

NOTICE TO CLOSING AGENTS: THIS IS A FEE-ASSESSED SUBDIVISION. CHECK WITH THE HOMEOWNERS ASSOCIATION FOR FEE SCHEDULE.

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
HARBOR WALK AT WATER VALLEY
(a Common Interest Community)**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for Harbor Walk at Water Valley is made and entered into this 6 day of MARCH, 2009, by the Harbor Walk Home Owners Association, a Colorado non-profit corporation (the "Association"), and is approved and adopted by the requisite affirmative vote of Lot Owners and Eligible Mortgagees as certified below.

RECITALS

A. The Declaration of Covenants, Conditions and Restrictions for Harbor Walk at Water Valley was recorded on April 26, 2002 at Reception No. 2946110 of the Weld County, Colorado records (the "Declaration").

B. The initial Declarant, Westgold Holdings, Inc., is or was the owner of that certain real property located in the County of Weld, State of Colorado legally described on Exhibit A hereof ("the Real Estate"). The Real Estate is part of Water Valley, a Large Planned Community for which a Master Declaration of Covenants, Conditions and Restrictions ("the Master Declaration") has been filed. The Real Property shall be subject to the Master Declaration and to the planning and other regulations of the City of Windsor, Colorado, in addition to this Declaration.

C. Declarant created a Common Interest Community ("the Community") on the Real Estate, pursuant to the Colorado Common Interest Ownership Act, Section 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time ("the Act"). Portions of the Real Estate will be designated for separate ownership, and the remainder will be owned by an association of lot owners.

D. The Real Estate will contain a maximum of 45 Lots.

E. Each Lot shall be subject to numerous easements for the benefit of Declarant, neighboring Owners, and the Association, as set forth in this Declaration, particularly in Article VII hereof.

F. Certain of the Lots are adjacent to Pelican Lake. The beach for Pelican Lake lies outside the Real Estate, and owners of other properties in Water Valley have a right of access to, and the use of, such beach.

G. Declarant has incorporated the Association as a Colorado non-profit corporation. The Association shall have the rights and powers set forth herein. The Association was formerly known as "Harbor Walk at Water Valley Homeowners Association," but is now known as the

Harbor Walk Home Owners Association.

H. The Real Estate constitutes a portion of the Water Valley Large Planned Community.

1. A **raw water tap fee** must be paid for each Lot within the Real Estate at the time a building permit is issued for such Lot.

2. The Association for Harbor Walk will receive, and must pay, an **annual billing for raw irrigation water** used within Harbor Walk and provided through the Water Valley Master Association. The cost of such raw irrigation water will therefore become a Common Expense for which all Owners within Harbor Walk will be liable. Such raw irrigation water fee is based upon the number of platted Lots and is applicable whether or not such Lots are developed. Such fee is in addition to the raw water tap fee for each Lot.

3. Expenses due to the Water Valley Master Association include an **annual assessment**, approved by the Board of Directors for Water Valley Master Association, which include, but are not limited to, maintenance services provided by the Water Valley Master Association.

I. The Harbor Walk Home Owners Association has responsibility for maintenance of Common Elements, as approved by the Board of Directors. Each Lot is subject to an **Assessment** to cover the costs of providing the services to the Common Interest Community.

J. The Association desires to amend and restate the Declaration on the following terms and conditions to promote and protect the health, safety and welfare of the Lot Owners, and to preserve, protect and enhance the values and amenities of the property within the Common Interest Community.

K. The Declaration requires the vote or agreement of Lot Owners of at least sixty-seven percent (67%) of the votes in the Association to amend the Declaration to change the uses to which any Lot is restricted.

L. The Association has obtained the requisite approval and consent of the Lot Owners and Eligible Mortgagees as indicated below.

ARTICLE I. SUBMISSION OF REAL ESTATE

Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

ARTICLE II. DEFINITIONS

Section 1: "Architectural Control Committee" shall mean and refer to the committee established to review and approve plans for the construction of improvements on Lots as set forth in Article IX of this Declaration.

Section 2: "Association" shall mean and refer to the Harbor Walk Home Owners Association, a Colorado non-profit corporation.

Section 3: "By-laws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

Section 4: "Common Elements" shall mean and refer to any real estate, personal property, easements, and other property rights within the Common Interest Community owned or leased by the Association, other than a Lot. This also includes the fence along Water Valley Parkway, the streets, street lights and signs, and the two EntryWays to the Community.

Section 5: "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Lot pursuant to this Declaration.

Section 6: "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. Such Common Expenses may include expenses relative to certain services provided by or through the Association and benefiting only certain Lots, which benefited Lots shall be solely allocated such expenses, as set forth in Article VII, Section 5, below. Common Expenses include amounts payable by the Association to the Water Valley Master Association pursuant to the Master Declaration of Covenants, Conditions, and Restrictions for Water Valley, which expenses include, but are not limited to, those payable for maintenance services provided by the Water Valley Master Association and raw irrigation water provided through the Water Valley Master Association. Common Expenses also include, but are not limited to, garbage collection, landscape maintenance of owner-installed landscaping, snow removal on streets, driveways and patios, and maintenance of Common Elements.

Section 7: "Common Interest Community" shall mean and refer to the Real Estate.

Section 8: "Declarant" shall mean and refer to any Person or group of persons acting in concert who:

- (a) As a part of the common promotional plan, offers to dispose of to a Purchaser such Declarant's interest in a Lot not previously disposed of to a Purchaser, or
- (b) Reserves or succeeds to any Special Declarant Right.

Section 9: "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, all plats of the Real Estate recorded in the Clerk and Recorder's office of Weld County, Colorado.

Section 10: "Dispose" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Lot, but the term does not include the transfer or release of a security interest.

Section 11: "Executive Board" shall mean and refer to the Executive Board of the Association.

Section 12: "Lot" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration or the Plat.

Section 13: "Lot Owner" shall mean and refer to Declarant or any other Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation. Declarant is the Owner of any Lot created in the Declaration until that Lot is conveyed to another Person.

Section 14: "Master Association" shall mean and refer to The Water Valley Master Association, Inc., a Colorado non-profit corporation, its successors and assigns.

Section 15: "Mortgagee" shall mean and refer to any Person who has a security interest in a Lot. "First Mortgage" shall mean and refer to a Mortgagee who has a security interest in a Lot prior to all other security interests except the security interest for real property taxes and assessments made by Weld County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

Section 16: "Person" shall mean and refer to a natural person, a corporation, a partnership, an association, a trust, or any other entity or combination thereof.

Section 17: "Plat" shall mean and refer to the Plat of the Real Estate recorded in the office of the Clerk and Recorder or Weld County, Colorado, and all recorded amendments thereto.

Section 18: "Purchaser" shall mean and refer to a Person, other than a Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

(a) A leasehold interest in a Lot of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal-options, being measured from the date the initial term commences; or

(b) A security interest.

Section 19: "Real Estate" shall mean and refer to the Real Estate described on Exhibit A hereof.

Section 20: "Residence" shall mean and refer to a single-family residential dwelling constructed on a Lot.

Section 21: "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Architectural Control Committee after approval by



Declarant or the Executive Board, or the Association, for the regulation and management of the Common Interest Community, including any amendment to those instruments.

Section 22: "Security Interest" shall mean and refer to an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge or an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 23: "Single-family" shall mean and refer to any individual or group of persons related by blood or marriage or any unrelated group of not more than three (3) persons living together in a Residence.

ARTICLE III. COMMON INTEREST COMMUNITY

Section 1: **Name.** The name of the Common Interest Community is Harbor Walk at Water Valley.

Section 2: **Association.** The name of the Association is Harbor Walk Home Owners Association.

Section 3: **Planned Community.** The Common Interest Community is a planned community. The Common Interest Community is a part of Water Valley, a Large Planned Community.

Section 4: **County.** The name of every county in which any part of the Common Interest Community is situated is Weld County, Colorado.

Section 5: **Legal Description.** A legal description of the Real Estate included in the Common Interest Community is set forth on Exhibit A hereof.

Section 6: **Maximum Number of Lots.** The maximum number of Lots that Declarant reserves the right to create within the Common Interest Community is 45.

Section 7: **Boundaries of Lots.** The boundaries of each Lot are set forth on the Plat of the Real Estate.

Section 8: **Allocated Interests.** The Common Expense Liability and votes in the Association shall be allocated among the Owners as follows:

(a) Except as otherwise provided for in Article VII, when the Community is totally developed, each Owner's share of the Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community. That is, each Owner's share shall be 1/45. While Lots are unimproved, the Board of Directors may assess an equal but lesser fee to each Unimproved Lot owner, and an equal, but greater fee, to each Improved Lot Owner.

(b) Each Owner shall be entitled to one (1) vote for each Lot owned.

Section 9: **Recording Data.** All easements and licenses to which the Common Interest Community is presently subject are listed on Exhibit B hereof. In addition, the Common Interest Community is subject to the Master Declaration and may be subject to other easements or licenses granted by Declarant pursuant to the terms of this Declaration.

Section 10: **Notice.** Notice of matters affecting the Common Interest Community may be given to Lot Owners by the Association or by other Lot Owners in the following manner: notice shall be hand delivered or sent prepaid by the United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner, or sent by email to the email address designated in writing by the Lot Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States mail, or into email.

ARTICLE IV. ASSOCIATION

Section 1: **Authority.** The business and affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by its By-laws as amended from time to time.

Section 2: **Powers.** The Association shall have all of the powers, authority, and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Community. The Association may adopt Rules and Regulations for the regulation and management of the Common Interest Community.

Section 3: **Declarant Control.** Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Association for a period of ten (10) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado. PROVIDED, HOWEVER, that the period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5)(6) and (7) of the Act.

ARTICLE V. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 1: **Special Declarant Rights.** Declarant hereby reserves the right for a period of ten (10) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado, to perform the acts and exercise the rights hereinafter specified ("the Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) **Completion of Improvements.** The right to complete improvements indicated on the Plat.

(b) **Exercise of Development Rights.** The right to exercise any Development Right reserved in Article VI of this Declaration.

(c) **Sales Management and Marketing:** The right to maintain a sales office, a management office, signs advertising the Common Interest Community, and models. Declarant shall have the right to determine the number of models and the size and location and office, and models from time to time at its discretion. After Declarant ceases to be the Owner of a Lot, Declarant shall have the right to remove any sales office, management office, or model from the

Common Interest Community.

(d) **Construction Easements.** The right to use easements through the Common Elements for the purpose of making improvements within the Common Interest Community.

(e) **Master Association.** The right to make the Common Interest Community subject to the Master Association.

(f) **Merger.** The right to merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership.

(g) **Control of Association and Executive Board.** The right to appoint or remove any officer of the Association or any Executive Board member during the period of Declarant Control.

Section 2: **Additional Reserved Rights.** In addition to the Special Declarant Rights set forth in Section 1 above, Declarant also reserves the following additional rights ("the Additional Reserved Rights"):

(a) **Dedications.** The rights to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Real Estate for purposes including, but not limited to, utilities, streets, paths, walkways, drainage, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Real Estate for the benefit of and to serve the Lot Owners within the Common Interest Community.

(b) **Use Agreements.** The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of the Real Estate or other property, which may or may not be a part of the Common Interest Community for the benefit of the Lot Owners within the Common Interest Community.

(c) **Amendment of Declaration.** The right to amend the Declaration in connection with the exercise of any Development Right or as otherwise allowed by the Act.

(d) **Amendment of Plat.** The right to amend the Plat in connection with the exercise of any Development Right or as otherwise allowed by the Act.

(e) **Other Rights.** The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 3: **Rights Transferable.** Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Weld County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE VI. RESERVATION OF DEVELOPMENT RIGHTS

Section 1: **Construction Easement.** Declarant expressly reserves the right to perform construction work, and store materials on the Real Estate, and the future right to control such

work and the right of access thereto until its completion. All work may be performed by Declarant without the consent or approval of any Lot Owner or Mortgagee. Such work may be performed on Lots owned by Purchasers, if necessary. Declarant shall have such easement rights as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities. Declarant may grant easements to public utility companies and to convey improvements within those easements. If Declarant grants any such easements, the Plat will be amended, if necessary, to include reference to the recorded easement.

Section 2: Termination of Development Rights. The Development Rights reserved to Declarant, for itself, its successors and assigns, shall expire ten (10) years from the date of recording this Declaration, unless the Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the development rights by Declarant.

Section 3: Transfer of Development Rights. Any development right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Weld County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE VII. ASSESSMENTS FOR EXPENSES

Section 1: Common Expenses Prior to Assessments. Until the Association makes a Common Expense Assessment, Declarant shall pay all common expenses. The Association shall charge the appropriate Lot Owners for special expenses as defined in Section 5 of this Article, promptly after each service described therein is provided by or through the Association or on a periodic basis; such charges shall not terminate the duty of Declarant to pay all Common Expenses as defined in Section 4, below, until such time as the Association makes a Common Expense Assessment.

Section 2: Personal Obligation of Owners for Expenses. After Assessments are made by the Executive Board, Declarant for each Lot owned by it hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association Common Expense Assessments imposed by the Association to meet the estimated Common Expenses. In addition, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant agree to pay to the Association for special services provided by or through the Association, as defined in Section 5 of this Article VII.

Section 3: Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and for the improvement, maintenance, repair, and replacement of the Common Elements..

Section 4: Common Expenses. All expenses growing out of or connected with the maintenance, repair, operation, additions, alterations, replacements, and improvements of and to the Common Elements shall be Common Expenses. Such items may include, but shall not be

limited to, expenses of management; taxes and special assessments unless separately assessed; premiums for insurance; expenses for leasing or purchasing water for irrigation of common areas; care of all common areas; expenses relating the maintenance of landscaping on those Lots for which the Association has assumed the right and authority to provide for the care and maintenance of such landscaping; to all street and parking areas within the Common Interest Community; all utility, mechanical, and other costs associated with providing water to, and irrigating, all common areas;; any Common Expenses (as defined in the Master Declaration) charged to the Association by the Master Association; costs related to proper storm water drainage; all electricity and other costs of providing street lighting and entrance features; costs of cleaning and removing snow from, and cleaning the streets, driveways, walkways and patios; legal and accounting fees; professional management fees; and all other expenses and liabilities incurred by the Association or any of its agents or employees on behalf of the Lot Owners. Expenses charged to the Association by the Master Association shall include, but are not limited to, expenses for maintenance services provided by the Master Association and for raw irrigation water provided through the Master Association. In addition, assessments may relate to deficits remaining from a previous period; the creation of any reasonable contingency reserve, working capital or sinking fund; and any reserve fund for replacement or improvement of Common Elements. Such Common Expenses shall be paid by each Lot Owner. When fully built out, the obligation of each Lot Owner shall be determined by dividing the aggregate sum of such Common Expenses by the total number of Lots within the Common Interest Community, and each Lot Owner shall be obligated to pay his proportionate share of such aggregate sum. Until all the Lots are built out, there will be one assessment for every Single-family home or Lot which has pulled a permit to begin building, and a lesser assessment for every unimproved Lot. The Board of Directors of the Association will determine the Assessment for both improved Lots and unimproved Lots.

Section 5: Special Expenses. The Association shall have the right to charge Lot Owners for special services provided by the Association to such Owners. Such special services shall include (to the extent provided by or through the Association): trash removal; lawn and landscape services (other than those provided by the Association as a Common Expense under Section 4 hereof); ; fence maintenance of the fence by Water Valley Parkway; and snow removal from driveways and sidewalks. If a particular service is provided solely to one Lot, all of the costs of such service shall be allocated to such Lot. If a particular service is provided to more than one Lot, the costs of such service shall be divided equally among all benefited Lots, unless the Executive Board reasonably determines that a different allocation of such costs is fair and equitable, under all of the circumstances. In this regard, the Executive Board shall disregard minor inequalities. Each such service shall be deemed to have been provided for the exclusive benefit of the affected Lot Owner(s) under Section 38-33.3-315(3)(b) of the Act. The costs of such services may be billed by the Association on a onetime, or periodic, basis as the Association may determine from time to time. The records of the Association as to the services provided, and the cost thereof, shall be conclusive on such points.

The Association shall also have the right to charge a Lot Owner for any expense caused by the misconduct of such Lot Owner, in which event such expense may be assessed exclusively against such Owner.

The lien rights provided to the Association by this Declaration shall extend to all charges



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provided for in this Section 5 and shall include Court costs and reasonable attorneys' fees incurred by the Association in collecting such charges.

Section 6: Special Assessments for Capital Improvements. In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair, or replacement of a capital improvement for which the Association is responsible, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the consent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7: Notice and Quorum for any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast twenty percent (20%) of all the votes of the Owners shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8: Exteriors of Improvements. Each Owner, at such Owner's own expense, shall have the obligation to maintain the exterior of the residence constructed on his or her Lot, including the walls and fences. PROVIDED, HOWEVER, that if an Owner fails to maintain such exterior to the standard established within the Community, the Association shall have the right to give written notice to such Owner specifying the deficiency and requiring that it be corrected within *twenty (20)* days after such notice is given. If the Owner fails or refuses to correct such deficiency within said grace period, the Association shall have the right, but shall not be obligated, to cause such exterior work to be performed as may be necessary or appropriate for curing such deficiency and bringing such Owner's residence to the established standard for the Community. In that event, the Association may charge all costs of such work to the Owner involved as a special expense under Article VII, Section 5 of this Declaration.

Section 9: Uniform Rate of Assessment. Except as otherwise provided in the preceding Sections hereof, both annual and special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 10: Date of Commencement of Annual Assessments/Due Dates. The annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot by Declarant to a Purchaser, unless Declarant is paying all assessments as provided in Section 1 above, (in which event no Annual Assessments shall commence during the period of time that Declarant is paying all said Assessments). The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the annual Assessment in accordance with the requirements of 38-33.3-303(4) of the Act. The due dates shall be established by the Executive Board. The Executive Board may, at its discretion, permit annual assessments to be payable in equal installments, as determined by the Executive Board.

Section 11: Lien for Nonpayment of Expenses. Any Assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Executive Board. In addition, the Executive Board may assess a late charge thereon. Any Owner who fails to pay any Assessment, charge, or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the association, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid Assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Lot as provided in the Act. Said lien shall have the priority provided for in Section 38-33.3-316 of the Act. The Association may bring an action, at law or in equity, or both, against any owner personally obligated to pay any amount due to the Association or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association or monthly or other installments thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien.

ARTICLE VIII. ZERO LOT LINE, FENCES AND LANDSCAPING

Section 1: Designations. All of the Lots include a "zero lot line" side. Such "zero lot line" side shall be determined for each benefited and burdened Lot when the Architectural Control Committee approves plans for construction of improvements on the benefited Lot. The Architectural Control Committee and the Association shall maintain records of such designations. The residential and other improvements on each zero lot line side of each Lot can be constructed on, or very close to, a boundary line of the Lot. As to such zero lot line side, each Owner shall have a right of access to such residential and other improvements, over and across each adjacent Lot for the purposes of inspecting, constructing, maintaining, repairing, improving, enlarging, and replacing such residential and other improvements. Such access rights may be exercised by the Owners and by their agents, employees, and contractors; such rights may also be exercised by the Association and its agents. Such rights shall be exercised in a reasonable manner so as to minimize, to the extent reasonably feasible, the disruption and physical damage to the adjacent Lot. Such rights shall not be exercised if it is reasonably feasible to accomplish the intended work in another manner, without exercising such rights. The Owner of the benefited Lot shall reimburse, and be liable to, the Owner of the burdened Lot for, the reasonable costs of repairing and restoring any damage done to such burdened Lot in the exercise of such rights that is not promptly and reasonably repaired by the Owner of the benefited Lot.

Section 2: Fences. The location, materials, design, and color of each fence must be approved by the Architectural Control Committee, prior to installation. The Architectural Control Committee shall have the right, in its discretion, to make reasonable exceptions or changes to the general requirements set forth herein. If there is a fence on the zero lot line side, it must have a gate that can be readily opened from both sides, so that the zero lot line rights set forth in Section 1 hereof may be exercised.

Any other fence installed by an Owner may not extend beyond the furthest rear portion of

either the building Owner's residence, or the furthest rear portion of the adjacent Owner's residence. If such furthest rear portion relates to the building Owner's residence, the fence may be built with a right angle or a diagonal, as proposed by the building Owner, subject to review and approval by the Architectural Control Committee. Such fences shall be of an open "wrought iron" design and shall not exceed five feet in height.

On Lots 10, 18, 20, 21, 27, 37, 38, and 44, the Owners may fence the entire active side yard, to the boundary of each such Lot. However, such fences shall not disturb trees or other landscaping. Such fences shall have gates which open from both sides, to allow access for the Association and its agents.

Section 3: Landscaping. The Association shall, maintain, redesign, and otherwise deal with the landscaping in all common areas. The Association shall maintain, but shall not install or replace, the grass covered portion of each Lot and the irrigation systems servicing such areas. The Owners, at their own expense, shall be responsible for installing and replacing all landscaping and irrigation systems on their respective Lots. Further, the Owners shall be responsible, at their own expense, for maintaining, and otherwise dealing with the landscaping within the locked fenced areas on their respective Lots. PROVIDED, HOWEVER, that if an Owner fails to maintain such landscaping to the standard established within the Community, the Association shall have the right to give written notice to such Owner specifying the deficiency and requiring that it be corrected within twenty (20) days after such notice is given. If the Owner fails or refuses to correct such deficiency within said grace period, the Association shall have the right, but shall not be obligated, to cause such landscaping work to be performed as may be necessary or appropriate for curing such deficiency and bringing such Owner's landscaping to be established standard for the Community. In that event, the Association may charge all costs of such work to the Owner involved as a special expense under Article VII, Section 5 of this Declaration.

The expenses incurred by the Association for such landscaping costs for common areas and outside the fenced areas of the Lots shall be a Common Expense. However, if any such expense is incurred by the Association due to the intentional or negligent act of an Owner, the amount of such additional expense attributable to such Owner's conduct shall be a special expense chargeable only to such Owner under Article VII, Section 5 of this Declaration.

Section 4: Easements. Each Lot shall be subject to easements for the installation, inspection, maintenance, repair and replacement of drainage facilities and utilities and a right of access for all such purposes. All portions of each Lot other than the area covered by a residence shall be subject to such easements. Such easements shall also include easements in favor of the Association and its agents for access onto each Lot for all purposes related to the performance by the Association of its rights and duties under this Declaration including, but not limited to, those relating to landscaping. Such easements shall extend to services and utilities in addition to those installed when a residence is built on a Lot. Such easement rights may be utilized by Declarant and the Association and its agents. Other Owners may utilize such easement rights, if such exercise is approved by the Architectural Control Committee or the Association. The person or entity exercising such rights shall be responsible for all costs involved, and shall exercise such rights in such a manner as to minimize the disruption and damage to the burdened Lot.

ARTICLE IX. ARCHITECTURAL CONTROL

Section 1: Architectural Control Committee:

(a) **Membership.** The Architectural Control Committee shall consist of up to three (3) persons. After the period of Declarant control ends, the members of the Architectural Control Committee shall be appointed by the Executive Board from among the Owners. Declarant may voluntarily surrender the right to appoint members of the Architectural Control Committee. Until the period of Declarant control of the Association ends, Declarant shall have the right to appoint the members of the Committee and may voluntarily surrender the right to appoint the Committee. If Declarant has surrendered his right to appoint the Committee or there is no person or company acting as Declarant, and no person holding Declarant rights, the Executive Board of the Association shall either act as the Architectural Control Committee, or appoint up to three persons to act as the Architectural Control Committee.

(b) **Purpose.** The Architectural Control Committee is hereby established for the purpose of maintaining within the Common Interest Community a consistent and harmonious general character of development and a style and nature of building design and visual appeal consistent with the natural beauty and features of the Common Interest Community. A majority of the members of the Architectural Control Committee may designate a representative to act for it. In the event of a vacancy in the Architectural Control Committee, a majority of the remaining members shall have full authority to fill such vacancy. The members of the Architectural Control Committee shall not be entitled to any compensation for services rendered pursuant to this Declaration, provided, however, that members of the Architectural Control Committee shall be reimbursed by the Association for all costs and expenses incurred in performing their duties pursuant to the terms of this Declaration.

Section 2: **Approval.** No building, fence, wall, or other structure shall be erected, placed, or altered on any Lot until the plans and specifications, along with a plot plan, have been approved by the Architectural Control Committee, which plans and specifications shall, among other things, show the size and height of the structure; the type of exterior material, color, and finish; exterior design; existing structures, if any, and location of the structure with respect to utility lines and facilities, property lines, streets, topography, and finished grade. The Architectural Control Committee shall have the right to hire an architect or engineer to assist the committee in reviewing any plans or specifications submitted to the committee and the applicant shall be obligated to pay the fee of such architect or engineer, in an amount as determined by the Architectural Control Committee's Rules and Regulations. Landscaping plans, and any changes to the color or type of exterior to the Patio home are also subject to approval of the Architectural Control Committee.

The Architectural Control Committee shall have the right to establish Rules and Regulations specifying the procedures, standards, and guidelines for the appeal of any decision of the Committee. While Declarant has the right to appoint members of the Architectural Control Committee, Declarant shall approve any such Rules and Regulations prior to their use and implementation. If Declarant has surrendered his right to appoint the Committee or there is no person acting as Declarant, and no person holding Declarant rights, the Executive Board shall approve all Rules and Regulations prior to their use and implementation.

Approval by the Architectural Control Committee shall be in writing or indicated by endorsement on the plans and specifications submitted for approval. In the event the Architectural Control Committee fails to approve or disapprove the plans and specifications submitted to it by the Owner of a Lot within forty-five (45) days after submission of the plans and specifications, then such approval shall not be required and shall be deemed to have been given. However, no building or other structure shall be erected or allowed to remain on any Lot which violates any of the covenants or restrictions herein contained. The issuance of a building permit or license by the Town of Windsor, Colorado, or other governmental authority having jurisdiction over the Common Interest Community shall not prevent or prohibit the Architectural Control Committee or an Owner from enforcing the terms and provisions of this Declaration; and approved by the Architectural Control Committee of plans and specifications submitted to it shall not constitute any representation that such plans and specifications comply with applicable zoning ordinances or building codes.

Section 3: **Liability.** The Architectural Control Committee shall not be liable to any Owner for any loss, cost, expense, or damage, including attorney's fees, suffered by such Owner as a result of any decision made by the Architectural Control Committee unless such action is taken with malice against an Owner.

ARTICLE X. USE RESTRICTIONS

Section 1: **Land Use and Building Type.** No building or other structure shall be erected, altered, placed, or permitted to remain on any other than one (1) single-family Residence per Lot, with attached garage.

Section 2: **Height of Buildings.** No building shall exceed a maximum of 35 feet in height measured from finished grade as indicated in the city approved grading.

Section 3: **Fences.** Any fence to be constructed on a Lot must be approved by the Architectural Control Committee.

Section 4: **Storage of Vehicles.** Commercial vehicles, recreational vehicles, mobile homes, boats, campers, trailers, watercraft, stored vehicles, inoperable vehicles, or other oversized vehicles may not be parked, stored, serviced, or repaired in any place other than an enclosed garage. Notwithstanding the foregoing, the parking of a motor vehicle by the occupant of a Lot on a street, driveway, or guest parking area in the Common Interest Community shall be permissible if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

- (a) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- (b) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;
- (c) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(d) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Lot Owners or occupants to use streets, driveways, and guest parking spaces within the Common Interest Community.

Section 5: Maintenance of Lots and Improvements. Owners of Lots shall keep or cause to be kept all buildings, fences, and other structures located on their property in good repair. Rubbish, refuse, garbage, and other solid, semi-solid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Lot, and shall be disposed of in a sanitary manner. No Lot shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a garage or other approved structure. No trash, litter, or junk shall be permitted to remain exposed on any Lot and visible from adjacent streets or other Lots. Burning of trash on any Lot shall be prohibited. No lumber or other building materials shall be stored or permitted to remain on any Lot unless screened from view from other Lots and from the streets, except for reasonable storage during construction.

Section 6: Nuisance. Nothing shall be done or permitted on any Lot which is or may become a nuisance. No obnoxious or offensive activities or commercial business or trades shall be conducted on any Lot, except home occupations as defined and permitted by the applicable zoning resolution of the governmental entity having jurisdiction over the Common Interest Community.

Section 7: Household Pets. Household pets, such as dogs, cats, and other usual and common pets, shall be permitted on any Lot, provided that said pets are restricted by leash or chain or confined by fence within the Lot or are properly trained and are at all times within the control of and controlled by the Owner. Household pets may not be kept, bred, or maintained on any Lot for commercial purposes. The number of household pets shall be reasonable. Pets which, in the sole discretion of the Executive Board, make objectionable noises, endanger the health or safety of, or constitute a nuisance or inconvenience to other Owners shall be removed upon request of the Board. If the pet owner fails to honor such request, the Executive Board may remove the pet. No animals, livestock or poultry of any kind except such household pets may be bred or kept on any Lot.

Section 8: Environmental. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Community, or which use excessive amounts of water or which result in unreasonable levels of sound, water or like pollution shall not be allowed.

Section 9: Drainage Flows. The flow of drainage shall not be obstructed or rechanneled after the location and installation of drainage swales, storm sewers, and storm drains. However, Declarant and the Association shall have such rights, provided that the exercise of such rights shall not materially diminish the value of, or unreasonably interfere with, the use of any Owner's property without such Owner's consent.

Section 10: Subdivision. No Lot may be subdivided into two or more Lots after the Plat has been approved and filed. Declarant may change the boundary lines of such Lots, so long as no new Lots are created.

Section 11: Other Activities. No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be allowed. However, an Owner may conduct business activities on such Owner's property so long as the existence or operation of such activity is not apparent or detectable by sight, sound or smell from outside the Owner's Lot, the activity conforms to all zoning requirements; and the activity does not involve regular visits to the property by clients, customers, suppliers or other business invitees or door-to-door solicitation of other Owners; and the activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners, all as may be determined in the sole discretion of the Executive Board.

Section 12: Damage or Destruction of Improvements. In the event any Residence or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Residence or other structure shall be promptly rebuilt or remodeled to comply with this Declaration; or in the alternative, if the Residence or other structure if not to be rebuilt, all remaining portions of the damaged structure, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other structure.

Section 13: Miscellaneous Limitations. Notwithstanding any provision in this Declaration, the by-laws, or Rules and Regulations of the Association to the contrary, the Association shall not prohibit reasonable modifications to a Unit or to Common Elements as necessary to afford a person with disabilities full use and enjoyment of the Patio Home in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604(f)(3)(A).

Section 14: Precedence. The Association will comply with any and all state laws regarding Home Owner Associations first and foremost. The Rules and Regulations of the Water Valley Master Mater Association will also take precedence.

ARTICLE XI. DRAINAGE

Section 1: Acknowledgment. The soils within the state of Colorado consist of expansive soils, low-density soils, and moisture retentive soils which will adversely affect the integrity of the Residence if the Residence and the Lot on which it is constructed are not properly maintained. Expansive soils contain clay materials which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils. Moisture retentive soils have led Declarant to install an underground system in the real estate.

Section 2: Grading. Each Owner of a Lot shall maintain the grading and drainage patterns of the Lot as indicated in the subdivision plans on file with the Planning Office of The City of Windsor, Colorado.

Section 3: Water Flow. The Owner of Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established for the Lot and the Common Interest Community.

Section 4: Action by Owner. It is the responsibility of each Lot Owner to maintain



proper drainage, away from the foundation of each neighbor's residence. To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

(a) Not to install improvements, including, but not limited to, landscaping, items relating to landscaping, walls, walks, driveways, parking pads, fences, additions to the Residence, outbuildings, or any other item or improvement which will change the grading of the Lot. The installation of such improvements is acceptable so long as the manner of installation is consistent with, and does not change the grading and drainage patterns of the Lot.

(b) To fill with additional soil any back-filled areas adjacent to the foundation of the Residence and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.

(c) Not to water the lawn or any other landscaping on the Lot excessively.

(d) Not to plant grass or vegetable gardens adjacent to or within three (3) feet of the foundation and slabs of the Residence, or within three (3) feet of the foundation and labs of a neighbor's residence.

(e) If evergreen shrubbery is used within three (3) feet of the foundation walls, to water such shrubbery by a drip watering system, and to avoid excessive watering.

(f) To minimize or eliminate the installation of piping and heads for sprinkler systems three (3) feet of foundation walls and slabs, including those for neighbor's residences.

(g) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

(h) To install a moisture barrier (such as polyethylene) under any gravel beds.

(i) To maintain the gutters and downspouts which discharge water into extensions or splash blocks by assuming that (i) the gutters and downspouts remain free and clear of all obstructions and debris; (ii) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) the splash blocks are maintained under sill cocks.

(j) To re-caulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

Section 5: **Disclaimer.** Declarant shall not be liable for any loss or damage to the Residence caused by, resulting from, or in any way connected with soil conditions or failure of owner to control drainage on any Lot.

ARTICLE XII. GENERAL PROVISIONS

Section 1: **Enforcement.** Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such proceedings shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such proceedings may be prosecuted by an Owner, by the Architectural Control Committee, or by the Association. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration. Other than (i) situations that involve an imminent threat to the peace, health, or safety of the Common Interest Community, (ii) the collection of Assessments, or (iii) the foreclosure of a lien for Assessments, all disputes arising between the Association and Unit Owners shall be resolved by binding arbitration under the "Uniform Arbitration Act", part 2 of article 22 of title 13, C.R.S.

(a) *Demand for Arbitration.* A demand for arbitration shall be made within a reasonable time after the dispute has arisen. A demand for the resolution of any dispute must be made in writing and delivered to the other party(ies) before the date when commencement of legal or equitable proceedings based on the dispute would be barred by the applicable statute of limitations. In no event shall the demand for arbitration of a dispute be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. Any party who fails to submit to binding arbitration regarding a dispute following a lawful demand by the opposing party shall bear all costs and expenses, including reasonable attorney's fees, incurred by the opposing party in compelling arbitration of such dispute.

(b) *Selection of Arbitrator.* The party desiring arbitration shall serve written notice upon the other party, together with designation of the first party's representative. If the person designated by the first party is acceptable to the second party as an arbitrator, the second party shall so notify the first party within ten (10) days and such representative shall serve as the sole arbitrator. If the person so designated is not acceptable to the second party, then the second party shall designate his or its own representative in a written notice to the first party within the same ten (10) day period. The two representatives so named, if such is the case, shall within ten (10) days thereafter appoint a sole arbitrator, and the sole arbitrator shall then proceed forthwith to hear and unilaterally determine the matter. If either party fails, within the time allowed herein, to appoint its representative, the representative named by the other party shall act as the sole arbitrator and unilaterally decide the matter. If the two representatives are unable to agree upon an arbitrator within the ten (10) days allowed herein, either party may at any time apply to the presiding judge of any court of competent jurisdiction in Weld County for the appointment of an arbitrator, and the arbitrator shall proceed forthwith to hear and unilaterally determine the matter.

(c) *Award.* The arbitrator shall make an award of attorneys' fees and expenses (including the fees and expenses of the arbitrator) to the prevailing party, with the arbitrator determining who is the prevailing party; provided, however, if the decision of the arbitrator is not wholly in favor of one party, the arbitrator shall allocate such fees and expenses between the parties. The results of any arbitration conducted pursuant to this Section shall be binding and



final, and the decision of the arbitrator may be filed, converted and enforced as a judgment, order or decree of the District Court of Weld County, Colorado.

Section 2: **Duration.** This Declaration shall run with the land, shall be binding upon all persons owning Lots and any persons hereafter acquiring said Lots, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 3: **Amendment.** Except in cases where the Declaration may be amended by Declarant as provided in Article V and Article VI hereof, or except in cases where the Association or Unit Owners may amend this Declaration as provided in the Act and except as limited by 38-33.3-217(4) of the Act, this Declaration may be altered or amended at any time by the then record Owners of sixty-seven percent (67%) or more of the Lots, through a duly written and recorded instrument.

Section 4: **Construction.** Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any Person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications. If there is a conflict between this Declaration and the Master Declaration, the more restrictive provision shall control unless that would result in a direct violation of the Master Declaration, in which case the Master Declaration shall control. The fact that this Declaration contains provisions which are different from or in addition to the provisions of the Master Declaration shall not, by itself, be deemed to be a conflict and, wherever possible, both documents shall be given full force and effect.

Section 5: **Management of the Common Areas.** The Association may obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper management, operation, and maintenance of the Common Elements; provided, however, that any contract in regard to the hiring or employing of such a managing agent or other personnel shall not be for a term in excess of three (3) years and shall provide that the same shall terminate only after not more than sixty (60) days' written notice, with or without cause, and without payment of any termination fee.

ARTICLE XIII. MORTGAGE PROTECTION

Section 1: **Introduction.** This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests and others as identified in Section 2. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 2: **Percentage of Eligible Mortgagees.** Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them such specified percentage of votes in the Association as compared to the total allocated to all Units then subject to Security Interests held by Eligible Mortgagees.

Section 3: **Notices of Actions.** The Association shall give prompt written notice to each Eligible Mortgagee of (and each Unit Owner hereby consents to and authorizes such notice):

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee, as applicable;
- (b) Any delinquency in the payment of Common Expense assessments owed by a Unit Owner whose Unit is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgage, as applicable, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 4 below; and.
- (e) Any judgment rendered against the Association.

Section 4: Consent and Notice Required.

(a) **Document changes.** Notwithstanding any requirement permitted by this Declaration of the Act, no amendment of any provision of the Documents by the Association or Unit Owners described in this Subsection may be effective without notice to all Eligible Mortgagees, and as required by Section 3 above, and the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right which affect or modify:

- (I) Voting rights;
- (II) Assessments, assessment liens or priority of assessment liens; .
- (III) Reserves for maintenance, repair and replacement of Common Elements;
- (IV) Responsibility for maintenance and repairs;
- (V) Reallocation of interest in the Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding Security Interest in such Units need approve such action;
- (VI) Redefinition of boundaries of Units, except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding Security Interests in such Unit or Units need approve such action;
- (VII) Convertibility of Units into Common Elements or Common Elements into

Units;

(VIII) Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community;

(IX) Insurance or fidelity bonds;

(X) Leasing of Units;

(XI) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;

(XII) A decision by the Association to establish self-management when professional management has been required previously by the Document or any Eligible Mortgagee;

(XIII) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents;

(XIV) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and

(XV) Any provision that expressly benefits mortgage holders, insurers or guarantors.

(b) **Actions.** Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions other than rights reserved to Declarant as Special Declarant Rights, without the notice to all Eligible Mortgagees, as required by Section 3 above, and approval of at least 51% (or the indicated percentage) of the Eligible Mortgagees:

(I) Convey or encumber the Common Elements or any portion thereof, where an 80% Eligible Mortgagee approval is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause);

(II) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation, as to which sixty-seven percent (67%) of the Votes of Eligible Mortgagees is required;

(III) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units, need approve the action;

(IV) The granting of any permits, easements, leases; licenses or concessions through or over the Common Elements (excluding, however, any utility, road or other easements serving or necessary to serve the Common Interest Community and excluding, however, any utility, road or other easements serving or necessary to serve the Common Interest Community and excluding any leases, licenses or concessions for more than one year);



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(V) The establishment of self management when professional management has been required previously by the projects' documents or by any Eligible Mortgagee.

(VI) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than specified in the documents.

(VII) The merger or the Common Interest Community with any other Common Interest Community.

(VIII) The assignment of the future income of the Association, including its rights to receive Common Expense Assessments.

(IX) Any action taken not to repair or replace the property.

(c) The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, "return receipt requested" for approval of an addition or amendment of the Documents wherever Eligible Mortgagee approval is required, shall constitute an implied approval of the addition or amendment.

Section 5: Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Section 6: Inspection of Books. The Association must maintain current copies of the Declaration, By-laws, Rules and Regulations, books and records and financial statement. The Association shall permit any Eligible Mortgagee or other first mortgagee of Units, to inspect the books and records of the Association during normal business hours.

Section 7: Financial Statements. The Association shall provide any Eligible Mortgagee who submits a written request, a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited or shall be reviewed by an independent certified public accountant if an Eligible Mortgagee requests it, in which case the Eligible Mortgagee shall bear the costs of the audit or review.

Section 8: Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and maybe enforced by any of them by any available means, at law; or in equity.

Section 9: Attendance at Meetings. Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

IN WITNESS WHEREOF, the Association has caused this Declaration to be executed as of the day and year first above written.

HARBOR WALK HOME OWNERS ASSOCIATION,
a Colorado non-profit corporation

By:

Tom Haiston
Thomas Haiston, President

STATE OF COLORADO)
)
)ss.
COUNTY OF WELD)

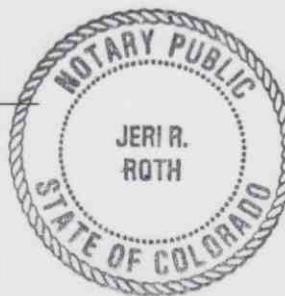
The foregoing instrument was acknowledged before me this 10th day of MARCH, 2009, by Thomas Haiston, President of Harbor Walk Home Owners Association, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires:

3/26/2012

Jeri Roth
Notary Public





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CERTIFICATION

The undersigned, as Secretary of the Harbor Walk Home Owners Association, hereby certifies that the required number of votes of the current Unit Owners, in excess of sixty-seven percent (67%) of the total votes in the Association, were cast in accordance with the terms of the Declaration and the By-laws of the Association to adopt the foregoing Amended and Restated Declaration, and that the approval of the requisite number of Eligible Mortgagees has likewise been obtained in accordance with the Declaration. All requisite documentation regarding the consent of the Unit Owners and Eligible Mortgagees to this Amended and Restated Declaration is available for review upon reasonable advance notice at the registered office of the Association.

HARBOR WALK HOME OWNERS ASSOCIATION,
a Colorado non-profit corporation:

By: Carol S. Durata
Its: Secretary

STATE OF COLORADO)
)
)ss.
COUNTY OF WELD)

6th day of March, 2009, by Carol S. Durata, as Secretary of the
Harbor Walk Home Owners Association, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: April 19, 2009

Monica Cazier
Notary Public





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EXHIBIT A

TRACT A
WATER VALLEY SUBDIVISION, FILING TWO, PHASE ONE,
TOWN OF WINDSOR
WELD COUNTY, COLORADO



EXHIBIT B

**THE EASEMENTS AND LICENSES TO WHICH THE REAL ESTATE IS SUBJECT
INCLUDE THE FOLLOWING:**

1. Rights of way and easements as now established and used, including but not limited to, roads, ditches, pipe lines, power lines, telephone lines and reservoirs.
2. Easement for utility and incidental purposes as shown on plat of subdivision, said easement ranging in width from 8 feet to 16 feet around the perimeter of subject property.
3. Right of way for an outlet or discharge ditch of the Windsor Reservoir and Canal Company through said Section 28, as evidenced by Deed recorded January 13, 1902 in, Book 163 at Page 83, said right of way not being specifically defined.
4. Reservation of an undivided 25% interest in and to all oil, gas, coal, and other hydrocarbon minerals, together with the rights of ingress and egress to prospect and explore for, and to mine and develop same as contained in instrument from Windsor Resource Corporation, a Colorado Corporation, recorded March 26, 1990 in Book 1259 as Reception No. 208869, and any interests therein, assignments, or conveyances thereof.
5. Reservation of an undivided 5% interest in and to any rocks, sand, and gravel, together with the rights of ingress and egress to prospect and explore for, and to mine, and develop same as contained in instrument from Windsor Resource Corporation, a Colorado Corporation recorded March 26, 1990, in Book 1259 as Reception No. 2208869, and any interests therein, assignments, or conveyance thereof.
6. Terms, conditions and provisions of Poudre Tech Center Planned Unit Development Agreement, between Trollco, Inc., a Colorado Corporation, and the Town of Windsor, Colorado, a Colorado Municipal Corporation recorded August 7, 1991 in Book 1307 as Reception No. 2258961.
7. The effect, if any, of subject property being located within the Poudre Tech Metropolitan District, the Water Valley Metropolitan District No. 1, and the Water Valley Metropolitan District No. 2.
8. Covenants and restrictions recorded November 3, 1995 in Book 1517 as Reception No. 2462325; First Supplement recorded February 25, 1998 as Reception No. 2596103, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States code or (b) relates to handicap but does not discriminate against handicap persons.
9. Any lien, whether by statute or otherwise, to secure payment of the assessments provided for under that certain agreement recorded November 3, 1995 in Book 1517 as Reception No. 2462325.



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10. Terms, conditions and provisions of Disclosure Memorandum, by Trollco, Inc. recorded February 25, 1998 as Reception No. 2596104.

11. Terms, conditions and provisions of Disclosure Memorandum, by Trollco, Inc. recorded August 7, 1998 as Reception No. 2631541.

12. Restrictive covenants contained in Special Warranty Deed from Eastman Kodak Company, a New Jersey Corporation, and Windsor Resource Corporation, a Colorado Corporation, recorded March 26, 1990 in Book 1259 as Reception No. 2208866, which states as follows: "For a period of 20 years following the date of this Special Warranty Deed, no buildings, structures, or other improvements of any kind shall be constructed, erected, or installed on the Easterly 500 feet of the property which exceed a height of 40 feet. The foregoing restriction shall run with the property and shall be binding upon all parties having any right, title or interest in the property and shall be part thereof, and shall inure to the benefit of the Grantor, its successors and assigns. The Grantee, by accepting the conveyance of the property, agrees that the foregoing restriction shall be binding upon the Grantee, its successors and assigns, and any other party having any right, title, or interest in the property or any part thereof."

13. Reservation of all oil and gas as contained in instrument from Trollco, Inc., recorded August 7, 1998 as Reception No. 2631543, and any interests therein, assignments, or conveyances thereof.

14. Covenants and restrictions, which do not contain reversionary clauses, as contained in Deed recorded August 7, 1998 as Reception No. 2631543, providing substantially as follows:

Grantor shall not be permitted to use any portion of the surface of the property or any area within 200 feet of the surface for access to reserved oil and gas or for any other purposes related to use or enjoyment of the reserved oil and gas, including but limited to:

- (a) ingress and egress;
- (b) surveying by geological, geophysical or other methods;
- (c) drilling, or operating for oil or gas.
- (d) laying of any pipeline or building of tanks, power stations or any other structures;
- (e) tunneling, boring or conducting any other activities.

15. Reservation of all oil and gas as contained in instrument from Trollco, Inc., recorded August 7, 1998 as Reception No. 2631544, and any interest therein, assignments, or conveyances thereof.

16. Conveyances and restrictions, which do not contain reversionary clauses, as contained in Deed recorded August 7, 1998 as Reception No. 2631544, providing substantially as follows:



Grantor shall not be permitted to use any portion of the surface of the property or any area within 200 feet of the surface for access to reserved oil and gas or for any other purposes related to use or enjoyment of the reserved oil and gas, including but not limited to:

- (a) ingress and egress;
- (b) surveying by geological, geophysical or other methods;
- (c) drilling or operating for oil or gas;
- (d) laying of any pipeline or building any tanks; power stations or any other structures;
- (e) tunneling, boring or conducting any other activities.

17. Covenants and restrictions, which do not contain reversionary clauses, as contained in Deed recorded December 29, 1999 as Reception No. 2739954, providing substantially as follows:

Grantor shall not be permitted to use any portion of the surface of the property or any area within 200 feet of the surface for access to reserved oil and gas or for any other purposes related to use or enjoyment of the reserved oil and gas, including but not limited to:

- (a) ingress and egress;
- (b) surveying by geological, geophysical or other Methods;
- (c) drilling or operating for oil or gas;
- (d) laying of any pipeline or building any tanks, power stations or any other structures;
- (e) tunneling, boring or conducting any other activities.

18. Terms, conditions, and provisions of Special Warranty Deed, between Lumbermen's Investment Corporation, a Delaware Corporation and West Gold Holdings Inc., a Colorado Corporation recorded December 22, 1999 as Reception No. 2739954.