

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
HOMESTEAD TRAILS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS for Homestead Trails, La Plata County, Colorado is made as of April, 2006, by The Homestead At Bayfield, LLC (“Declarant”).

**RECITALS**

A. Declarant is the owner of certain real property located in La Plata County, Colorado, more particularly described on the attached Exhibit A (the “Property”) and the attached Exhibit B (the “Expansion Property”).

B. Declarant’s predecessor, Diamond Development, Inc. a New Mexico Corporation, created a planned community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §§ 38-33.3-101 *et. seq.* (the “Act”) on a portion of the Property, the name of which is the Village East Subdivision, pursuant to the Declaration of Covenants, Conditions and Restrictions for Village East Subdivision October 12, 2000 and recorded on October 12, 2000 at Reception No. 794308 (the “Original Declaration”), and Amendment Number One to the Declaration of Covenants, Conditions and Restrictions for Village East Subdivision dated March 17, 2003 and recorded on March 21, 2003 at Reception No. 852429 (the “First Amendment”).

C. Declarant desires to continue to protect and maintain the common interest community as a residential area of high quality and value to enhance and protect its desirability and attractiveness and to provide for the maintenance of the common areas serving the common interest community.

D. Declarant acquired the Property from Diamond Development, Inc. in May 23, 2003 and, thereafter, changed the name of the common interest community from Village East Subdivision to Homestead At Bayfield through recordation of a replat of the Village East Subdivision, Project No. 96-049 recorded at Reception No. 877398 in the records of the La Plata County Clerk and Recorder.

E. By this Amended and Restated Declaration of Covenants, Conditions, and Restrictions (the “Amended and Restated Declaration”), Declarant desires to (i) consolidate and amend the Original Declaration and the First Amendment thereto into one comprehensive new Amended and Restated Declaration describing the Covenants, Conditions and Restrictions for Homestead Trails, and (ii) subject the real property identified in the Original Declaration and First Amendment to the terms and conditions of this Amended and Restated Declaration and (iii) to subject such real property as may later become a part of Homestead Trails subdivision to the terms and conditions of this Amended and Restated Declaration.

F. This Amended and Restated Declaration shall supersede and replace, in their entirety, the Original Declaration and First Amendment which shall no longer have force and effect and which shall no longer govern the common interest community.

**ARTICLE I  
DECLARATION AND SUBMISSION**

Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, restrictions, and easements, which are for the purpose of protecting the value and desirability of the common interest community, and which shall run with the land and be binding on all parties and heirs, successors, and assigns

of parties having any right, title, or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

## **ARTICLE II DEFINITIONS**

The following terms when used in this Declaration or any amendment or supplement hereto shall have the following meanings:

Section 2.1     “Act” means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, Colorado Revised Statutes, as it may be amended from time to time.

Section 2.2     “Allocated Interests” means a fraction or percentage of the Common Expenses of the Association and a portion of the votes in the Association allocated to each Lot in accordance with Article XII.

Section 2.3     “Articles” means the Articles of Incorporation for Homestead Trails Property Owner’s Association, Inc. (the “Association”), which are on file with the Colorado Secretary of State, and any amendments made to those Articles from time to time.

Section 2.4     “Assessments” means the Annual, Special, and Default Assessments levied pursuant to Article VIII.

Section 2.5     “Association” means the Homestead Trails Property Owners Association, a Colorado non-profit corporation.

Section 2.6     “Association Documents” means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any design guidelines, procedures, rules, regulations, or policies adopted under such documents by the Association.

Section 2.7     “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

Section 2.8     “Common Elements” means all general and limited common elements as designated on a recorded subdivision plan of any portion of the Property that may be owned or possessed by the Association or such real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners. Such interest may include, without limitation, estates in fee, for terms of years, or easements. By way of illustration, and not limitation, the Common Elements may be designated as “Common Areas,” open space, parks or otherwise, all as may be indicated on the Plat, and may also include shared roads, trails, mailboxes, signage, drainage and utility easements or playground equipment and picnic facilities or pavilions.

Section 2.9     “Common Expense” means (i) all expenses expressly declared to be common expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, or repairing the Common Elements; (iii) insurance premiums for the insurance carried under Article VII; and (iv) all expenses lawfully determined to be common expenses by the Executive Board of the Association, including, but not limited to, any allocations to reserves.

Section 2.10    “Common Interest Community” means the Homestead Trails subdivision, including existing Phases One and Two and any future phases consisting of the Expansion Property that are subsequently annexed by way of a supplemental declaration.

Section 2.11    “Declarant” means The Homestead At Bayfield, LLC and its successors and assigns, and is further defined in § 103(12) of the Act.

Section 2.12    “Declaration” means and refers to this Amended and Restated Declaration of Covenants,

Conditions, and Restrictions of the Homestead Trails, including any amendments or supplements thereto.

Section 2.13     “Director” means a member of the Executive Board of the Association.

Section 2.14     “Executive Board” means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Common Interest Community and all improvements on the Common Interest Community.

Section 2.15     “Expansion Property” means the real property identified on Exhibit B attached hereto and incorporated herein.

Section 2.16     “First Mortgage” means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute; “First Mortgagee” means any person named as mortgagee in a First Mortgage.

Section 2.17     “Improvements” means any construction, structure, equipment, fixture or facilities existing or to be constructed in the Common Interest Community, including but not limited to buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility wires, pipes, meters and any water facilities.

Section 2.19     “Lot” means a residential dwelling portion of the Common Interest Community, which is designed for separate ownership or occupancy, the boundaries of which are shown on the Plat. For purposes of the Act, “Lot” shall have the same definition as the term “Unit” has under the Act. “Lot Owner” or “Owner” means the Declarant or any other Person who owns a Lot by virtue of a fee simple deed. Lot Owner does not include a Person having only a security interest or any other interest in a Lot solely as security for an obligation. The Declarant is the initial owner of each and every Lot created and defined by this Declaration and the Plat.

Section 2.20     “Member” means every person or entity that holds membership in the Association.

Section 2.21     “Mortgage” means any mortgage, deed of trust, or other document pledging any Lot or interest therein as security for payment of a debt or obligation. Mortgage is also defined as a Security Interest under the Act. “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.22     “Person” means an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

Section 2.23     “Phase One” shall mean that portion of the Property identified in the plat recorded on January 26, 2004 at Reception No. 877398 in the office of the Clerk and Recorder of La Plata County.

Section 2.24     “Phase Two” shall mean that portion of the Property identified in the plat recorded on November 8, 2005 at Reception No. 922097 in the office of the Clerk and Recorder of La Plata County.

Section 2.25     “Plat” means, collectively, the land survey plats depicting the Common Interest Community, recorded in the records of La Plata County, Colorado including the plats referenced in Section 2.23 and 2.24 for Phases One and Two and any plats to be recorded for future Phases of the Common Interest Community.

Section 2.26     “Successor Declarant” means any party or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record in the office of the La Plata County Clerk and Recorder, designating such party as a Successor Declarant. Upon such recording, Declarant’s rights and obligations under this Declaration shall cease and terminate to the extent provided in such documents.

Section 2.27 “Water System” means the water system improvements owned and operated by Homestead Water Company, LLC, including but not limited to, the water storage tank(s), water main, distribution lines, water meters, fire hydrants, curb valves and other water facilities necessary for providing domestic water within the Common Interest Community as described in Article XVIII. Water service to the Lot Owners shall be initially provided and operated by the Homestead Water Company LLC pursuant to a Water Service Agreement.

Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

### **ARTICLE III NAME, LOCATION, NUMBER AND SIZE OF LOTS**

Section 3.1 Name. The name of the project is Homestead Trails.

Section 3.2 Description. The entire Common Interest Community is situated in the County of La Plata, State of Colorado, is located on the Property, and is a planned community as defined in the Act.

Section 3.3 Association. The name of the association is Homestead Trails Property Owner’s Association, Inc. Declarant has caused the Association to be incorporated under the laws of the State of Colorado as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

Section 3.4 Number of Lots. The number of Lots in the Common Interest Community is 71 (which comprises the Lots within Phase 1 and Phase 2). Declarant reserves the right to expand the Common Interest Community to a maximum number of 350 Lots (which number includes the existing 71 lots).

### **ARTICLE IV MEMBERSHIP, VOTING RIGHTS; ASSOCIATION OPERATIONS**

Section 4.1 Membership in Association. 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. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

Section 4.2 Voting. The Association shall have one class of voting membership, which shall consist of all Owners. Except as otherwise provided in this Declaration, each Member shall be entitled to vote in Association matters on the basis of his Allocated Interests, defined in Article XII. When more than one Person holds an interest in any Lot, all such Persons shall be Members; however, the vote for such Lot shall be exercised by one Person or alternative Person appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended in the event more than one Person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Lot that is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one vote be cast with respect to any one Lot.

Section 4.3 Period of Declarant Control. Declarant and any Successor Declarant shall have exclusive power to appoint and remove members of the Executive Board and officers of the Association to the fullest extent permitted by § 303 of the Act. This Period of Declarant Control shall terminate no later than: (i) 60 days after conveyance of 75% of the Lots that may be created in the Common Interest Community to Lot Owners other than a Declarant; (ii) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or (iii) two years after any right to add Lots (including Lots within the Expansion Property) was last exercised.

A. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Executive Board before termination of the Period of Declarant Control. In that event, the Declarant

may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

B. Not later than 60 days after conveyance of 25% of the Lots that may be created to Lot Owners and/or the Expansion Property (all phases) to purchasers, at least one member and not less than 25% of the members of the Executive Board shall be elected by Lot Owners other than the Declarant. Not later than 60 days after conveyance of 50% of the Lots that may be created to Lot Owners other than a Declarant, not less than 33-1/3% of the members of the Executive Board must be elected by Lot Owners other than the Declarant. Not later than the termination of the Period of Declarant Control, the Lot Owners shall elect an Executive Board of at least three members, at least a majority of whom shall be Lot Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

C. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice in accordance with § 308 of the Act, the Lot Owners, by a vote of 67% of all Lot Owners present and entitled to vote at a meeting of the Lot Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 4.4 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents, the books, records, and financial statements of the Association prepared pursuant to the Bylaws, and minutes of Executive Board and committee meetings. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act or by other applicable law.

Section 4.5 Manager. The Association may employ or contract for the services of a manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association.

Section 4.6 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

Section 4.7 Powers of the Association. The Association shall have the power to:

- A. administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, and all other provisions set forth in the Declaration, and supplements thereto;
- B. adopt and amend Bylaws and Rules;
- C. adopt and amend budgets for revenues, expenditures and reserves in accordance with the Act;
- D. collect Assessments from Lot Owners;
- E. collect delinquent assessments by suit or otherwise and to enjoin or seek damages from an Owner as provided in the Declaration and these Bylaws;
- F. hire and discharge managing agents;
- G. hire and discharge independent contractors, employees and agents other than managing agents;

H. institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of or otherwise enforce the Association's Declaration, Bylaws or Rules in the Association's name, on behalf of the Association or two or more Lot Owners on matters affecting the Common Interest Community;

I. make contracts and incur liabilities;

J. regulate the use, maintenance, repair, replacement and modification of the Common Elements;

K. incur such costs and expenses, to designate and remove personnel, and to enter into contracts as may be necessary to keep in good order, condition, and repair all of the Common Elements and items of common personal property as provided herein and in the Declaration;

L. establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed advisable;

M. keep and maintain full and accurate books and records showing all of the receipts and disbursements and to permit examination thereof at any reasonable time by each of the Owners and their mortgagees.

N. meet at least annually;

O. cause additional Improvements to be made as a part of the Common Elements;

P. acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to this Declaration and § 312 of the Act;

Q. grant easements, leases, licenses and concessions through or over the Common Elements;

R. impose a reasonable charge for late payment of Assessments and levy reasonable fines for violations of the Declaration, the Bylaws, or the Rules;

S. impose a reasonable charge for the preparation and recording of amendments to the Declaration and for a statement of unpaid assessments;

T. provide for the indemnification of the Association's officers and Executive Board, and maintain Directors' and officers' liability insurance;

U. assign the Association's right to future income, including the right to receive Assessments;

V. adopt and publish rules and regulations governing the use of the Common Elements and governing the personal conduct of the Members and their guests, and the Association may establish penalties, including, without limitation, the imposition of fines for the infraction of such rules and regulations;

W. suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment;

X. borrow monies for Association purposes and the right to pledge future income in order to secure such borrowings. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof

Y. exercise any other powers conferred by the Declaration, these Bylaws or the Act;

Z. exercise any other power that may be exercised in the state by a legal entity of the same type as the Association; and

AA. exercise any other power necessary and proper for the governance and operation of the Association.

Section 4.8 Executive Board Powers and Duties; Limitations. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community or to elect Members of the Executive Board or determine the qualifications, powers and duties or terms of office of Executive Board Members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

Section 4.9 Sub-Associations. "Sub Association" means a property owners association that may be formed by Declarant or an Owner for the purpose of creating a multi-family community, including but not limited to, townhomes, patio homes or condominiums within the Project. All Sub-Associations must be approved by the Declarant and shall be subject to this Declaration and any assessments due hereunder. Sub-Associations may create subdivision declarations and impose assessments with respect to common elements, (i.e., shared parking areas or common landscaping etc) within the multi-family or condominium community. Notwithstanding the fact that a sub-association may impose assessments, all units within the sub-association, shall also be subject to the periodic assessments imposed hereunder as provided in Section 12.3. Any reference to a "Unit" shall also have the same meaning as a "Lot" within this Declaration.

## ARTICLE V LOTS AND RELOCATION OF BOUNDARIES

Section 5.1 Lot Boundaries. Boundaries of each Lot created by the Declaration are shown on the Plat, and may hereafter be transferred by using the following legal description:

Lot \_\_\_\_, Homestead Trails, according to the plat recorded at Reception No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, La Plata County, Colorado.

Section 5.2 Relocation of Lot Boundaries. The boundaries between adjoining Lots may be relocated by an amendment to the Declaration upon application to the Association by the Owners of the Lots affected by the relocation. If the Owners of the adjoining Lots have specified a reallocation between their Lots of their Allocated Interests, the application shall state the proposed reallocation. Unless the Association determines, within 60 days after receipt of the application, that the reallocations are unreasonable, the Association and the appropriate Lot Owners shall prepare and record an amendment that identifies the Lots involved, shows the boundaries as altered, states the reallocations of interests, if applicable, and indicates the Association's consent. The applicants will pay for the costs of preparation of the amendment and its recording, as well as the reasonable consultant fees incurred by the Association if the Association deems it necessary to employ a consultant.

Section 5.3 Reallocation of Limited Common Elements. Subject to the provisions of this Declaration, a Limited Common Element may be reallocated between or among units after compliance with the procedure set forth in § 208(2) of the Act. Common Elements not previously allocated as Limited Common Elements, and Limited Common Elements that have not yet been assigned to Lots, may be so allocated only pursuant to this Declaration. The allocation(s) or assignment(s) must be made by amendment(s) to the Declaration specifying to which Lot or Lots the Limited Common Element is allocated or assigned. Such amendment shall be prepared, executed, and recorded by the Declarant or his successor during the Period of Declarant Control.

## ARTICLE VI MAINTENANCE OF THE COMMON INTEREST COMMUNITY

Section 6.1 Maintenance of Lots.

A. Each Owner shall be solely responsible for all maintenance and repair of his Lot, including all fixtures and improvements located therein or on, and is required to maintain the Lot and any improvements located thereon in a condition of good order and repair. No Owner shall unreasonably damage the value of other Lots by the shoddy upkeep of his Lot.

B. Utility or service connections, facilities, or other utility equipment and property located in, on, or upon a Lot used solely to supply a service or utility to such Lot shall be owned by the Lot Owner using such utility or service, and all expenses and liabilities for repair and maintenance shall be borne solely by the Lot Owner, who shall have a perpetual easement in and to that part of such other Lots containing such property for purposes of maintenance, repair, and inspection. With respect to water utilities, Lot Owners shall be responsible for the repair, replacement and maintenance of the water service lines from the point of the water meter to their residence.

C. No Owner shall construct any structure or improvements or make or suffer any structural or design change (including a color scheme change), either permanent or temporary and of any type or nature whatsoever to the exterior of his Lot or construct any addition or improvement to his Lot without first obtaining the prior written consent of the ARC pursuant to Article XVI.

Section 6.2 Owner's Failure to Maintain or Repair. In the event that a Lot and the Improvements thereon are not properly maintained and repaired by an Owner, or in the event that the improvements on the Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially repair, replace or reconstruct the same condition in which they existed prior to the damage or destruction, then the Association, after 30 days prior written notice to the Owner and with the approval of the Executive Board, shall have the right to enter the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article VIII.

Section 6.3 Maintenance by Association. The Association shall maintain and keep the Common Elements in good repair, and the cost of such maintenance shall be funded as provided in Article VIII. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, signage, irrigation system, and Improvements, if any, located in the Common Elements. This maintenance also includes maintenance, repair, snowplowing, dust control, weed control, and general supervision of the roads within the Common Interest Community.

Section 6.4 Maintenance Contract. The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

**ARTICLE VII  
INSURANCE**

Section 7.1 Coverage. To the extent reasonably available, the Association shall obtain and maintain

insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Association determines that any insurance described in this Article will not be maintained, the Association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and at their last known addresses. The Association shall obtain and maintain:

A. Property Insurance. Property insurance that will cover the Common Elements, any personal property owned by the Association, and the Improvements on the Common Interest Community for broad form covered causes of loss. The property insurance will be for an amount equal to 100 % of the actual cash value at the time the insurance is purchased and at each renewal date. The maximum deductible shall be one percent of the policy face amount.

B. Liability Insurance. The Association shall obtain and maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership of the Common Elements in an amount to be determined by the Association, but in no event shall it be less than \$1,000,000. The insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements and the activities of the Association.

Insurance policies required by this Section shall provide that: (a) the insurer waives the right to subrogation under the policy against an Owner; (b) an act or omission of an Owner will not void the policy or be a condition of recovery under the policy; (c) if at the time of loss, there is other insurance in the name of an Owner which covers the same risk, the Association's policy provides primary insurance; (d) losses must be adjusted with the Association; (e) insurance proceeds shall be paid to the Association, or its designated Trustee, to be held in trust for each Owner; and (f) the insurer may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association.

Section 7.2 Fidelity Insurance. A blanket fidelity bond may be provided at the option of the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of all others who handle or who are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond shall be obtained for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.

Section 7.3 Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate personal liability insurance shall be maintained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

Section 7.4 Other Insurance. The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 7.5 Insurance Obtained by Owners. Each Owner may obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot and improvements, personal property, and personal liability (except to the extent any such Lot is encumbered by an easement conveyed to the Association as Common Elements). In addition, an Owner may obtain such other and additional insurance coverage on the Lot as such Owner, in the Owner's sole discretion, shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Association, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Lot. No Owner shall obtain

separate insurance policies on the Common Elements. The Association may require an Owner who purchases insurance coverage for the Owner's Lot (other than coverage for the Owner's personal property) to file copies of such policies with the Association within 30 days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

Section 7.6 General Insurance Provisions. All insurance coverage obtained by the Association shall be governed by the following provisions:

A. As long as Declarant owns any Lots, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for with respect to such claims.

B. The deductible amount, if any, on any insurance policy purchased by the Association may be treated as a Common Expense payable from Annual Assessments or Special Assessments, or as an item to be paid from working capital reserves established by the Association; or alternatively, the Association may treat the expense as an assessment against an Owner whose Lot is specifically affected by the damage or whose negligence or willful act resulted in damage.

C. The insurance coverage described in this Article shall be considered minimum coverage and the Association shall be obligated to secure and maintain such other or additional coverage as may be required by law, including, without limitation, § 313 of the Act.

D. Except as otherwise provided by the Association pursuant to this Article, insurance premiums shall be a Common Expense to be paid by regular Assessments levied by the Association.

E. The named insured under any such policies shall include Declarant, until all the Lots have been conveyed, and the Association, as a trustee for the Owners and their Mortgagees, as their interests may appear, or the authorized representative of the Association who shall have exclusive authority to negotiate losses and receive payments under such policies.

F. In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees.

## **ARTICLE VIII ASSESSMENTS FOR COMMON EXPENSES**

Section 8.1 Obligation. Declarant, for each Lot owned by Declarant, hereby covenants, and each Owner, by accepting a deed for a Lot, is deemed to covenant to pay to the Association: (i) the Periodic Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance and management of the Common Elements and to perform the functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; and (iii) Default Assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

Section 8.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety, and welfare of the Owners and occupants of the Common Interest Community, and for the improvement and maintenance of the Common Elements, all as more fully set forth in this Declaration.

Section 8.3 Budget. Within 30 days after the adoption of any proposed budget for the Association, 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 the Owners to consider ratification of the budget not less than 14 or more than 60 days after mailing or other delivery of the summary. Unless at that meeting 67% of all Owners reject the budget, the

budget is 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.

Section 8.4 Periodic Assessments. Periodic Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to this Article. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance of the Common Elements, including, but not limited to, maintenance of parks and open space; maintenance of trails, picnic areas, and picnic facilities; maintenance and snow plowing of shared roads; expenses of management; taxes and special governmental assessments pertaining to the Common Elements and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds within the Common Elements; wages; common water and utility charges for the Common Elements; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance of the Common Elements on a periodic basis, as needed. Periodic Assessments shall be payable on a prorated basis each year in advance and shall be due on the first day of each year, or such other periods as the Executive Board may determine. The omission or failure of the Association to fix the Periodic Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Periodic Assessments in excess of the actual expenses incurred in any fiscal year.

Section 8.5 Apportionment of Periodic Assessments. Each Owner shall be responsible for his share of the Common Expenses in accordance with the Allocated Interests, subject to the provisions of this Article.

Section 8.6 Special Assessments. In addition to the Periodic Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, if permitted by applicable law, 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 or reconstruction, unexpected repair or replacement of improvements within the Common Elements, or for any other expense 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 expense, but shall be construed to prescribe the manner of assessing expenses authorized by other section of this Declaration and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Periodic Assessments, subject to the requirements that any extraordinary maintenance, repair, or restoration work on fewer than all of the Lots shall be borne by the Owners of those affected Lots only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the action of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than 30 days after such notice shall have been given.

Section 8.7 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.

Section 8.8 Effect of Nonpayment; Assessment Lien. Any assessment installment, whether pertaining to any Periodic, Special, or Default Assessment, which is not paid within 30 days of its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- B. Assess an interest charge from the date of delinquency at the yearly rate established by the Executive Board, not to exceed 21% per annum;
- C. Suspend the voting rights of the Owner during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

F. File a statement of lien with respect to the Lot and proceed with foreclosure as set forth in this subsection (F). Assessments chargeable to any Lot shall constitute a continuing lien on such Lot, including any improvement on the Lot. To evidence the lien created under this Section, the Association may, but is not required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued penalty on the indebtedness, (iv) the name of the Owner of the Lot, and (v) a description of the Lot. The notice shall be signed and acknowledged by the President or Vice President of the Association, the Association's attorney, or by the Manager, and the Association shall serve the notice upon the Owner by mail to the address of the Lot or to such other address as the Association may have in its files for such Owner. At least ten days after the Association mails the Owner such a notice, the Association may record the notice in the office of the Clerk and Recorder of La Plata County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. Thirty days following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under Colorado law. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on the Lot at a foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

The Association shall be entitled to costs and reasonable attorney fees in any action brought by the Association under this Section.

Section 8.9 Personal Obligation. The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of the Lot. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest, thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 8.10 Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Lot, except as provided below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Lot without prejudice to such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall be personal, and shall not terminate upon termination of such successor's fee simple interest in the Lot. In addition such successor shall be entitled to rely on the Statement of Status of Assessment Payment by or on behalf of the Association under this Article.

Section 8.11 Subordination of Lien. The lien of the Assessments provided for in this Declaration shall be subordinate to (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) liens for all sums unpaid for a first lien security interest on

a Lot recorded before the date on which the assessment sought to be enforced became delinquent, subject to the priority granted to the Association's lien under the Act. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. An Owner's transfer of any Lot shall not affect the Association's lien except that sale or transfer of any Lot pursuant to foreclosure of any first mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Lots as a Common Expense at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, any Assessments made after the sale or transfer.

Section 8.12 Notice to Mortgagees. The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for longer than 60 days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

Section 8.13 Statement of Status of Assessment Payment. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee, upon written request, delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished with 14 calendar days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request.

## **ARTICLE IX DAMAGE OR DESTRUCTION**

Section 9.1 Damage to or Destruction of Common Interest Community. The Association shall promptly repair or replace any portion of the Common Interest Community for which insurance is required according to this Declaration and the Act or for which insurance is carried by the Association (the "Association-Insured Property"), unless the Common Interest Community is terminated; repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or 67% of the Owners, including every Owner of a Lot or Limited Common Element that will not be rebuilt, vote not to rebuild. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 9.2 Funds for Repair and Reconstruction. Proceeds received by the Association from any hazard insurance carried by the Association shall be used to repair and reconstruct the Association-Insured Property. If said proceeds are insufficient to pay the estimated or actual cost of such repair or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Article VIII, but subject to applicable law, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or replacement.

Section 9.3 Replacement of Less than Entire Property. Any insurance proceeds attributable to a Lot or Limited Common Element that is not rebuilt must be distributed to the Owner of such Lot or to lien holders, as their interests may appear in the Records. The remainder of the proceeds shall be distributed to each Owner or lien holder,

as their interests may appear, in proportion to the Allocated Interests.

## **ARTICLE X CONDEMNATION**

Section 10.1 Rights of Owners. Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under thereof of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceeding incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 10.2 Partial Condemnation, Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for the Owners, and the award shall be disbursed in equal shares per Lot among the Owners, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

Section 10.3 Complete Condemnation. If all of the Common Interest Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 10.2 above.

## **ARTICLE XI MORTGAGEE'S RIGHTS**

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Lots. To the extent applicable, necessary, or proper, the provisions of this Article apply to this Declaration and also the Articles and Bylaws of the Association.

Section 11.1 Title Taken By Mortgagee. Any Mortgagee holding a First Mortgage of record against a Lot who obtains title to the Lot pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Lot is acquired or could have been acquired under Colorado law, whichever is earlier, provided, however, that the lien of the Association for unpaid assessments shall not have priority over a First Mortgage in the amount of more than six months of regular Common Expense assessments.

Section 11.2 Notice of Action. Any First Mortgagee, upon written request to the Association, will be entitled to timely written notice of

A. Any proposed amendment of the Association Documents effecting a change in the boundaries of any Lot; the interest in the Common Elements appurtenant to a Lot or the liability of Assessments related thereto; the number of votes in Association matters allocated to a Lot; or the purposes to which any Lot or Common Elements are restricted.

B. Any proposed termination of the Common Interest Community.

C. Any condemnation loss or any casualty loss that affects a material portion of the Common Interest Community or affects a Lot upon which a First Mortgage is held.

D. Any delinquency in the payment of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of 60 days.

Section 11.3 Action by Mortgagee. If this Declaration or any Association Documents require the

approval of Mortgagees to any action, then, if any Mortgagee fails to respond to any written request for such approval delivered by certified mail, return receipt requested, within 30 days after such Mortgage receives notice of the request, such Mortgagee shall be deemed to have approved such request.

Section 11.4 Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common area, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

## **ARTICLE XII ALLOCATED INTERESTS**

Section 12.1 Allocation of Interests. Interests have been allocated in accordance with the formulas set out in this Article. The same formulas are to be used in reallocating interests if Lots are added to the Common Interest Community.

Section 12.2 Formula for Allocation of Interests. The formula for calculating the Allocated Interests is based on a fraction the numerator of which is one (1) and the denominator of which is the number of Lots in the Common Interest Community. For Allocation purposes, Lots are created at the time of recordation of the Plat and Supplement Declaration identifying such Lots as described in Section 17.7 below. Nothing contained in this Section shall prohibit certain Common Expenses from being apportioned to particular Lots under any other Article of this Declaration.

Section 12.3 Allocation of Condominium/Multifamily Interests.

(a) In the event that condominium units or multi-family units are included within the Common Interest Community and made subject to the terms of this Declaration, each condominium unit and/or multifamily unit shall have one (1) voting membership in the Association. Multifamily units shall include townhomes, duplexes or other attached homes constructed on a Lot.

(b) Upon inclusion within the Common Interest Community, each condominium or multifamily unit shall be obligated to pay its proportionate Allocated Interest of the Common Expenses of the Association according to the formula set forth above. Each additional unit or SubAssociation, as the case may be, shall be responsible for payment of any applicable water tap fees pursuant to the Water Service Agreement.

## **ARTICLE XIII DURATION OF COVENANTS AND AMENDMENT**

Section 13.1 Term. The covenants, easements, and restrictions of this Declaration shall run with and bind the Property in perpetuity, subject to the termination provisions of the Act.

Section 13.2 Amendment. This Declaration, or any provision of it, may be amended at any time by an instrument signed by Owners holding no less than 67% of the votes and signed by Declarant (if the amendment is proposed during the Period of Declarant Control as described in Article IV). Any Amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association. The procedure for amendment must follow § 217 of the Act.

Section 13.3 Nonmaterial Amendments by Declarant. Declarant may amend, without the consent of the

Owners, the Declaration or the Plat to correct typographical, clerical, or technical errors and to comply with the standards, requirements, or guidelines of recognized secondary mortgage markets and similar agencies, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

Section 13.4 Termination. This Declaration shall not be revoked, nor shall the Common Interest Community be terminated, except as provided in Article X regarding total condemnation, without the consent of 67% of the Owners evidenced by a written instrument duly recorded. Termination of the Common Interest Community may be accomplished only in accordance with § 218 of the Act.

Section 13.5 Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

#### **ARTICLE XIV PROTECTIVE COVENANTS**

Section 14.1 Residential Use. All Lots shall be used for single-family purposes, except that a person who is a resident of a single family residence in the Homestead Trails common interest community may conduct business from such residence, provided that no employees or independent contractors of such business shall conduct any work at such residence and no customers, clients or other persons shall visit the residence for any commercial purposes. All land use and buildings upon a Lot will be in compliance with any applicable zoning and land use ordinances and regulations, including those of La Plata County and any other applicable governing agency or municipality. Only one single-family residence may be constructed on a Lot. Long-term rental of a single-family residence is permitted.

Section 14.2 Prohibited Structures. No used or second-hand structure, no building of a temporary character, mobile home, manufactured home (including modular homes), house trailer, tent, barn, shack, or outbuilding shall be placed or used on the Common Interest Community. Certain temporary structures which are necessary for construction and which have been approved, in advance, by the ARC, may be used during the period extending no later than (i) eighteen months after commencement of construction, or (ii) the date of substantial completion of said improvement, whichever is earlier. The type, placement, appearance, and maintenance of temporary (to the extent permitted) or permanent structures are subject to the approval of the ARC. No structure shall be constructed without prior approval from the ARC as set forth in Article XVI. **Notwithstanding the foregoing, it is permissible for a Lot within Phase 1 (and only within Phase 1) to contain a modular home or manufactured home as a permanent structure.** In addition, the Declarant, during the Declarant period of reserved rights, shall be permitted to use a trailer or other temporary structure for the purpose of sales and marketing and for subdivision administration purposes.

Section 14.3 Trash. No trash, ashes, or other refuse or debris may be allowed to accumulate or be placed on the Common Interest Community. With the exception of the Declarant's ability to burn debris and trees/shrubs as provided in Section 14.11, the burning of refuse outdoors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed, or used except as approved by the Executive Board. Waste materials, garbage, and trash shall be kept in sanitary containers, enclosed and screened from public view, protected from disturbance, and disposed of with reasonable promptness.

Section 14.4 Animals and Pets. Except for common household pets, no livestock, poultry, or exotic animals may be kept on the property unless with the permission of the Executive Board. No dog-runs shall be permitted, and all applicable leash laws strictly followed. There shall be no more than two cats or two dogs and no combination of cats and dogs greater than three in number. No pets shall be bred, or maintained for commercial purposes. No animals shall be allowed to run free, or to otherwise constitute a nuisance to any other Owners, and Owners shall "clean up" after their pet at all times and in all places within the Common Elements of the Common Interest Community. The Owner of any animal shall at all times be personally liable and responsible for all actions of

such animals and any damage caused by such animal.

Section 14.5 Noxious or Offensive Activity. No noxious or offensive activity shall be conducted in any Lot, nor shall anything be done or placed on a Lot or the Common Interest Community that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

Section 14.6 Maintenance of Lots and Outside Storage. Every Lot (including the improvements thereon) shall be kept and maintained by the Owner thereof in a clean, safe, and attractive condition and in good repair; and no lumber, grass, shrub or tree clippings, plant waste, metals, building materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate in or on any Lot.

Section 14.7 Annoying Lights, Sounds, or Odors. No lights shall be emitted from any Lot which are unreasonably bright or cause unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be emitted from any Lot which is noxious or unreasonably offensive to other Owners.

Section 14.8 Vehicles.

(a) Automobiles and other vehicles shall be parked in driveways or inside garages only. No trailers, tractors, construction equipment, motor homes, recreational vehicles (RVs), snowmobiles, all terrain vehicles, or boats shall be parked or stored or operated within the Common Interest Community, except inside a garage or shed or other designated area;

(b) No abandoned or inoperable motor vehicles shall be stored or parked anywhere in the Common Interest Community other than inside a garage. "Abandoned or inoperable" shall be defined as incapable of legal operation upon a public roadway or of being driven under its own power for a period of 30 days or longer.

(c) All motorcycles, trail bikes, all-terrain vehicles or other recreational type vehicles are to be operated only on established roads and streets within the Common Interested Community and shall be prohibited from all Common Areas, footpaths and walkways; and

(d) No major repairing or overhauling of any of the vehicles mentioned in this Section 14.8 shall be permitted on the streets, roadways, driveways or parking areas within the Common Interest Community.

Section 14.9. Signs. No sign of any kind will be displayed to the public view without the approval of the ARC except (i) such signs as may be used by the Declarant in connection with development of the Common Interest Community and the sale of homes or Lots; (ii) such signs of customary and reasonable dimensions as may be displayed on Lots advertising a Lot or home for sale or lease; (iii) signs in support of an ongoing political campaign so long such sign is displayed no earlier than 45 days before the day of an election and no later than seven days after an election day.

Section 14.10 Weed Control. Every Owner, regardless of whether his Lot is improved (i.e., whether the Lot is vacant or a residence is located thereon), shall take all action necessary to restrict the growth of and to remove noxious weeds and grasses as identified by La Plata County in accordance with all applicable local state, and federal requirements. The control of noxious weeds using chemical control methods shall be in accordance with U.S. EPA label restrictions and shall be applied by an individual experienced in chemical application and safety requirements. Weed control of Common Areas shall be the responsibility of the Association.

Section 14.11 Hazardous Activities. No activities shall be allowed or conducted on the property which are or might be unsafe or hazardous to any person or property, nor shall any inherently unsafe or hazardous materials be stored on the property. Without limiting the generality of this restriction, no firearms will be discharged within the Common Interest Community, and no open fires or incinerators will be lighted or permitted except in an contained barbecue for cooking purposes or patio fireplace or inside the home "EPA-approved" fireplace or "EPA-approved"

wood burning stove. Notwithstanding the foregoing, the Declarant shall be permitted to burn debris and trees and shrubs as necessary for maintenance and upkeep of the Common Interest Community.

Section 14.12 Conduct of Occupant. No immoral, improper, offensive or unlawful use may be made of the Common Interest Community. Lot Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Colorado and all ordinances, rules and regulations of the County of La Plata. The violating Lot Owner shall hold the Association and other Lot Owners harmless from all fines, penalties, costs and prosecutions for any violation or noncompliance.

Section 14.13 Mining, Oil and Gas Prohibited. The mining or quarrying of rocks, stones, gravel or earth and/or the drilling or conducting of operations relating to the development of oil, gas or other minerals (including sand and gravel) is prohibited in the Common Interest Community. No derrick or other equipment designed for use in boring for oil, natural gas or other minerals will be erected, maintained or permitted on any Lot.

Section 14.14 Antennae and Satellite Dishes. Satellite dishes shall be permitted; however, no satellite dish shall exceed 30 inches in diameter.

Section 14.15 No Partition. The Common Elements shall be owned by the Association, and no Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Elements.

Section 14.16 Appearance of Common Elements. Owners shall cooperate in maintaining the Common Elements in a clean, neat, orderly, and attractive manner. Any personal items belonging to an Owner found in the Common Elements may be confiscated by the Association, and if unclaimed in 10 days, disposed of. No landscaping of any portion of the Common Elements shall be permitted without the express consent of the Association.

Section 14.17 Drainage and Erosion Control. Each Owner will be responsible for the construction and maintenance of the handling and disposal of all surface water drainage and storm runoff from their Lot. No Owner shall do anything that shall impair or adversely affect the natural drainage on any Lot, any adjoining property or Common area. No improvements or structures on a Lot shall cause erosion, exacerbate existing erosion, or create a drainage pattern change where such actions shall be detrimental to any of the other Lots or Common Elements. All drainage and erosion control on and within a Lot shall be subject to the approval of the ARC.

Section 14.18 Completion of Construction. Any construction activity on any Lot shall be commenced within twelve months of written approval of plans and specifications by the Declarant (during the period of Declarant control) and/or the ARC in accordance with Article XVI. All construction activity shall be consistent with this Declaration. All construction commenced shall be fully completed within 24 months of the date of construction commencement.

Section 14.19 Landscaping. Within nine (9) months after issuance of a certificate of occupancy for the completion of a residence on a Lot, the Owner of such residence must complete the preliminary landscaping of the Lot, which shall include the minimum landscaping as required within the applicable ARC guidelines. The obligation to complete landscaping within the aforementioned 9 month period runs with the land and shall be an obligation on subsequent purchasers if the selling Owner has not completed the landscaping requirement.

Section 14.20 Further Subdivision. Lots shall not be further subdivided unless such further subdivision is approved by the Declarant.

Section 14.21 Utilities. All Utilities, including but not necessarily limited to, water, sewer, electrical, telephone, and cable T.V., but with the exception of gas, shall be underground and shall be constructed and installed consistent with this Declaration and ARC Guidelines. If the gas utility is propane, the propane tank(s) may be above-ground or buried, unless burial is precluded by applicable safety laws and regulations, and shall be in a location approved by the Declarant (during the Declarant Control Period) and the ARC. Utilities shall be installed within

easements designated for such purposes as shown on the Plat. Each Owner shall be responsible for the maintenance of the utility easement located within the Lot and no improvements, plantings or structures shall be placed on or within the easement so as to interfere with easement purposes. In the event an Owner builds within a utility easement, the Owner, at such Owner's cost, shall be responsible for removal of the structure in the event of the need for maintenance of drainage or maintenance and improvement to utilities within the easement by Declarant or the appropriate agency for such utilities.

Section 14.22 Walls/Fencing. All walls and/or fencing must be approved by the ARC and conform to the ARC Guidelines.

## **ARTICLE XV EASEMENTS AND LICENSES**

Section 15.1 Existing Easements. The Common Interest Community shall be subject to all easements shown on the Plat, those of record, those provided for in the Act, and as otherwise set forth in this Article.

Section 15.2 Owner's Easement Across Common Elements. Every Owner shall have an easement across the Common Elements, which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Declarant and/or the Association to dedicate or transfer all or part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer by the Association shall be effective unless an instrument signed by 67% of the Lot Owners agreeing to such dedication or transfer has been recorded in the Records.

Section 15.3 Reserved Easements. Declarant reserves easements on, over, and under the Common Interest Community to exercise his Development and Declarant Rights and for construction, maintenance, repair, replacement, and reconstruction of poles, wires, pipes, and conduits for lighting, heating, electricity, gas, telephone, water and sewer, drainage, and any other public or quasi-public utility service purposes, and for sewer and pipes of any kind.

Section 15.4 Encroachment Easements. An encroachment easement is reserved by the Declarant over all Lots, in the event that engineering or maintenance, such as the subdivision perimeter fencing, dictate the necessity for encroachment, provided that such encroachment will not significantly damage any Lot encroached upon.

Section 15.5 Infrastructure, Trail Easements. Declarant hereby reserves, as a blanket easement, the right to grant dedicate, reserve and otherwise create, at any time, other easements necessary for subdivision infrastructure improvements (including but not limited to, roads, drainage and utilities) or such other easements as may be required by the County, the Town of Bayfield or other governmental agency; and for pedestrian and/or bike trails on, across, over or under the Common Elements provided, however, that such easements do not unreasonably interfere with an Owner's use of a Lot.

## **ARTICLE XVI ARCHITECTURAL REVIEW**

Section 16.1 Architectural Review Committee. There is hereby established an Architectural Review Committee ("ARC"), which shall be responsible for the establishment and administration of Architectural and Design Guidelines ("Guidelines") to carry out the purposes and intent of this Declaration. The ARC will be composed of not less than three (3) persons nor more than five (5) persons. The ARC need not include any Member of the Association. All ARC members will be appointed, removed and replaced by Declarant, in its sole discretion, until all the Lots comprising the Property (including Lots within the Expansion Property) are sold, unless otherwise required by the Act, or until such earlier time as Declarant may give notice to the Association of its waiver of control over the ARC. After the period of Declarant's control of the ARC as set forth in this Section, the members of the ARC will be elected or removed by the Association in the same manner as officers of the Executive Board are

elected or removed.

A. The term of office of each member of the ARC will be two (2) years, and continuing until his successor shall have been appointed. Should an ARC member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided below.

B. So long as Declarant appoints the members of the ARC, Declarant will appoint the replacement. After the period of Declarant's control of the ARC, a member of the ARC shall be appointed by the Executive Board should an ARC member die, retire, or become incapacitated or temporarily absent. Otherwise, ARC members shall be elected by a majority vote of the members of the Association.

Section 16.2 General Authority of Architectural Review Committee. The ARC will review, study and either approve or reject proposed improvements and landscaping on the Property, in compliance with this Declaration and as further set forth in the Guidelines, as they may be amended from time to time. No improvement or landscaping will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the improvements shall have been approved by the ARC. Improvements that are completely within a dwelling structure may be undertaken without such approval.

Section 16.3 Submittal. In addition to any requirement of submitting improvement plans and specifications for approval to the appropriate division of the La Plata County government, the Owner of each Lot shall submit the plans and specifications for the construction, alteration, or addition of improvements thereon to the ARC, whose prior consent shall be required before any such improvements are commenced.

Section 16.4 Committee Discretion. The ARC will exercise its best judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the building site, height, grade and finished ground elevation, landscaping, and the schemes and aesthetic considerations set forth in the Guidelines and other Association Documents. The ARC, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. The approval by the ARC of improvements on the Property shall carry no precedential weight when reviewing subsequent requests for approvals, and the ARC shall not be required to approve requests for the same or similar improvements.

Section 16.5 Guidelines. The specific guidelines adopted by the ARC and which pertain to Homestead Trails are set forth in the Architectural Review Guidelines for Homestead Trails. The Guidelines shall set forth, among other things, standards for the construction and design of all structures and improvements to be located within the common interest community and landscaping. The ARC shall have the discretion to adopt different sets of standards for different phases within the subdivision; provided, however, that new standards shall not be applied retroactively. The ARC may amend, repeal and augment the Guidelines from time to time, in the ARC's sole discretion. The Guidelines will be binding on all Owners and other persons governed by this Declaration. Phase I lots shall be held to existing architectural and landscaping requirements (as set forth in the Original Declarations and First Amendment) and as shall be described more fully in the ARC Guidelines.

Section 16.6 Expenses. Except as provided in this Section below, all expenses of the ARC will be paid by the Association and will constitute a Common Expense. The ARC will have the right to charge a fee for each application submitted to it for review, in an amount that may be established by the ARC from time to time, and such fees will be collected by the ARC and remitted to the Association to help defray the expenses of the ARC operation. Further, the ARC may retain the services of a third party consultant to assist the ARC in reviewing a particular application. In such event, the ARC may charge the applicant for the professional fees incurred in retaining such consultant.

Section 16.7 Limitation of Liability. The ARC will use reasonable judgment in approving or disapproving plans and specifications submitted to it. Neither the ARC nor any individual ARC member will be liable to any person for any official act of the ARC in connection with submitted plans and specifications, except to the extent the ARC or any individual ARC member acted with malice or wrongful intent. Approval by the ARC does not necessarily assure approval by the appropriate governmental authority. Notwithstanding that the ARC has approved plans and specifications, neither the ARC nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability or improvements to a Lot. Neither the Executive Board, the ARC, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the ARC will be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the ARC's decisions. The Association, however, will not be obligated to indemnify each member of the ARC to the extent that any such member of the ARC is adjudged to be liable for malice or wrongful intent in the performance of his duty as a member of the ARC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 16.8 Enforcement. Any member or authorized consultant of the ARC, or any authorized officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Lot to determine whether the improvements have been or are being built in compliance with the Association Documents and the plans and specifications approved by the ARC.

Every violation of these covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member will be applicable. Without limiting the generality of the foregoing, these covenants may be enforced as provided below:

A. The ARC may adopt a schedule of fines for failure to abide by the ARC rules and the Guidelines, including fines for failure to obtain any required approval from the ARC.

B. The Association, upon request of the ARC and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove, correct or complete any improvement constructed, reconstructed, refinished, altered or maintained in violation of these covenants. The Owner of the improvement will immediately reimburse the Association for all expenses incurred in connection with such removal, correction or completion. If the Owner fails to reimburse the Association within thirty days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the default rate from the date of the advance by the Association through the date of reimbursement in full, and all such sums and interest will be a Default Assessment enforceable as provided in this Declaration.

C. All improvements commenced on the Property will be prosecuted diligently to completion and will be completed within one (1) year after commencement, unless an exception is granted in writing by the ARC. If an improvement is commenced and construction is then abandoned for more than ninety days, or if construction is not completed within the required one year period, then after notice and opportunity for hearing as provided in the Bylaws, the Association may impose a fine per day of such reasonable amount as the Association may set to be charged against the Owner of the Lot until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Executive Board that such abandonment is for circumstances beyond the Owner's control. Such charges will be a Default Assessment and lien as provided in this Declaration.

Section 16.9 Binding Effect. The actions of the ARC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it or with respect to any other matter before it, will be conclusive and binding on all interested parties.

**ARTICLE XVII**  
**DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

Section 17.1 Reservation of Development Rights. The Declarant reserves the following Development Rights for a period of 30 years from the date of recordation of this Declaration:

A. The right to create and subject additional phases identified within the “Expansion Property” to the provisions of this Declaration as set forth in Section 17.7 below.

B. The right to add other unspecified real estate to the Common Interest Community in accordance with § 222 of the Act.

C. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across any portion of the Common Interest Community for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Common Interest Community.

D. The right to withdraw and grant easements and licenses to public utility companies and to convey Improvements within those easements anywhere in the Common Interest Community not occupied by buildings, for the purposes mentioned above.

E. The rights to create from the Expansion Property, Lots, Common Elements and Limited Common Elements; and the right to subdivide Lots; to convert Lots to General Common Elements; and to withdraw property (excluding property which comprises a General Common Element) from the Common Interest Community.

F. The right to create and subject the Property described herein (and the Expansion Property) to the terms and conditions of a Master Declaration and governance by a Master Association by filing a Master Declaration in the real property records of La Plata County; provided, however, that the Master Association shall not contain unduly burdensome conditions or restrictions on individual lot owners.

G. The right to enter into agreements with the Town of Bayfield, the County, and any other third parties, for the purpose of planning and fully developing Homestead Trails, including the negotiation and execution of Development Agreements, Service Agreements, Annexation Agreements with the Town of Bayfield or any other agreement with a governmental body which would facilitate the provision of services, roads and utilities to the Lots and which would, among other things, create conditions or restrictions on density, air quality, and overall residential development.

H. The right to allow subdivision of parcels and to include and subject condominium or other multi-family development and ownership to the terms and conditions of this Declaration and to permit the formation of sub-associations to the extent necessary, for the governance of multi-family buildings and their common elements.

Section 17.2 Limitations on Development Rights. The Development Rights reserved in this Article are limited as follows:

A. the Development Rights may be exercised at any time, but not more than thirty years after the recording of this Declaration; and,

B. the quality of construction of any Common Elements and Improvements to be created within the Common Interest Community under the Development Rights shall be consistent with, or better than, the quality of those constructed pursuant to this Declaration as initially recorded.

Section 17.3 Exercise of Development Rights. No assurances are made by the Declarant as to whether the Declarant will exercise its Development Rights or the order in which such Development Rights will be developed.

The exercise of Development Rights as to some portions of the Common Interest Community will not obligate the Declarant to exercise them as to other portions.

Section 17.4 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- A. to complete Improvements indicated on the Plat and any future plats pertaining to the Expansion Property;
- B. to exercise a Development Right reserved in the Declaration;
- C. to maintain sales offices and management offices with a neat and clean appearance, including landscaping, and signs advertising the Common Interest Community and models;
- D. to use easements through the Common Elements and Lots for the purpose of making Improvements within the Common Interest Community;
- E. to appoint or remove a director of the Association or an Association member during the Period of Declarant Control, subject to the provisions of Article IV of this Declaration.

Section 17.5 Construction; Declarant's Easement. The Declarant reserves the right to perform warranty work, repairs and construction work in Lots and Common Elements, to store materials in a screened and safe manner, and to control and have the right of access to work and repairs until completion. All work may be performed by the Declarant without the consent or approval of the Association. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility and drainage easements to the County of La Plata or the State of Colorado.

Section 17.6 Interference with Special Declarant Rights. Neither the Association nor any Lot Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

Section 17.7 Reserved Development Rights of Expansion. Declarant reserves the right for itself and any successor Declarant at any time and from time to time to subject additional phases of the Expansion Property to the provisions of this Declaration and, in connection therewith, to expand the Common Elements. The Expansion Property means the real property described on Exhibit "B" attached hereto which Declarant may submit to the terms of this Declaration by one or more Supplemental Declarations.

A. Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the La Plata County Clerk and Recorder one or more Supplemental Declarations and Supplemental Plats setting forth the Lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages or phases by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion, determines. Declarant, however, shall not be obligated to expand the Common Interest Community beyond the number of Lots initially submitted to this Declaration.

B. Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Lot" shall mean the Lots as shown on the Plat plus any additional Lots added by any Supplemental Declarations and Supplemental Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Property as expanded. Likewise, the term "Plat"

shall refer to the Plat referencing the Property described in Exhibit A as well as the Plats recorded for any Expansion Property

C. Declaration Operative on Expansion Property. Lots added by way of Supplemental Declarations and Plats shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations, upon recording the Supplemental Plat(s) depicting the Expansion Property and Supplemental Declaration(s) with the La Plata County Clerk and Recorder. The rights of Declarant and any successor Declarant, as described herein, shall apply to all Lots and real property added to this Declaration in accordance with these provisions relating to enlargement thereof. No rights or obligations of any character of any owner in the Lots in the Expansion Property shall attach until a Supplemental Declaration and Supplemental Plat are filed with the Clerk and Recorder annexing the Lots constructed in such area to Homestead Trails planned community.

D. Effect of Expansion. Upon the inclusion of the additional Lots under this Declaration and the filing of the Supplemental Declaration(s) and Supplemental Plat(s) thereof, the Allocated Interests applicable to a Lot shall be as set forth above in Article XII. Notwithstanding any inclusion of additional Lots under this Declaration, each Owner (regardless of whether such Owner is the owner of a Lot shown on the original Plat or is the owner of a Lot created within the Expansion Property and included by a Supplemental Declaration and Plat) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Area, roads and other new Common Element costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Lot prior to such recording.

## **ARTICLE XVIII WATER SYSTEM**

Section 18.1 Water Distribution System. Subject to an Owner's payment of a tap fee and applicable assessments and charges, domestic water shall be provided to Lots from the Water System. Declarant has conveyed the Water System, and its distribution lines, and related facilities to Homestead Water Company, LLC ("HWC"). Operation and the provision of domestic water to Lot Owners shall be made by and shall be the responsibility of HWC pursuant to the terms and conditions of a Water Service Agreement. The Declarant shall cause the Water System to be conveyed from HWC to the Association no earlier than the date of the termination of the Period of Declarant Control or the date upon which Declarant has obtained and recorded the final plat which provides for the inclusion of the Lots identified for inclusion within the Common Interest Community. Following such conveyance, the Association shall own the Water System and be responsible for the operation, maintenance, repair and replacement of the Water System.

Section 18.2 Individual Wells. No individual wells of any nature shall be permitted to be drilled and operated on the Property.

Section 18.3 Irrigation Water. Ownership of a Lot excludes any and all reservoir and reservoir storage rights, water and water rights, ditch and ditch rights and spring and spring rights, groundwater and groundwater rights, all of which were originally owned by Declarant and which have now been conveyed to HWC. Irrigation rights held by HWC include shares in the Pine River Irrigation District and Thompson-Epperson Ditch Company as recorded in the office of the clerk and recorder for La Plata County (the "Irrigation Water"). Subject to an Owner's payment of a fee and applicable assessments and charges, Irrigation Water shall be provided to individual Lot Owners pursuant to the terms and conditions of a Water Service Agreement. The Declarant shall cause HWC to convey all of its right title and interest in and to the Irrigation Water and shall transfer such shares to the Association no earlier than the date of the termination of the Period of Declarant Control or the date upon which Declarant has obtained and recorded the final plat which provides for the inclusion of the Lots identified therein within the Common Interest Community. Thereafter, the Association shall be the owner of, and shall be responsible for, the provision of Irrigation Water to the Lot Owners according to the terms of the Service Water Agreement.

Section 18.4 Restrictions and Regulations. Water rationing or other limitations or restrictions on the use of

water may be imposed on Lot Owners in times of water shortage, when necessary for maintenance or repair to the system, by reason of acts of God causing disruptions to the system or for other good causes. Specific rules and regulations pertaining to the Water System are set forth in the Water Service Agreement and/or Rules and Regulations of Homestead Trails Water System. These Rules and Regulations shall be binding on all Owners and other persons governed by this Declaration.

## **ARTICLE XIX GENERAL PROVISIONS**

Section 19.1 Enforcement. Except as otherwise provided in this Declaration, the Executive Board, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Executive Board of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. All reasonable attorney's fees and costs incurred by the Declarant or the Association in a suit to enforce the terms hereof shall, if the Declarant or the Association prevails in such action, be recoverable from the losing party.

Section 19.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 19.3 Conflicts. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and Bylaws, the Articles shall control. The Documents are intended to comply with the requirement of the Act. If there is any conflict between the Documents and the provisions of the Act, the provisions of the Act shall control. In the case of a conflict between this Declaration and any governmental or municipal restrictions, including any restrictions that may arise as between the Declarant and the Town of Bayfield or La Plata County, the governmental or municipal restriction shall govern.

Section 19.4 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its officers, directors, agents or employees in connection with any portion of the Property, or any Improvement thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant. **ANY AND ALL WARRANTIES WITH RESPECT TO ANY PORTION OF THE PROJECT, AND ANY IMPROVEMENTS THEREON, EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OR MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY SPECIFICALLY DISCLAIMED.**

Section 19.5 Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

Section 19.6 Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

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[Signature Page for Declaration of Homestead Trails]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 26th day of April, 2006.

The Homestead At Bayfield, LLC:

By: /s/ Grant Richards  
Grant Richards, Manager

STATE OF COLORADO            )  
  ) ss.  
County of La Plata            )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2006, by Grant Richards, Manager of The Homestead At Bayfield, LLC.

Witness my hand and official seal.  
My commission expires: 10/22/07

/s/ Lori R. Smith  
Notary Public

**EXHIBIT A**  
To The Amended and Restated  
Declarations of Covenants Conditions and Restrictions of  
Homestead Trails

(LEGAL DESCRIPTION OF THE PROPERTY)

The complete legal description shall be inclusive of all of the following real property referenced by and within the plat descriptions identified below:

1. Homestead At Bayfield according to the recorded plat thereof filed for record on January 26, 2004 at Reception No. 877398 in the office of the Clerk and Recorder of La Plata County.
2. Homestead At Bayfield according to the recorded plat thereof filed for record on November 8, 2005 at Reception No. 922097 in the office of the Clerk and Recorder of La Plata County.

**EXHIBIT B**  
To The Amended and Restated  
Declarations of Covenants Conditions and Restrictions of  
Homestead Trails

(LEGAL DESCRIPTION OF THE EXPANSION PROPERTY)

**PARCEL I:**

**LOTS 5, 9 AND 39, THE HOMESTEAD AT BAYFIELD ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD JANUARY 26, 2004 UNDER RECEPTION NO. 877398, COUNTY OF LA PLATA, STATE OF COLORADO.**

**PARCEL II:**

**A TRACT OF LAND LYING AND BEING IN THE SW1/4SE1/4 OF SECTION 10, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT, BEING A POINT ON THE SOUTH BOUNDARY LINE OF THE SW1/4SE1/4 OF SECTION 10, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., WHENCE THE SOUTHEAST CORNER OF SAID SW1/4SE1/4 OF SECTION 10, BEARS SOUTH 88 DEGREES 45 MINUTES EAST, 910 FEET;  
THENCE RUNNING NORTH TO THE NORTHWEST CORNER BEING A POINT ON THE SOUTH BOUNDARY LINE OF THE RIGHT OF WAY OF THE DURANGO-BAYFIELD ROAD;  
THENCE RUNNING NORTHEASTERLY, FOLLOWING THE SOUTH BOUNDARY LINE OF THE RIGHT OF WAY OF SAID DURANGO-BAYFIELD ROAD, TO THE NORTHEAST CORNER, BEING A POINT ON THE WEST BOUNDARY LINE OF THE RIGHT OF WAY OF THE KING CONSOLIDATED DITCH;  
THENCE RUNNING SOUTHERLY FOLLOWING THE WEST BOUNDARY LINE OF THE RIGHT OF WAY OF SAID KING CONSOLIDATED DITCH, TO THE SOUTHEAST CORNER, BEING A POINT ON THE SOUTH BOUNDARY OF SAID SW1/4SE1/4 SECTION 10;  
THENCE RUNNING NORTH 88 DEGREES 45 MINUTES WEST, FOLLOWING THE SOUTH BOUNDARY LINE OF SAID SW1/4SE1/4 SECTION 10 TO THE SOUTHWEST CORNER, THE POINT OF BEGINNING.**

**AND**

**ALL THAT PART OF THE W1/2NE1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., BOUNDED AND DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHEAST CORNER OF THE NW1/4NE1/4 OF SAID SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M.;  
THENCE RUNNING NORTH 88 DEGREES 45 MINUTES WEST, ALONG THE NORTH LINE OF SAID NW1/4NE1/4 OF SECTION 15, 910 FEET;  
THENCE RUNNING SOUTH 340 FEET;  
THENCE RUNNING SOUTH 24 DEGREES 18 MINUTES WEST, 996 FEET, MORE OR LESS, TO THE WEST BOUNDARY LINE OF SAID W1/2NE1/4 SECTION 15;  
THENCE RUNNING SOUTH ALONG THE WEST LINE OF SAID W1/2NE1/4 SECTION 15, 1308 FEET, MORE OR LESS, TO A POINT ON SAID WEST LINE OF SAID W1/2NE1/4 SECTION 15, AFORESAID, 122 FEET NORTH OF THE SOUTHWEST CORNER OF THE SW1/4NE1/4 OF SAID SECTION 15, AFORESAID;  
THENCE RUNNING EAST 1320 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID SW1/4NE1/4 AFORESAID 122 FEET NORTH OF THE SOUTHEAST CORNER OF SAID SW1/4NE1/4 AFORESAID;  
THENCE RUNNING NORTH ALONG THE EAST LINE OF THE W1/2NE1/4 AFORESAID 2518 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.**

**LESS AND EXCEPT FROM ABOVE DESCRIBED TRACTS:**

**A TRACT OF LAND LYING AND BEING IN THE SW1/4SE1/4 OF SECTION 10 AND THE NW1/4NE1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT WHENCE THE S1/2 CORNER OF SAID SECTION 10 BEARS NORTH 86 DEGREES 18 MINUTES 46 SECONDS WEST, 720.83 FEET;  
THENCE NORTH 02 DEGREES 44 MINUTES 25 SECONDS EAST, 382.38 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF U. S. HIGHWAY NO. 160-B;  
THENCE NORTH 67 DEGREES 57 MINUTES 30 SECONDS EAST, 451.67 FEET SAID SOUTHERLY RIGHT OF WAY LINE TO THE WESTERLY RIGHT OF WAY LINE OF THE KING CONSOLIDATED DITCH;  
THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES:  
SOUTH 20 DEGREES 57 MINUTES 22 SECONDS WEST, 139.81 FEET;  
SOUTH 43 DEGREES 14 MINUTES WEST, 183.54 FEET;  
SOUTH 08 DEGREES 21 MINUTES 30 SECONDS WEST, 130.77 FEET;  
SOUTH 00 DEGREES 43 MINUTES EAST, 140.02 FEET;  
SOUTH 32 DEGREES 45 MINUTES 01 SECONDS EAST, 64 FEET;  
THENCE LEAVING SAID RIGHT OF WAY NORTH 82 DEGREES 37 MINUTES 28 SECONDS WEST, 280.90 FEET TO THE POINT BEGINNING.**

**PARCEL III:**

**A TRACT OF LAND IN THE E1/2NW1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT FROM WHENCE THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M. (A 1/4" IRON PIPE) BEARS NORTH 71 DEGREES 15 MINUTES 21 SECONDS WEST, 1418.74 FEET;  
THENCE NORTH 78 DEGREES 54 MINUTES 50 SECONDS EAST, 215.18 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160;  
THENCE NORTH 77 DEGREES 35 MINUTES 15 SECONDS EAST, 176.76 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160;  
THENCE NORTH 75 DEGREES 25 MINUTES 00 SECONDS EAST, 119.39 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF U. S. HIGHWAY 160;  
THENCE SOUTH 10 DEGREES 52 MINUTES 50 SECONDS EAST, 270.06 FEET TO AN IRON PIN; THENCE SOUTH 82 DEGREES 24 MINUTES 35 SECONDS WEST, 558.72 FEET TO AN IRON PIN;  
THENCE NORTH 00 DEGREES 52 MINUTES 35 SECONDS EAST, 229.61 FEET TO AN IRON PIN, ALSO BEING THE POINT OF BEGINNING.**

**PARCEL IV:**

**THE NORTHERLY 35 ACRES OF THE FOLLOWING DESCRIBED PROPERTY:**

**A TRACT OF LAND LOCATED WITHIN THE E1/2NW1/4 AND THE W1/2NE1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., COUNTY OF LA PLATA, STATE OF**

**COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160 FROM WHICH THE NORTH 1/4 CORNER OF SAID SECTION 15, A 2" ALUMINUM CAP BY L.S. 12027 BEARS NORTH 80 DEGREES 56 MINUTES 36 SECONDS EAST, 172.64 FEET; THENCE SOUTH 29 DEGREES 50 MINUTES 00 SECONDS EAST, 689.23 FEET ALONG THE WESTERLY BOUNDARY LINE OF LOT A, PROJECT 80-15 ACCORDING TO THE PLAT THEREOF FILED UNDER RECEPTION NO. 441094 TO A POINT ON THE CENTERLINE OF KING IRRIGATION DITCH; THENCE NORTH 33 DEGREES 24 MINUTES 54 SECONDS EAST, 75.66 FEET ALONG THE CENTERLINE OF THE KING IRRIGATION DITCH; THENCE NORTH 43 DEGREES 02 MINUTES 06 SECONDS EAST, 282.96 FEET ALONG THE CENTERLINE OF THE KING IRRIGATION DITCH; THENCE SOUTH 24 DEGREES 18 MINUTES 00 SECONDS WEST, 986.85 FEET TO A POINT ON THE EAST LINE OF THE E1/2NW1/4 OF SECTION 15; THENCE NORTH 00 DEGREES 02 MINUTES 54 SECONDS WEST, 12.59 FEET ALONG THE EAST LINE OF THE E1/2NW1/4 OF SECTION 15; THENCE NORTH 89 DEGREES 58 MINUTES 29 SECONDS WEST, 1338.25 FEET ALONG THE NORTH BOUNDARY LINE OF TRACT DESCRIBED IN DEED FROM PETER D. ROWLAND TO ECHO BASIN LLC UNDER RECEPTION NO. 755627 TO THE EAST LINE OF LA PLATA COUNTY PROJECT NO. 84-101; THENCE NORTH 00 DEGREES 33 MINUTES 33 SECONDS EAST, 652.85 FEET ALONG THE EAST LINE OF LA PLATA COUNTY PROJECT NO. 84-101; THENCE NORTH 79 DEGREES 05 MINUTES 02 SECONDS EAST, 558.72 FEET; THENCE NORTH 11 DEGREES 21 MINUTES 08 SECONDS WEST, 270.06 FEET TO THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160; THENCE NORTH 73 DEGREES 59 MINUTES 33 SECONDS EAST, 691.71 FEET TO THE POINT OF BEGINNING.**

**AND**

**THE SOUTH 40 ACRES OF ALL THAT PORTION OF LOT 2 AND E1/2NW1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., LYING SOUTHERLY OF U.S. HIGHWAY 160 AND EAST OF TRACT B, EXEMPTION PLAT - PROJECT NO. 84-101 AS PER PLAT FILED JUNE 6, 1984 UNDER RECEPTION NO. 500566.**

**LESS AND EXCEPT, THAT PORTION, IF ANY, CONTAINED WITHIN THE FOLLOWING DESCRIBED PARCEL:**

**A TRACT OF LAND IN THE E1/2NW1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT FROM WHENCE THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M. (A 1/4" IRON PIPE) BEARS NORTH 71 DEGREES 15 MINUTES 21 SECONDS WEST, 1418.74 FEET; THENCE NORTH 78 DEGREES 54 MINUTES 50 SECONDS EAST, 215.18 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160; THENCE NORTH 77 DEGREES 35 MINUTES 15 SECONDS EAST, 176.76 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160; THENCE NORTH 75 DEGREES 25 MINUTES 00 SECONDS EAST, 119.39 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160; THENCE SOUTH 10 DEGREES 52 MINUTES 50 SECONDS EAST, 270.06 FEET TO AN IRON**

**PIN;**

**THENCE SOUTH 82 DEGREES 24 MINUTES 35 SECONDS WEST, 558.72 FEET TO AN IRON PIN;**

**THENCE NORTH 00 DEGREES 52 MINUTES 35 SECONDS EAST, 229.61 FEET TO AN IRON PIN, ALSO BEING THE POINT OF BEGINNING.**

**PARCEL V:**

**A TRACT OF LAND LOCATED WITHIN THE E1/2NW1/4 AND THE W1/2NE1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., COUNTY OF LA PLATA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160 FROM WHICH THE NORTH 1/4 CORNER OF SECTION 15, A 2" ALUMINUM CAP BY L.S. 12027 BEARS NORTH 80 DEGREES 56 MINUTES 36 SECONDS EAST, 172.64 FEET;  
THENCE SOUTH 29 DEGREES 50 MINUTES 00 SECONDS EAST, 689.23 FEET ALONG THE WESTERLY BOUNDARY LINE OF LOT A, PROJECT 80-15 ACCORDING TO THE PLAT THEREOF FILED UNDER RECEPTION NO. 441094 TO A POINT ON THE CENTERLINE OF KING IRRIGATION DITCH;  
THENCE NORTH 33 DEGREES 24 MINUTES 54 SECONDS EAST, 75.66 FEET ALONG THE CENTERLINE OF KING IRRIGATION DITCH;  
THENCE NORTH 43 DEGREES 02 MINUTES 06 SECONDS EAST, 282.96 FEET ALONG THE CENTERLINE OF KING IRRIGATION DITCH;  
THENCE SOUTH 24 DEGREES 18 MINUTES 00 SECONDS WEST, 986.85 FEET TO A POINT ON THE EAST LINE OF THE E1/2NW1/4 OF SECTION 15;  
THENCE NORTH 00 DEGREES 02 MINUTES 54 SECONDS WEST, 12.59 FEET ALONG THE EAST LINE OF THE E1/2NW1/4 OF SECTION 15;  
THENCE NORTH 89 DEGREES 58 MINUTES 29 SECONDS WEST, 1338.25 FEET ALONG THE NORTH BOUNDARY LINE OF TRACT DESCRIBED IN DEED FROM PETER D. ROWLAND TO ECHO BASIN LLC UNDER RECEPTION NO. 755627 TO THE EAST LINE OF LA PLATA COUNTY PROJECT NO. 84-101;  
THENCE NORTH 00 DEGREES 33 MINUTES 33 SECONDS EAST, 652.85 FEET ALONG THE EAST LINE OF LA PLATA COUNTY PROJECT NO. 84-101;  
THENCE NORTH 79 DEGREES 05 MINUTES 02 SECONDS EAST, 558.72 FEET;  
THENCE NORTH 11 DEGREES 21 MINUTES 08 SECONDS WEST, 270.06 FEET TO THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 160;  
THENCE NORTH 73 DEGREES 59 MINUTES 33 SECONDS EAST, 691.71 FEET TO THE POINT OF BEGINNING.**

**AND**

**THE SOUTH 40 ACRES OF ALL THAT PORTION OF LOT 2 AND E1/2NW1/4 OF SECTION 15, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M., LYING SOUTHERLY OF U.S. HIGHWAY 160 AND EAST OF TRACT B, EXEMPTION PLAT - PROJECT NO. 84-101 AS PER PLAT FILED JUNE 6, 1984 UNDER RECEPTION NO. 500566.**

**LESS AND EXCEPT THE NORTHERLY 35 ACRES THEREOF.**

**PARCEL VI:**

**LOTS 2 AND 3, SECTION 5U, TOWNSHIP 34 NORTH, RANGE 7 WEST, N.M.P.M, COUNTY OF LA PLATA, STATE OF COLORADO.**

**LESS and EXCEPT:**

A tract of land located in the SW/4SE/4 of Section 10 and in the NW/4NE/4 of Section 15 all in Township 34 North, Range 7 West of the New Mexico Principal Meridian, County of La Plata, State of Colorado being more particularly described as follows:

*Commencing* at the northeast corner of said NW/NE/4 of Section 10, whence the southeast corner of said NW/4NE/4 bears S00°01'42"W a distance of 1167.08 feet, *thence* N88°16'46"W along the northerly line of said NW/4NE/4 a distance of 371.95 feet, *thence* S32°08'02"E, a distance of 64.69 feet to the centerline of the King Consolidated Ditch and the *Point of Beginning*.

*Thence* along said centerline of ditch the following seven (7) courses:

- 1) S58°57'18"E, a distance of 102.50 feet;
- 2) S05°25'06"E, a distance of 50.65 feet;
- 3) S47°41'35"W, a distance of 76.63 feet;
- 4) N81°34'59"W, a distance of 204.64 feet;
- 5) S76°34'20"W, a distance of 64.04 feet;
- 6) S59°32'46"W, a distance of 179.71 feet;
- 7) S79°30'55"W, a distance of 209.80 feet;

*Thence* N00°02'56"E along the easterly line of Lot A, Category 1, Project No. 80-15, a distance of 556.76 feet to the southerly right-of-way of U.S. Highway 160B;

*Thence* N67°42'52"E along said right-of-way, a distance of 357.31 feet;

*Thence* S02°51'13"W along the westerly line of the exception tract described in a Warranty Deed recorded in the Office of the La Plata County Clerk and Recorder under Reception Number 857756 Tract II, a distance of 387.05 feet;

*Thence* S82°29'49"E, a distance of 280.59 feet to the *Point of Beginning*.

Said tract contains 5.50 acres, more or less.

**ALSO LESS and EXCEPT:**

All of the real property (described in Exhibit A of the Amended Declaration of Covenants, Conditions, Restrictions and Easements) referenced by and within the following plat descriptions of Phases I and II as set forth below:

1. All of the real property included within the Homestead At Bay field according to the recorded plat thereof filed for record on January 26, 2004 at Reception No. 877398 in the office of the Clerk and Recorder of La Plata County.

and

2. All of the real property included within the Homestead At Bay field according to the recorded plat thereof filed for record on November 8, 2005 at Reception No. 922097 in the office of the Clerk and Recorder of La Plata County.

