the Board of Directors appointed by the Declarant.

ARTICLE V  
ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation for Assessments.

(a) Declarant, for each Lot owned within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) supplementary assessments, and (3) special assessments, such assessments to be established and collected as hereinafter provided.

(b) All annual, supplementary and special assessments, together with interest, at the highest lawful rate as provided by the Act as may be further amended from time to time, late charges, costs, and reasonable attorney's fees:

(1) Shall be a charge on the land and shall be a continuing lien in favor of the Association against the Lot against which each such assessment is made. The Association's lien resulting from this paragraph shall be prior to any other lien or claim against a Lot, except for a lien for ad valorem taxes, Mortgages and liens and encumbrances recorded before the recordation of this Declaration, and except as otherwise provided in this Declaration. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person, or entity, who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; and

(2) Shall be a charge on the land and shall be a continuing lien in favor of the Association against the Lot against which each such assessment is made to the extent provided by the Act, C.R.S. §38-33.3-316 (2) (b), as may be further amended from time to time. The Association's lien resulting from this paragraph shall be prior to any other lien or claim against a Lot, except for a lien for ad valorem taxes and liens and encumbrances recorded before the recordation of this Declaration, and except as otherwise provided in this Declaration. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person, or entity, who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 5.2 Purposes of Assessments. The assessment levied by the Association shall be used exclusively: to promote the health, safety, and welfare of the residents within the Property; for the improvement, maintenance and repair of the Open Space and Easements, including landscaped areas and sprinkler or irrigation systems therefor and any other improvements located therein or thereon; for the maintenance and repair of signs wherever located; and for the selected improvement, maintenance and repair of all streets, parking areas, driveways, sidewalks, paths, fences, yards, landscaped areas, and other improvements situated upon the Open Space or in any Easements for

the Property as specified in Article V herein; and for such other maintenance, repairs, replacements and services as the Association may determine to be in the best interests of the Owners and undertake.

Section 5.3 Annual Assessments.

(a) Annual assessments shall be made for the purposes of providing funds for the normal operations of the Association including, but not limited to: the purposes set forth in Section 5.2 above; salaries; costs of operating the Association; insurance premiums for insurance coverage provided for in Article VII; management fees; office costs; snow removal from all streets and driveways located within the Property; adequate reserve funds for maintenance repair and replacement of driveways, streets, and those portions of the Open Space and Easements that must be replaced on a periodic basis; improvements to the Open Space; amounts necessary to pay deficits or debts incurred by the Association; trash, garbage or other waste removal charges; charges for water to irrigate landscaped areas of the Property; real estate taxes; betterment or other special assessments, if any; and funds for any other purpose or purposes of the Association provided for herein. The total amount of money required to be raised by annual assessments for each fiscal year shall be the amount, as determined by the Board, necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in such fiscal year, including the payment of reserves, and providing a reasonable carry-over reserve for subsequent fiscal years. To determine the amount required to be raised by annual assessments for any fiscal year, the Board shall prepare an annual budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated income and other funds which will be available in that fiscal year, the estimated total amount of money required to be raised by annual assessments to cover such costs and expenses and to provide a reasonable reserve, and the estimated apportionment of the assessments among the Lots. The Board of Directors shall furnish a summary of such budget to the Owners and shall set a date for a meeting of the Owners to consider the ratification of such budget as required by the Act as may be further amended from time to time. Upon request, the Board will furnish a summary of the most recently adopted budget to any Mortgagee. Based on such budget, the Board of Directors shall determine the amount of the annual assessment per Lot for such fiscal period.

(b) If the Board shall fail to establish an annual assessment for any year, the annual assessment for such year shall remain the same as for the year immediately preceding, except that, upon Approval by the Board or by a majority vote of the entire membership of the Association, such annual assessment may be increased or decreased for the remainder of the assessment year as of the first day of the month following such vote.

(c) Annual assessments shall apply only to Lots now or hereafter subjected to this Declaration and included within the jurisdiction of the Association.

(d) Annual assessments shall be payable in twelve equal monthly installments during each fiscal year.



Section 5.4 Supplementary Assessments. In the event that the Board shall determine, at any time or from time to time, that the amount of the annual assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Board shall revise the annual budget for such fiscal year as provided in Section 5.3, or prepare a new budget, a summary of which shall be furnished to each owner and shall set a date for a meeting of the owners to consider the ratification of such budget as required by the Act as may be further amended from time to time. Upon request, the board will deliver a summary of the revised or new budget to any Mortgagee. Based on such revised or new budget, the Board may make a supplementary assessment for such fiscal year against each Lot.

Section 5.5 Special Assessments. A special assessment for purposes of large or unexpected expenditures that are capital in nature shall be made only upon resolution of the Association's Board of Directors. The Board will deliver to all Lot Owners, by first class mail or otherwise, a summary of the special assessment and shall set a date for a meeting of the owners for purposes of ratification of the special assessment as required by the Act as may be further amended from time to time.

Section 5.6 Assessment Reserves. Each owner, other than Declarant, shall be required to deposit and maintain continuously with the Association an amount as determined by the Board from time to time, but not to exceed four (4) times the amount of the monthly installments of the annual assessment, such reserve amount to be held without interest accruing to the Owner. This sum shall be used by the Association as a reserve for payment of each Owner's assessments and for working capital of the Association. The advance payment shall not relieve an Owner from making the regular payments of the annual assessments, or any portion thereof, as same become due, nor shall the Association be required to deduct from such advance payment sums due for annual assessments by an Owner prior to instituting any proceedings against the Owner for delinquent assessments. In the event the Association shall, pursuant to the purposes of this Article, draw delinquent assessments from the reserve created by such advance payment applicable to an Owner, the Owner expressly agrees, following ten (10) days prior written notice from the Association, to repay such amounts to the Association in order to properly maintain the reserve account, and such amount to be repaid shall have the same status as an annual, supplementary or special assessment for purposes of Article V of this Declaration. Upon the sale of a Lot, an Owner shall be entitled to a credit from his grantee for the remaining balance of such reserve account applicable to the Owner's Lot.

Section 5.7 Uniform Rate of Assessments. Annual, supplementary and special assessments for each Lot shall be uniform and shall be determined by dividing the total assessment by the total number of Units that have received Certificates of Occupancy from Summit County. In addition, Lot assessments shall include charges for excessive utility service paid for such Lot by the Association as a result of a master billing for all Lots or Units by the utility provider. No Lot shall be subject to assessment until a Certificate of Occupancy has been issued by Summit County for that Lot.

Section 5.8 Date of Commencement of Annual Assessments: Due Dates. The Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the issuance of a Certificate of Occupancy for each such Lot. Written notice of assessments shall be sent to every owner.

Section 5.9 Certificate of Status of Assessment. The Association shall, upon written demand by an owner or such owner's designee or to the holder of a Mortgage or its designee, delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the amount of unpaid assessments currently levied against the Owner's Lot. The statement shall be furnished as provided in the Act, which may be further amended from time to time. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment or installment not paid within fifteen (15) days after the due date shall bear interest from the due date at the highest rate allowed by the Act, as may be further amended from time to time. In addition, the Board may establish by resolution a reasonable delinquent or late charge for any assessment not paid when due. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the Association's lien against the Lot, or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Private Open Space or abandonment of his Lot. In addition to any other remedies herein or by law provided, the lien herein established may be foreclosed by an action in the Summit County, Colorado District Court in the manner of foreclosure of common law mortgages, pursuant to the law and statutes of the State of Colorado, and subject to all the rights and duties therein provided, including redemption. In any civil action to enforce or recover unpaid assessments, the prevailing party shall be entitled to an award of reasonable attorney fees and all costs of collection or foreclosure.

Section 5.11 Subordination of the Lien Mortgages. Except as provided in Section 5.1(b)(2), the lien for assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a Mortgage of record and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. Sale or transfer of any Lot shall not affect the lien for said assessments, except that sale or transfer of any Lot pursuant to foreclosure of any such Mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract shall relieve the Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof. Nothing herein shall be deemed to release any owner from his personal obligation to pay any assessment.

Section 5.12 Homestead. The lien of the Association for unpaid assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to any Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 5.13 Recording of Liens. The board shall immediately record a lien against all Lots owned by an Owner who fails to pay an assessment installment within sixty (60) days of becoming due.

Section 5.14 Notice to Lot Owners. Notice by the Board and other Owners of matters affecting the park Forest Estates development shall be via first class mail or personal delivery to the Owners and the Association.

## ARTICLE VI DESIGN REVIEW COMMITTEE

Section 6.1 Purpose. Any and all exterior design, landscaping and uses of new development on and/or additions to any property within the Property as well as any changes or alterations thereto, shall be subject to review by and consent of the Design Review Committee. The goal of such review and consent shall be to create, maintain and improve the Property as a pleasant and desirable environment, establish and preserve a harmonious design for the community, and protect and enhance the value of the Property.

Section 6.2 Appointment of Members. The Association shall establish the Design Review Committee consisting of a minimum of three members. Each member of the Design Review Committee shall be appointed by the Board of Directors of the Association, and any such member may be removed, with or without cause, at any time, by the Board of Directors of the Association by giving written notice to such member.

Section 6.3 Authority of Design Review Committee.

(a) The Design Review Committee shall establish and have the authority to amend and modify rules, regulations and design guidelines (the "Architectural and Development Standards" or "Standards") governing the design and construction of, as well as improvements to, all structures, landscaping, recreational facilities, exterior lighting, signage and general improvements proposed within the Property. Any and all such Standards, together with any amendments or modifications thereto, shall be approved by the Board of Directors before taking effect.

(b) The following, among other things, shall require prior written approval of the Design Review Committee: grading and other site preparation; landscaping (including, without limitation, tree cutting and clearing); building construction; sign design and erection; exterior changes to property or improvements; modification, alteration or enlargement of any existing structure; paving and driveways; fencing; exterior lighting; location and maintenance of all structures and improvements; and changes to the permitted use of any

property within the property. In exercising its authority to modify or reject any project proposal, the Design Review Committee may, when warranted, consider whether such proposal would cause an unacceptable disturbance of views for other sites or adjacent structures, but such consideration shall weigh heavily the right of each owner to use and develop his or her property in keeping with the standards set forth in this Declaration. The approval of the Design Review Committee shall not be required for alterations or remodeling which are completely within a building or structure, do not change the exterior appearance thereof and are not visible from the outside of the structure.

(c) The Design Review Committee shall have the power to enforce compliance with their respective Design Regulations, and in that regard, shall have the authority to levy and collect fines (including incremental fines for repeat offenders), sue for damages or injunctive relief, foreclose the Assessment Lien or exercise any other enforcement power conferred upon the Association by this Declaration.

Section 6.4 Decisions of Design Review Committee. Actions taken by the Design Review Committee shall not be arbitrary or capricious, and shall be presumed to be enforceable in accordance with their terms. Decisions of the Design Review Committee shall be conclusive and binding on all interested parties. Any challenge to a decision of the Design Review Committee must be filed in a court of competent jurisdiction within thirty days of receipt of notice of such decision by the affected party or parties.

Section 6.5 Inspection of Projects. The Design Review Committee or its designated representatives may monitor any approved project within the Property to ensure that the construction or work on such project complies with any and all approved plans, the Standards, construction procedures, applicable Rules and Regulations and applicable law. The Design Review Committee or its designated representatives may enter upon any property within the Property at any reasonable time or times to inspect the progress, work status, or completion of any project. The Design Review Committee may withdraw its approval of any project and require all activity at such project to be stopped if deviations from the approved plan, the Standards, construction practices, applicable Rules and Regulations or applicable law are not corrected or reconciled within ten days after written notification to the Owner of the subject property specifying such deviations, or within such lesser period of time as is specified by the Design Review Committee in such notice to the owner. The Design Review Committee shall have the authority to levy and collect Default Assessments for such deviations, including, without limitation, incremental monetary fines for the occurrence of repeated violations.

Section 6.6 Design Review Committee Not Liable. Neither Declarant, the Design Review Committee, nor any of their respective officers, directors, employees, members or agents shall be responsible or liable for any defects in any plans or specifications which are submitted, revised or approved pursuant to this Article VI, nor for any defects in construction pursuant to such plans and specification, nor for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee, unless due to the willful misconduct or conscious bad faith of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of any project be deemed

approval of, the project from the standpoint of safety, whether structural or otherwise. Approval of plans and specifications pursuant to this Article VI shall not relieve any owner of said Owner's responsibility to comply with any and all applicable governmental laws or regulations.

Section 6.7 Entrance Signage. Notwithstanding anything to the contrary contained in this Declaration, Declarant reserves to itself and its successors and assigns, the right to construct, install, operate, maintain, repair, remove, replace and reconstruct one or more signs of such types, number, design, materials, colors, sizes and contents as Declarant, its successors and assigns, may from time to time desire on, over, under and through the portions of Tracts G and H (the "Sign Easement Areas"), and such signs shall not be subject to the authority or control of the Design Review Committee or the Association, or any of the provisions of this Declaration or the Association Documents. No other Person shall install any signs of any kind within the Sign Easement Areas without the prior written consent of Declarant.

#### ARTICLE VII LIMITATION AND RESTRICTIONS ON BUILDING IMPROVEMENTS

Section 7.1 Permitted Improvements--Single-Family Residential Lots. No Single-Family Residential Lot may contain any building improvements except:

- (a) One Single-family Structure together with one attached garage of a size sufficient to enclose at least one automobile; and
- (b) Such enclosed service areas for garbage, trash, utilities and other maintenance facilities as may be approved in writing by the Design Review Committee; and
- (c) Such fences, walls, driveways and parking areas as may be approved in writing by the Design Review Committee; and
- (d) Landscaping improvements approved in writing by the Design Review Committee.

Section 7.2 Permitted Improvements - - Duplex Lots. No Duplex Residential Lots may contain any building improvements except:

- (a) Two attached residential Structures, each with a garage of a size sufficient to enclose at least one automobile; and
- (b) Such enclosed services areas for garbage, trash, utilities and other maintenance facilities as may be approved in writing by the Design Review Committee; and
- (c) Such fences, walls, driveways and parking areas as may be approved in writing by the Design Review Committee; and

(d) Landscaping improvements approved in writing by the Design Review Committee.

Section 7.3 Prohibited Improvements. No structures or buildings of a temporary character (except a sales facility or construction trailer for Declarant's use in selling or developing Lots within the Subdivision), nor any mobile home, house trailer, tent shack, or other such structure shall be placed or used within the Property, either temporarily or permanently, without prior written approval of the Design Review Committee, which approval may be withheld in the Design Review Committee's sole discretion. Notwithstanding the preceding sentence, necessary appurtenances, modest construction trailers and structures of a temporary nature may be used without the Design Review Committee's approval during the period of performance of construction of any improvement for which necessary government permits and Design Review Committee approval have been obtained, provided that (a) the Design Review Committee shall approve the location and appearance of such appurtenances, trailers or structures, (b) no overnight occupancy shall be permitted in any such appurtenance, trailer or structure, and (c) such appurtenances, trailers or structures shall be removed from the Property on the earlier of (i) the date that is twelve months after the initial use thereof and (ii) the date of substantial completion of said improvement.

Section 7.4 Design Review Committee Approval Required. Each Owner agrees that he or she will not apply to the Town of Breckenridge, Summit County, or any other governmental authority for permission to construct building improvements on such Owner's property without the prior express written authorization of the Design Review Committee. It shall be an objective of the Design Review Committee to prevent the making of improvements which will materially impair the aesthetic and monetary values of the Property. In reviewing proposed project, the Design Review Committee will consider, among other things, the following factors: (a) the suitability of the improvements and the materials of which they are to be constructed; (b) the quality of all materials to be utilized in any proposed improvement; (c) the effect of any proposed improvement on adjacent or neighboring property, provided that each Owner of property within the Property is entitled to use and develop his or her property in accordance with the standards set forth herein and the Design Guidelines; (d) the location and character and method of utilization of all utility services; (e) the impact of any proposed improvement upon the natural surroundings; and (f) the timely and orderly completion of all such improvements.

Section 7.5 Town Approval Required. No modification or other improvement to a Lot or dwelling unit that requires the approval of the Town of Breckenridge and/or Summit County shall be made or built until such approval has been obtained.

Section 7.6 Property to be Maintained. Except as otherwise provided herein, each Lot and all other portions of the Property, including all improvements within the Property, shall be kept and maintained by the Owner(s) thereof in a clean, safe, attractive and sightly condition and in good repair.

Section 7.7 Fences. All fences, walls or other barriers on any lot, as limited by the Standards and any other applicable instrument, including, but not limited to, the Farmer's Grove

Governmental Covenants and Agreements, may be erected only upon prior written approval of the Design Review Committee.

Section 7.8 Paved Areas and Driveway Construction. Private driveways and parking areas within the Property must be paved in accordance with the Standards. Materials used to create special paving patterns or colors are subject to Design Review Committee approval.

\* Section 7.9 Storage of Equipment and Vehicles. All boats, snow plows, snowmobiles, campers, and other recreational equipment and vehicles must be stored in a garage. Motorhomes, travel trailers, construction equipment and other oversized machinery and equipment shall not be stored or parked within the Property. This Section 7.9 shall not prohibit the storage or parking of construction equipment and machinery within the Property during the period of construction activities for which all applicable permits and Design Review Committee approval have been obtained, provided that the Design Review Committee may require the removal of any such equipment or machinery upon written notice to the Owner of the affected Lot.

Section 7.10 No Unsightliness. No unsightliness shall be permitted on any Property. Without limiting the generality of the foregoing: (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure, except as otherwise provided herein; (b) refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure; (c) service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure; (d) pipes for water, gas, sewer, drainage or other purposes, wires, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks shall be kept and maintained within an enclosed structure or below the surface of the ground, unless otherwise approved in writing by the Design Review Committee prior to installation, except that satellite reception equipment no larger than 18 inches in diameter shall be permissible upon written approval of the proposed location thereof by the Design Review Committee; and (e) no metals, bulk materials or scrap or refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Property. Nothing contained in the foregoing shall prohibit the installation of sewer lift station facilities in such locations as Declarant deems necessary or appropriate. All enclosed structures shall comply with the Rules and Regulations as in effect from time to time.

\* Section 7.11 Pets. Dogs, cats or customary household pets, not to exceed two pets per dwelling unit, may be kept on the Property. Because of the restrictions limiting fencing within Farmer's Grove, all pet owners are encouraged to install and use electric invisible fences and enforcement collars to insure that pets do not leave the Owner's property. No wild animal, reptile or bird may be trapped, transported, kept or maintained anywhere within the Property, except for (a) animal control activities of authorized governmental entities and licensed contractors and (b) activities of Owners to trap rodents for the purpose of removal or destruction. No pet may be kept which abnormally or unreasonably interferes with the rights, comforts or convenience of other Owners. For-profit breeding of any animals on the Property is specifically prohibited. All pets must be kept on a leash or within an electric invisible fence when outside an Owner's residence. No pets

of any kind shall be allowed to run or roam free at Farmer's Grove. No horses may be stabled or kept anywhere on the Property.

Section 7.12 Restriction on Signs. Except as otherwise provided in Section 6.9 above, no signs or advertising devices of any nature shall be erected or maintained on any Property except signs approved by the Design Review Committee, signs required by law or legal proceedings, identification signs for work under construction (not to exceed six square feet), temporary signs to caution or warn of danger or Association signs necessary or desirable to give directions or advise of rules or regulations. Except as otherwise provided in Section 6.7 above, the Design Review Committee shall have the authority to approve the size and location of signs within the Property. Without limiting the foregoing, the Design Review Committee may adopt a standard "for sale" sign to be used by all Owners in connection with any sale of any Lot.

Section 7.13 Restriction on Parking. Parking of vehicles on the Property or any portion thereof is permitted with respect to a Lot only within parking spaces constructed with the prior approval of the Design Review Committee and such parking shall be used only by the owner or Lessee of such Lot or their guests for the parking of personal vehicles.,

Section 7.14 No Commercial Development or Use. At no time shall any commercial development or use be allowed on the Property.

#### ARTICLE VIII GENERAL RESPONSIBILITIES AND RESTRICTIONS

Section 8.1 Open Space. The Association is herewith charged with the direct and continuing responsibility for maintenance, repair, replacement, operation, protection, extension and improvement of the Open Space.

Section 8.2 Exterior Maintenance.

(a) In addition to maintenance of and improvements to the Open Space, the Association shall provide: maintenance, repair and replacement of irrigation systems, trees, shrubs, and grass, maintenance of all drainage/water quality control facilities, and maintenance (including snow removal), repair and replacement of all driveways on the Property. All areas excluded from maintenance responsibility by the Association shall be the responsibility of each Lot owner.

(b) The Association shall, at a minimum, maintain landscaped areas, including, but not limited to all Open Space, at the level set forth in the Farmer's Grove Landscape Plan and in all permits issued by the Town of Breckenridge and/or Summit County with respect to each Lot.

(c) In the event that the need for maintenance, repair or replacement of any of the foregoing is caused through the willful or negligent acts of the family, tenants or invitees of



an Owner, the cost of such maintenance or repair shall be added to and become part of the assessment for the Lot owned by said Owner.

Section 8.3 Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any of the Buildings and/or Units subject to this Declaration and is located or placed on the dividing line between Units 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.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the Units on either side of such party wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, either Owner of the Lots on either side of the wall may restore it, and the Owner of the Lot on the other side of the wall 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 other owner under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with Land. The right of any Owner to contributions from any other Owner under this Section shall be appurtenant to the land and shall pass to each such Owner's successors in title.

Section 8.4 Declarant's Use. Notwithstanding any provisions herein contained to the permissible, during any period allowed by the Colorado Common Interest Ownership Act, as amended, C.R.S. §38-33.3-101, et. seq., for Declarant, its successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant, to complete any improvements indicated on plats or maps referenced herein, to exercise any development right pertaining to the Property, and to maintain during the period of construction and sale upon such portion of the Property as Declarant deems necessary, facilities incidental to said construction and sale, including, but without limitation, a business or sales office, construction office, management office, signs advertising the common interest community and the sale of the Lots and Units, one or more model Units, material storage areas, and one or more storage areas constructed or converted for a use other than a single family dwelling. Additionally, Declarant may use any and all Open Space for construction of utilities and for construction staging. All uses undertaken shall be compatible with the structure of the Buildings, the Lot, the surroundings, and the topography of the land, as well as the legitimate and proper uses of the Property.

Section 8.5 Use Restrictions.

(a) No Unit or Lot shall be used, and no Building and/or Unit shall be hereafter constructed or converted for a use other than a single family dwelling. No secondary or accessory unit or apartment may be created in any Unit or on any Lot. All uses undertaken shall be wholly compatible with the structure of the Building, the Lot, the surroundings, and the topography of the land, as well as the legitimate and proper uses of the Property.

(b) No tree may be cut down on the Property without the approval of the Board and the Town of Breckenridge. No planting or gardening shall be done, and no fences, hedges, walls, or other improvements or structures shall be erected or maintained in or upon any Lot or upon the Open Space except as approved by the Design Review Committee. Except for the right of ingress and egress, the Owners are hereby prohibited and restricted from using any of the Property outside the exterior boundary lines of their respective Lots, except as may be allowed by the Association's Board of Directors and this Declaration. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners and is necessary for their protection.

(c) Maintenance, upkeep and repairs of any Building and/or Unit or other improvements on or to each Lot except as to certain maintenance more fully described in Section 8.2 of this Article, shall be the sole responsibility of the Owner thereof and not of the Association. In the event an Owner of any Lot shall fail to maintain his Lot or Unit and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon said Lot and in said Unit and to repair, maintain, and restore the Lot or Unit and the exterior of the Unit and any other improvements erected thereon. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

(d) All utilities, fixtures and equipment installed within any Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot, shall be maintained and kept in repair by the Owner thereof. An owner shall not do any act or work that will impair any Easement or hereditament, nor perform any act nor allow any condition to exist which will adversely affect the other Lots or the Owners thereof.

(e) By way of enumeration, and not limitation, the use of all the Property, Units, Buildings and Lots located thereon shall be subject to the following restrictions and limitations:

(1) No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Property, nor upon any structure situated thereon without prior written approval and authorization by the Design Review Committee;

(2) No wood burning appliance shall be installed in any Unit. Only natural gas fireplaces may be installed in the Units.

(3) Refuse piles or other unsightly objects or materials shall not be allowed to be placed or to remain upon the Property. The Association shall have the right to remove such refuse piles or other unsightly objects or materials at the expense of the Owner responsible therefor, and such entry shall not be deemed a trespass provided three (3) days prior notice has been given to the Owner and the Owner failed to remove same during said three (3) day period;

(4) No free-standing mailbox or newspaper box shall be erected unless approved by the Board of Directors;

(5) Trash, garbage or other waste shall be disposed of in a sanitary manner, pursuant to rules and regulations adopted by the Association. All trash containers must be kept indoors at all times except on trash pickup day. All containers must have animal proof lids securely in place when outside. The foregoing notwithstanding, the Association shall contract with one company for trash removal for all Lots, subject rules and regulations of the Association pertaining to trash removal which rules and regulations shall be binding upon all Owners.

(6) No tanks of any kind, either elevated or buried shall be erected, placed or permitted upon the Property;

(7) No exterior clotheslines shall be attached to any Building or Unit or permitted or maintained on the Property;

(8) All furniture, tools, and other personal property shall be kept and maintained in neat condition and in such a manner so that, to the extent possible, the same are concealed from view from any other Lot;

(9) No house trailer, motor home, recreational vehicle, boat, camper, trailer, snowmobile, motorcycle, commercial vehicle, tent, shack, detached garage, barn, or outbuilding of any kind shall be permitted to be placed on the Property;

(10) No junk vehicle, inoperative vehicle, unlicensed vehicle, or vehicle under repair shall be parked, stored or maintained on the Property for more than two (2) days; and

(11) No charcoal or other fossil fuel burning device, including grills, shall be used or stored on any exterior wooden deck of any Building or Unit. This restriction shall not, however, prevent the use of such devices on the ground floor patio or deck, so long as the surface of such patio or deck is non-flammable.

(f) Owners, guests or tenants, may keep no more than two (2) domesticated pets on any Lot. No pet shall be outdoors without being supervised by a person of at least twelve years of age who is also outdoors and is in line of sight of such pet. All pets must be kept on a leash whenever outdoors unless such pet is within an invisible electric fenced area. No

# \* Pets \*

kennels or commercial pet operations are permitted. Pets must not be noisy or obnoxious. If an Owner fails to clean up after a pet or if an Owner allows a pet to run free, or if a pet is noisy or obnoxious, the Board can order removal of such pet or pets on a permanent basis.

## Section 8.6 Easements.

(a) Each Lot and the Open Space shall be subject to: all easements and rights of way as shown on the Plat recorded at approximately the same time as this Declaration is recorded; easements and encroachments created by construction, including those for overhangs, roofs, patios and fences; easements for utility and utility services as designed or constructed by the Declarant; easements for vehicular and pedestrian access to and from each Unit, over, across and through driveways as constructed by Declarant on Open Space or on any other Lot, whether located completely or partially on or shared with such adjacent Lot, and for parking of vehicles, provided that no Owner, tenant, guest or other invitee shall have any right to park any vehicle on any portion of any driveway in a location which hinders vehicular access to or from the Unit located on any other Lot; easements for snow storage as shown on the Plat; easements for maintenance of all improvements and utility services; and easements for access by the Association to effect the purposes set forth in these Declarations, including, but not limited to, the promotion of the health, safety, and welfare of the residents of the Property.

(b) The Owner(s) of Lot 36 are hereby granted a perpetual Private Utility Easement over and across the westerly 20 feet of Lot 37, as shown on the Plat, for the sole and exclusive purpose of installing, repairing, maintaining and replacing an underground water service line from the Alpensee Drive right-of-way to Lot 36. The Owner(s) of Lot 36 shall be obligated to repair or replace any improvements, including landscaping improvements, disturbed, damaged, removed or destroyed on Lot 37 as the result of the use and benefit of the easement granted hereby.

(c) Declarant shall have an easement over the Lots and Open Space for the purpose of completing the full and final development and improvement of the Property.

(d) The Association, the Board of Directors, and their agents shall have a non-exclusive right and easement to make such use of and to enter into or upon the Open Space, the Lots and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration and under the Act.

(e) The easements, uses and rights herein created for an owner shall be appurtenant to the Lot of that Owner and all conveyances of and other instruments affecting title to a Lot shall be deemed to grant and reserve the Easements, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

Section 8.7 Enforcement of Covenants. The Association and/or any Owner are herewith vested with authority by Declarant and are assigned the rights of Declarant to enforce, to the same extent as Declarant might, any and all covenants running with the Property, or with other property in which Declarant, its successors or assigns, has an interest or right of enforcement, including, but not limited to, all covenants contained herein, or in other protective covenants recorded against the Property, if any; provided that the authority and rights herein granted and assigned shall not preclude Declarant from proceeding to enforce any or all of said covenants, whether or not the Association is acting in that regard. The Declarant's right of enforcement shall not be greater than that of the Association or any owner and shall cease when the Declarant no longer owns any portion of the Property. In any civil action to enforce a covenant created herein, the prevailing party shall be entitled to an award of reasonable attorney's fees.

## ARTICLE IX INSURANCE AND INDEMNIFICATION

Section 9.1 Insurance. All insurance, other than title insurance, carried in connection with Open Space or improvements thereon or thereto shall be governed by the provisions of this Article IX.

Section 9.2 Insurance Requirements Generally.

(a) The Association shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do business in the State of Colorado.

(b) To the extent possible, the casualty, property, and liability insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (ii) provide that the insurance cannot be canceled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; and (iii) provide that the policy of insurance shall not be terminated, canceled or substantially modified without at least thirty (30) days prior written notice to the Association; and provide as required by Section 313 of the Act as may be amended from time to time.

(c) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of the holders of any first mortgage or deeds of trust. Any loss falling within the deductible portion of a policy shall be borne by the Association. The cost and expense of all insurance obtained by the Association shall be paid out of Association funds collected by assessments and otherwise as elsewhere provided in this Declaration.

Section 9.3 Casualty Insurance.

(a) The Association or its agents shall obtain and maintain at all times insurance coverage or the nearest equivalent available for the full replacement cost of any improvements and personal property of the Association.

Section 9.4 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive general liability insurance including non-owned and hired automobile liability coverage, owned automobile liability coverage (if there are any owned automobiles), personal injury liability coverage covering liabilities of the Association, its officers, directors, employees, agents, and members arising in connection with ownership, operation, maintenance, occupancy, or use of the Lots and any other area the Association is required to restore, repair, or maintain pursuant to this Declaration with bodily injury liability limits not less than One Million Dollars (\$1,000,000.00) for each occurrence and property damage liability limits of not less than One Million Dollars (\$1,000,000.00) aggregate. Each policy shall include a "severability of interest" endorsement.

Section 9.5 Insurance by Owners. Each Owner shall obtain property, hazard and liability insurance for the Owner's Lot and Unit, and shall provide copies of such insurance policies to the Association, if the Association so requests. At all times each Owner shall also be responsible for obtaining insurance for all of the Owner's personal property and furnishings, and, except as provided by this Article, the Association shall not be responsible for providing any such insurance. Nothing herein shall be construed as requiring any owner to obtain any insurance whatsoever as to his own personal property.

Section 9.6 Fidelity Insurance. The Association may maintain adequate fidelity coverage, if available, to protect against dishonest acts on the part of the directors, officers, trustees, and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name the Association as obligee, (ii) be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation, and from and definition of "employee" or similar expression, and (iv) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least fifteen (15) days written notice to the Association.

Section 9.7 Other Insurance. The Association may obtain such additional insurance coverage against such additional risks as it shall determine to be appropriate.

Section 9.8 Indemnification.

(a) Indemnification. The Association shall indemnify each director, officer, property manager, their respective successors, personal representatives and heirs, against all losses, costs and expenses, including attorney's fees, reasonably incurred by them in connection with any action, suit or proceeding to which they may be made a party by reason of their position with or employment by the Association, except as to matters as to which such person(s) shall be finally adjudged in such action, suit or proceeding to be liable for

gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director, officer or property manager in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director, officer or property manager is entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as a common expense, provided, however, that nothing in this Section 9.8 contained hereto shall be deemed to obligate the Association to indemnify any member or Owner who is or has been a director, officer or property manager of the Association with respect to any duties or obligations assumed or liabilities incurred by him as a member or Owner under and by virtue of this Declaration.

(b) No independent contractor, including a director, officer, member or owner providing services to the Association as an independent contractor, shall be protected by this indemnification provision, any indemnification provision provided for in the Bylaws of the Association or any insurance policy obtained by the Association in relating to any such indemnification provision.

(c) Summit County shall not be responsible for or liable to Lot owners for damage to landscaping or to structures resulting from road maintenance or snow removal conducted by Summit County.

## ARTICLE X CONDEMNATION

Section 10.1 Consequences of Condemnation. If at any time or times pursuant to this Declaration, all or any part of the Open Space shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu or in avoidance of such condemnation, the provisions of this Article shall apply.

Section 10.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award", shall be payable to the Association, which may distribute the Condemnation Award to the owners or apply such proceeds to the payment of the expenses of the Association in lieu of such distribution. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Disbursement of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

Section 10.3 Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association and such Owner's interest shall thereupon terminate.

ARTICLE XI  
SPECIAL CONSIDERATIONS

Section 11.1 Sixty-Seven Percent Vote. Except as otherwise provided herein, unless at least sixty-seven percent (67%) of the Owners of the Lots (based upon one vote for each Lot) on the Property have given their prior written approval, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Open Space owned, directly or indirectly, by the Association for the benefit of the Units, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Open Space shall not be deemed a transfer within the meaning of this clause;

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or an Owner;

(c) by act, or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Buildings or Units, or the maintenance of the Open Space;

(d) fail to maintain fire and extended coverage on insurable Open Space and other property of the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs;

(e) use hazard insurance proceeds for losses to any Open Space or other property for other than the repair, replacement or reconstruction of such property.

Section 11.2 Majority Vote. In all other respects, the affirmative vote of a majority of the membership represented at a meeting of the Association and entitled to vote on the subject matter shall be the act of the Association unless another number is specifically designated as the required affirmative vote by the specific provision of this Declaration under consideration.

ARTICLE XII  
RIGHTS OF MORTGAGEES

Section 12.1 Payment of Taxes. Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Open Space and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Open Space and the first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. Upon request, the Association shall execute an agreement with a Mortgagee of any Unit evidencing its entitlement to such reimbursement.



Section 12.2 Priority to Proceeds. Neither the Owner, nor any other party shall have priority over any rights of the Mortgagee of a Lot in the case of a distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of Open Space.

Section 12.3 Notification of Default. A Mortgagee is entitled, upon request, to written notification of any default in the performance by an individual owner of any obligation under this Declaration which is not cured within sixty (60) days.

### ARTICLE XIII GENERAL PROVISIONS

Section 13.1 Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any provision, covenant, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any civil action to enforce any provision, covenant, or restriction, the prevailing party shall be entitled to an award of reasonable attorney fees.

Section 13.2 Severability. Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in force and effect.

Section 13.3 Declaration Amendment. The covenants, conditions, restrictions and liens of the Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Declarant may, for a period of five (5) years from the date of recording of this Declaration, make such minor, technical and clarifying amendments to this Declaration as Declarant deems appropriate. Additionally, this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Owners.

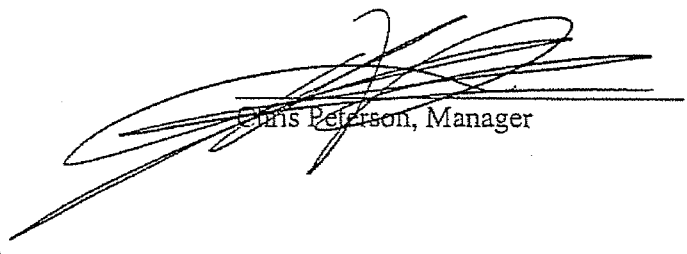
Section 13.4 Plat Amendment. Declarant reserves the right to amend the Plat described herein so as to make minor adjustments to Lot or Tract lines of Lots or Tracts then owned by Declarant as Declarant deems appropriate for a period of five (5) years from the date such Plat is recorded.

Section 13.5 Assignability. Declarant's right hereunder shall be freely assignable.

Section 13.6 No Partition or Subdivision. The Private Open Space shall remain undivided, and no owner, other person, or other entity shall bring any action for partition, division, or subdivision of the Private Open Space. Similarly, no action shall be brought for partition or subdivision of a Lot or Unit between or among the owners thereof. Each Owner hereby expressly waives any and all such rights of partition or subdivision he may have by virtue of his ownership of a Lot. This Section 10.6 shall not, however, be interpreted to prevent adjustments to Lot lines agreed to by the Owners of the Lots affected.

IN WITNESS WHEREOF, Farmer's Grove Development, LLC has caused its name and seal to be hereunto signed and affixed by its duly authorized officer this 4<sup>th</sup> day of April, 2001.

FARMERS GROVE, LLC  
a Colorado limited liability company

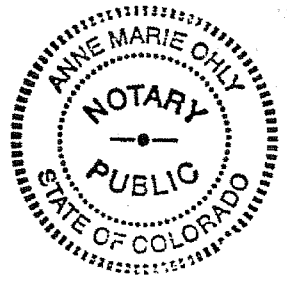
  
Chris Peterson, Manager

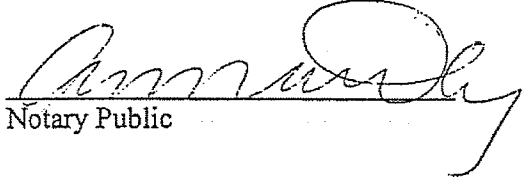
STATE OF COLORADO    )  
                                  )ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 2001 by Chris Peterson as Manager of Farmers Grove, LLC.

Witness my hand and official seal.

My commission expires: 11/24/2001



  
Notary Public

## FARMER'S GROVE SUBDIVISION

### LEGAL DESCRIPTION

A TRACT OF LAND SITUATE IN SECTION 1, TOWNSHIP 6 SOUTH, RANGE 78 WEST OF THE 6<sup>TH</sup> P.M., COUNTY OF SUMMIT, STATE OF COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 1, T 6 S, R 78 W 6<sup>TH</sup> P.M.; THENCE N 10°02'10" W, 3555.31 FEET TO THE POINT OF BEGINNING; SAID POINT BEING IDENTICAL WITH THE NORTHWEST CORNER OF THE ALPENSEE SUBDIVISION, FILING NO. 3, A SUBDIVISION RECORDED SEPTEMBER 10, 1963 AT RECEPTION NUMBER 97401 IN THE SUMMIT COUNTY RECORDS; BEING ALSO A POINT ON THE EASTERLY LINE OF THE SUMMIT HIGH SCHOOL PROPERTY DESCRIBED IN THAT DEED RECORDED JANUARY 6, 1995 UNDER RECEPTION NUMBER 484033 IN THE SUMMIT COUNTY RECORDS; THENCE N 14°22'24" W, 672.30 FEET ALONG THE EASTERLY LINE OF SAID SUMMIT HIGH SCHOOL PROPERTY TO AN ANGLE POINT; THENCE CONTINUING ALONG SAID EASTERLY LINE OF SAID SUMMIT HIGH SCHOOL PROPERTY N 06°36'27" W, 263.24 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL DESCRIBED IN DEED RECORDED UNDER RECEPTION NUMBER 531993 IN THE SUMMIT COUNTY RECORDS; THENCE N 83°23'33" E, 499.60 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL RECORDED AT RECEPTION NUMBER 531993 TO THE WESTERLY RIGHT OF WAY OF COLORADO STATE HIGHWAY 9; THENCE S 06°32'24" E, 267.00 FEET ALONG SAID WESTERLY RIGHT-OF-WAY; THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY S 11°56'37" E, 369.46 FEET; THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY S 13°56'39" E, 233.16 FEET TO A POINT ON THE NORTHERLY LINE OF SAID ALPENSEE III SUBDIVISION; THENCE S 75°46'04" W, 476.79 FEET ALONG THE NORTHERLY LINE OF SAID ALPENSEE SUBDIVISION FILING NO 3 TO THE POINT OF BEGINNING CONTAINING 440,623 SQUARE FEET OR 10.115 ACRES MORE OR LESS; IN SUMMIT COUNTY, COLORADO, UNDER THE NAME AND STYLE OF "FARMER'S GROVE" HAS LAID OUT, PLATTED AND SUBDIVIDED SAME AS SHOWN ON THIS PLAT, AND BY THESE PRESENTS DOES HEREBY DEDICATE TO THE COUNTY OF SUMMIT, STATE OF COLORADO, THE STREETS, ROADS AND OTHER PUBLIC AREAS AS SHOWN HEREON FOR USE AS SUCH AND HEREBY DEDICATE THOSE PORTIONS OF LAND LABELED AS UTILITY EASEMENTS TO THE COUNTY OF SUMMIT FOR USE BY UTILITY COMPANIES IN THE INSTALLATION AND MAINTENANCE OF UTILITY LINES AND FACILITIES. IT IS UNDERSTOOD THAT THE DEDICATION OF PUBLIC RIGHTS-OF-WAY FOR STREETS AND ROADS DOES NOT NECESSARILY RESULT IN ACCEPTANCE OF ROADS CONSTRUCTED THEREIN FOR MAINTENANCE BY THE COUNTY OF SUMMIT.

### EXHIBIT A