

391320

Page 1 of 34

Judy Benine, Clerk & Recorder

Huerfano County, CO RP: \$0.00

06-28-2011 12:00 PM Recording Fee \$176.00

After Recording, Return To:

HindmanSanchez P.C.
5610 Ward Road, Suite 300
Arvada, CO 80002

***SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
TRES VALLES WEST***

TABLE OF CONTENTS

ARTICLE 1

DEFINED TERMS. -3-
 Section 1.1 Defined Terms. -3-

ARTICLE 2

NAMES & DESCRIPTION OF PROPERTY/EASEMENTS...... -5-
 Section 2.1 Name and Type. -5-
 Section 2.2 Property. -6-
 Section 2.3 Owners' Easements of Enjoyment. -6-
 Section 2.4 Delegation of Use...... -6-
 Section 2.5 Disclaimer of Liability. -6-
 Section 2.6 Utility, Plat Easements...... -7-
 Section 2.7 Easement for Encroachments...... -7-

ARTICLE 3

THE ASSOCIATION. -7-
 Section 3.1 Membership. -7-
 Section 3.2 General Purposes and Powers of the Association. -7-
 Section 3.3 Owner's Negligence...... -7-
 Section 3.4 Authority of the Association. -8-
 Section 3.5 Managing Agent...... -8-
 Section 3.6 Security Disclaimer. -8-
 Section 3.7 Education and Training. -8-

ARTICLE 4

COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES. -9-
 Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses. -9-
 Section 4.2 Basis of Assessments...... -9-
 Section 4.3 Annual Assessment...... -9-
 Section 4.4 Special Assessments. -9-
 Section 4.5 Application of Payments. -10-
 Section 4.6 Effect of Non-Payment of Assessments...... -10-
 Section 4.7 Assignment of Rents. -11-
 Section 4.8 Lien Priority...... -11-
 Section 4.9 Borrowing. -12-

ARTICLE 5

WATER SYSTEM...... -12-
 Section 5.1 Water System...... -12-

Section 5.2 Water Charges. -12-
 Section 5.3 Restrictions. -12-

ARTICLE 6

COVENANTS AND RESTRICTIONS ON USE,

ALIENATION AND OCCUPANCY. -12-

Section 6.1 Flexible Application of the Subsequent Covenants and Restrictions. . . . -12-
 Section 6.2 Authority. -13-
 Section 6.3 Use/Occupancy. -13-
 Section 6.4 Leasing and Occupancy. -13-
 Section 6.5 Maintenance of Lots and Improvements. -15-
 Section 6.6 Restrictions on Pets. -15-
 Section 6.7 Nuisances. -15-
 Section 6.8 Vehicular Parking, Storage, and Repairs. -15-
 Section 6.9 Use of Common Area. -16-
 Section 6.10 No Annoying Lights, Sounds or Odors. -16-
 Section 6.11 No Hazardous Activities. -16-
 Section 6.12 Restrictions on Clotheslines. -16-
 Section 6.13 Restriction on Signs and Advertising Devices. -16-
 Section 6.14 Outbuildings and Temporary Structures. -17-
 Section 6.15 Trash Removal Restriction. -17-
 Section 6.16 Underground Utility Lines. -17-
 Section 6.17 Rules and Regulations. -17-
 Section 6.18 Compliance with Governing Documents. -17-
 Section 6.19 Compliance With Other Laws. -18-
 Section 6.20 Restriction on Mining and Drilling. -18-
 Section 6.21 Lots Not to be Subdivided. -18-
 Section 6.22 Use of the Words Tres Valles West and Tres Valles West Owners Association. -18-

ARTICLE 7

ARCHITECTURAL REVIEW. -18-

Section 7.1 Required Approval. -18-
 Section 7.2 Acknowledgment of Owners. -19-
 Section 7.3 Architectural Criteria. -20-
 Section 7.4 Establishment of the Committees. -20-
 Section 7.5 Architectural Guidelines. -20-
 Section 7.6 Reply and Communication. -20-
 Section 7.7 Conditions of Approval. -21-
 Section 7.8 Commencement and Completion of Construction. -21-
 Section 7.9 Variances. -21-
 Section 7.10 Right to Appeal. -22-
 Section 7.11 Waivers. -22-

Section 7.12 Liability. -22-
 Section 7.13 Records. -22-
 Section 7.14 Enforcement.. . . . -22-

ARTICLE 8

INSURANCE/CONDEMNATION. -23-
 Section 8.1 Insurance on the Lots. -23-
 Section 8.2 Insurance to be Carried by the Association. -23-
 Section 8.3 Hazard Insurance on Common Area. -23-
 Section 8.4 Association Liability Insurance. -23-
 Section 8.5 Association Fidelity Insurance. -23-
 Section 8.6 Association Worker's Compensation and Employer's Liability Insurance. -23-
 Section 8.7 Directors' and Officers' Personal Liability Insurance. -23-
 Section 8.8 Miscellaneous Terms Governing Insurance Carried by the Association. . -24-
 Section 8.9 Other Association Insurance. -24-
 Section 8.10 Insurance Premium. -25-
 Section 8.11 Annual Insurance Review.. . . . -25-
 Section 8.12 Adjustments by the Association.. . . . -25-
 Section 8.13 Duty to Repair. -25-
 Section 8.14 Condemnation and Hazard Insurance Allocations and Distributions. . . . -25-
 Section 8.15 Responsibility for Payment of Deductible Amount. -25-
 Section 8.16 Insurance Assessments.. . . . -25-
 Section 8.17 Damage to or Destruction on Lots. -26-

ARTICLE 9

GENERAL PROVISIONS. -26-
 Section 9.1 Compliance and Enforcement. -26-
 Section 9.2 Attorney Fees. -27-
 Section 9.3 Severability. -28-
 Section 9.4 Term of Declaration. -28-
 Section 9.5 Amendment of Declaration by Owners. -28-
 Section 9.6 Registration of Mailing Address. -28-
 Section 9.7 Captions. -28-
 Section 9.8 Interpretation. -28-
 Section 9.9 Singular Includes the Plural. -28-
 Section 9.10 Challenge to this Amendment. -29-
 Section 9.11 Non-Waiver. -29-
 Section 9.12 Conflict of Provisions. -29-

***SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TRES VALLES WEST***

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TRES VALLES WEST is effective upon recording.

RECITALS:

A. On September 24, 1980, Harry R. Willis, dba Huajatolla Valley Land and Cattle Co. and Charles R. Fenimore, dba Mountain Winds, submitted the real property described in those certain Protective Covenants and Owners Association Agreement, recorded in the real property records of Huerfano County, Colorado in Book 358 at Page 508, and re-recorded on February 5, 1985 in Book 373 at Page 209 to its covenants, conditions and restrictions, as amended and restated by the following:

1. Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Tres Valles West, recorded in the real property records of Huerfano County, Colorado on June 8, 1999, at Reception Number 339533;
2. Amendment to Amended and Restated Declaration of Covenants recorded in the real property records of Huerfano County, Colorado on January 24, 2001, at Reception No. 347525 (implements court approved water augmentation plan pursuant to Case No. 97CW108(B), Water Division 2, Colorado);

(collectively, the "Original Declaration").

B. The Owners within the Tres Valles West Community desire to amend and restate the Original Declaration by virtue of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Tres Valles West ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. The Original Declaration provides for and allows for this Declaration in Article X, Section 1, which provides as follows:

The Association shall not:

- (a) unless it has obtained the prior written consent of at least [sic] sixty-seven percent (67%) of the Members and sixty-seven percent (67%) of the First Mortgagees (based on one vote for each First Mortgage owned):

...

- (vi) add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendment to any such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of such a request shall be deemed to have approved such request, and provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and further provided that this subsection (vi) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Property or improvements thereon;
- 1) voting;
 - 2) assessments, assessment liens or subordination of such liens;
 - 3) reserve for maintenance, repair and replacement of those elements of the Common Area which must be maintained, repaired or replaced on a periodic basis;
 - 4) insurance, including but not limited to fidelity bonds;
 - 5) rights to use of the Common Area;
 - 6) responsibility for maintenance and repair of any portion of the Property;
 - 7) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property;
 - 8) interests in the Common Area;
 - 9) convertability of Lots into Common Area or of Common Area into Lots;
 - 10) leasing of Lots or dwellings constructed thereon;
 - 11) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Lot;

- 12) any provisions which are for the express benefit of First Mortgagees, insurers or guarantors of First Mortgages.

D. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

G. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots; and

H. Pursuant to the requirements set forth in Article X, Section 1(a) of the Original Declaration, at least 67% of the Members and 67% of the First Mortgagees subject to the Original Declaration have approved this Declaration, provided that pursuant to Article X, Section 1(vi) of the Original Declaration, any mortgagee that does not respond within 30 days of a request for approval of amendments shall be deemed to have approved such amendments.

NOW THEREFORE, the Original Declaration is replaced and superceded by the covenants, servitudes, easements and restrictions set forth below:

ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

- (a) Act shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended.

(b) Architectural Review Committee means the committee appointed by the Board of Directors for the purposes of reviewing any requests submitted to it, as more fully provided herein, and of ensuring the implementation of the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(c) Assessment shall include all Common Expense Assessments, water charges, and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association shall mean Tres Valles West Owners Association, a Colorado nonprofit corporation, and its successors and assigns.

(e) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(f) Board Architectural Committee means the committee appointed by the Board of Directors, comprised of Board members, for the purpose of making decisions on any requests submitted to and reviewed by the Architectural Review Committee, as more fully provided herein.

(g) Common Area shall mean all real property owned in common by all Owners, and all property owned and/or maintained by the Association for the common use and enjoyment of the Owners, if any. The Common Area shall include, but not necessarily be limited to, the private roads in the Community as shown on the Plat, the Water System, the stock tanks, and the trails in the Community.

(h) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(i) Community or Tres Valles West Community or Planned Community shall mean the planned community known as "Tres Valles West," and the real property subject to this Declaration and as further defined by the recorded Plats and the legal descriptions contained in this Declaration, and the Members of the Association.

(j) Declaration shall mean and refer to this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Tres Valles West, as amended, recorded in the office of the Clerk and Recorder of Huerfano County, Colorado.

(k) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(l) Lot shall mean and refer to any numbered plot of land shown upon any recorded Plat of the Property with the exception of Common Areas, if any.

(m) Member shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(n) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(o) Plat shall mean and refer to the plat(s) and/or map(s) of the Property and improvements that are subject to this Declaration and which are designated in the Plat recorded in the records of the Office of the Clerk and Recorder of Huerfano County. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(p) Property shall mean the property described in or which is subject to this Declaration, pursuant to the Original Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(q) Rules and Regulations shall mean any written instruments, however identified, which are adopted pursuant to the Bylaws for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.

(r) Water System shall mean and refer to the water rights, facilities, and easements used or reserved to be used to deliver domestic water to the Lots. Conditions in the augmentation plan for the Water System require a limitation of a maximum of 80 houses on the Property, with irrigated acreage no greater than 1,000 square feet per Lot. Livestock watering from the Water System is prohibited. Livestock may be maintained on the Property if provided with water from other water rights or water sources.

ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is Tres Valles West. The name of the Association is the "Tres Valles West Owners Association".

Section 2.2 Property. The Planned Community is located in Huerfano County, State of Colorado. The Property of the Planned Community is described in the Original Declaration, in the Plat, and/or is consistent with the common scheme and plan for the creation and operation of the Community. The number of Lots currently included in the Community is eighty (80). Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon any recorded Plat of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area;
- (c) the right of the Association to transfer or convey ownership of any Common Area owned by the Association;
- (d) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area; and
- (e) the right of the Association to change use of, add or remove improvements to the Common Area.

Section 2.4 Delegation of Use. Owners may delegate their right of enjoyment to any Common Area to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot. If the Owner delegates rights to use the Common Area to tenants or contract purchasers who reside at their Lot, the Owner shall not be entitled to use the Common Area, except as necessary for ingress and egress to the Community.

Section 2.5 Disclaimer of Liability. The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

Section 2.6 Utility, Plat Easements. Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the Plat of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.7 Easement for Encroachments. If any portion of a structure encroaches upon the Common Area or upon any adjoining Lot, or if any portion of the Common Area encroaches upon any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one vote which shall be cast as a single vote and shall not be subject to fractional voting.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Tres Valles West Community as provided in this Declaration so as to protect the value and desirability of the Tres Valles West Community and the Lots. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area and the Water System. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Owner's Negligence. Notwithstanding anything to the contrary herein, in the event that the need for maintenance or repair of the Common Area or Water System is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article 4 of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board at a hearing after notice to the Owner.

Section 3.4 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Plat, its Articles of Incorporation and Bylaws, and any Rules and Regulations. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.5 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.7 Education and Training. As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

ARTICLE 4
COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses, water charges, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Assessments for Common Expenses and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lots equally.

Section 4.2 Basis of Assessments. Common Expense Assessments may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 4.3 Annual Assessment. The budget for annual Assessments shall be submitted to the Owners for approval as set forth in the Bylaws, as may be amended from time to time. Assessments for Common Expenses shall be allocated equally and shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 4.4 Special Assessments. 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 cost of any construction, reconstruction, repair or replacement of the Common Area, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors;

provided that any such Assessment shall have the assent of 67% of the Members who are voting in person or by proxy at a meeting duly called for such purpose. At any meeting to adopt Special Assessments, the presence of Members present in person or by proxy entitled to cast 60% of the total votes in the Association shall be required to constitute quorum. If the required quorum is not met at any meeting to adopt Special Assessments, another meeting may be called pursuant to the Bylaws, and the required quorum at the subsequent meeting shall be lowered to 30% of the Members present in person or by proxy. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 4.5 Application of Payments. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 4.6 Effect of Non-Payment of Assessments.

(a) Any Assessment, water charge, fee or other charge provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors. If payment of any water service charge is not received within thirty (30) days of the due date, the Association may discontinue water service to such Owner's Lot as more fully provided in the Association's Rules and Regulations.

(b) Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Owner's annual Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments 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 an Owner to recover a money judgment for unpaid Assessments, charges or fees, 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 therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 4.7 Assignment of Rents. If a Lot is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Lot are more than thirty (30) days delinquent, the Association may collect, and the occupant or lessee shall pay to the Association, the rent for any Lot owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Association's request. The Association shall send notice to the Owner by any reasonable means at least ten (10) days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Association's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Lot rental or a waiver of the Owner's obligations as provided in the Declaration. The Association shall not exercise this power where a receiver has been appointed with respect to a Lot or Owner, nor in derogation of the exercise of any rights to rents by a the holder of a first lien security interest of a Lot. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Lot in the same manner as any other Assessment under this Declaration.

Section 4.8 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or

transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.9 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Assessments.

ARTICLE 5 WATER SYSTEM

Section 5.1 Water System. The Association has the responsibility for developing and maintaining the Water System. The Association has the authority to adopt Rules and Regulations, pursuant to the Bylaws, concerning the use and maintenance of the Water System, including imposing conditions on the use of the Water System by Owners or others, establishing requirements for connecting to the Water System, and establishing a rate schedule for tapping into the Water System and for water usage from the Water System.

Section 5.2 Water Charges. The Association may charge Owners tap fees, connection fees and water service fees for connecting to the Water System and using water through the Water System, as may be more fully provided for in the Rules and Regulations of the Association. The Association may charge for water usage based on usage, and such charges need not be equal for all Owners. Any such fees or charges charged by the Association shall be collectable by the Association in such amounts and in such manner as determined by the Association and shall be collectible in the same manner as Assessments.

Section 5.3 Restrictions. Conditions in the augmentation plan for the Water System require a limitation of a maximum of 80 houses on the Property, with irrigated acreage no greater than 1,000 square feet per Lot. Livestock watering from the Water System is prohibited. Livestock may be maintained on the Property if provided with water from other water rights or water sources.

ARTICLE 6 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 6.1 Flexible Application of the Subsequent Covenants and Restrictions. All Lots within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be

unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 6.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.

(b) Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions pursuant to the Governing Documents.

(c) All fines imposed are collectable as Assessments.

Section 6.3 Use/Occupancy. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any adopted Rules and Regulations. Lots shall not be used for any purpose other than a residential dwelling (including all ancillary uses permitted by applicable zoning ordinances) except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Lot and do not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

Section 6.4 Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Lot by the child or parent of an Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing.

(b) Short term occupancies and rentals of Lots of less than 30 days shall be prohibited, without prior written permission from the Association.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association.

(d) Each Owner who leases his or her Lot shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.

(f) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(g) All occupancies of Lots shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Lot.

(h) Leases shall be for the entire Lot.

(i) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(j) The Association shall have the authority to adopt Rules and Regulations, pursuant to the Bylaws, regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 6.5 Maintenance of Lots and Improvements. Except during any period of construction or reconstruction, each Lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so that the same are visible from any neighboring Lot, the Common Area or any road. The Association, and its agents, shall have the authority, after giving the Owner 30 days written notice, to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Owner thereof all reasonable costs related thereto as an Assessment hereunder.

Section 6.6 Restrictions on Pets. No animals, livestock, reptiles, poultry or insects of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners or residents of each Lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident(s) of the Property. Horses may be kept on a Lot. An Owner's or resident's right to keep household pets shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such pet(s). Owners shall hold the Association harmless from any claim resulting from any action of their pets or the pets of their tenants, guests or other invitees.

Section 6.7 Nuisances. No nuisance shall be permitted within the Tres Valles West Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or resident or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Tres Valles West Community by Owners or residents. Further, no unlawful use shall be permitted within the Tres Valles West Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Tres Valles West Community or a portion thereof shall be observed.

Section 6.8 Vehicular Parking, Storage, and Repairs.

(a) Parking upon any Common Area shall be regulated by the Association.

(b) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the Property only if such parking or storage is done wholly within the enclosed garage located on a Lot or is otherwise screened so as to not be visible from any road, except that a tent, recreation vehicle or house trailer may be placed on a Lot for a maximum period of ninety (90) consecutive days in any one calendar year for camping. This restriction contained in this Section, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvements located thereon.

(c) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(d) No parked vehicle may impede the safe and efficient use of the roads by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway or Community roads.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on or within the Property, unless it is done within a 24-hour time period or within completely enclosed structure(s) which screen sight and sound of the activity from the road and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

Section 6.9 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

Section 6.10 No Annoying Lights, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others.

Section 6.11 No Hazardous Activities. No activities shall be conducted on the Property or within improvements constructed on or within the Property which are or might be unsafe or hazardous to any person or property. Owners shall hold the Association harmless from any claim resulting from any action of the Owner, and his or her tenants, guests or other invitees which results from any such activities conducted in violation of this Section.

Section 6.12 Restrictions on Clotheslines. Except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the Board and except as otherwise permitted by Colorado law, no clotheslines, dog runs, drying yards or service yards shall be so located on any Lot as to be visible from a road.

Section 6.13 Restriction on Signs and Advertising Devices. (a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot except such sign or signs as may be approved in writing by the Association. (b) Signs intended to impact the outcome of an election must be displayed in

accordance with the Association's Rules and Regulations. (c) One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding one square foot may be displayed on a Lot. (d) A name plate of the occupant and a road number sign may be displayed on a Lot.

Section 6.14 Outbuildings and Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, or outbuilding shall be placed or erected upon any Lot, and no residence shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction, alteration, repair or remodeling of a residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. Additionally, in connection with the construction of a residence, a house trailer may be placed on the Lot for a period not to exceed 365 days. The work of construction, altering or remodeling any residence shall be prosecuted diligently from the commencement thereof until the completion thereof. Except as provided herein, no house trailers, tents, shacks, outbuildings or recreational vehicles may be used as a residence on any Lot.

Section 6.15 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any road, on any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. If trash removal is a service offered by the Association to Owners, then the Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners. All trash containers used outside on the Property shall be bear-proof.

Section 6.16 Underground Utility Lines. Except for those existing as of the date of the Original Declaration, all electric, television, radio and telephone line installations shall be placed underground, except that during the construction of any residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

Section 6.17 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed pursuant to the Bylaws. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 6.18 Compliance with Governing Documents. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

Section 6.19 Compliance With Other Laws. No unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 6.20 Restriction on Mining and Drilling. No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth. Notwithstanding the above, the Association shall have the right to quarry rocks, stones, gravel and earth from the Property for use in maintaining the roads in the Community.

Section 6.21 Lots Not to be Subdivided. No Lot shall be subdivided, except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created thereby. Not less than one entire Lot, as conveyed, shall be used as a building site.

Section 6.22 Use of the Words Tres Valles West and Tres Valles West Owners Association. No Owner or resident shall use the words Tres Valles West or Tres Valles West Owners Association or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

ARTICLE 7 ARCHITECTURAL REVIEW

Section 7.1 Required Approval. With the exception of improvements made by the Association on Common Area, for which approval is not required, no structure or any attachment to an existing structure, any building, fences, walls, canopies, awnings, roofs, exterior lighting facilities, athletic facility, antennas, or other similar improvements shall be constructed, erected, placed or installed upon the Property and no alteration of the materials or appearance (including color) of the exterior of a residence or other structure shall be made, and no change in the final grade of any Lot shall be performed, unless copies of plans and specifications therefor (said plans and specifications to show exterior design, height, materials, location of the structure or addition to the structure, as well as such other materials and information as may be required by the Architectural Review Committee) shall have been first submitted to the Architectural Review Committee and approved in writing by Board Architectural Committee, with input and recommendation from the Architectural Review Committee. The plans and specifications so submitted shall comply in all respects with the applicable building and zoning regulations of the County of Huerfano and the Planned Unit Development of Tres Valles West. An Owner may construct a six foot cedar privacy fence or a two or three split rail wood fence which does not exceed four feet in height measured from ground level without prior approval of the Board Architectural Committee; provided, however, that only a two or three split rail wood fence which does not exceed four feet in height shall be constructed on the boundary of a Lot which is contiguous to the Common Area. The Architectural Review Committee and the Board Architectural Committee shall exercise their reasonable judgment to the end that all

attachments, improvements, construction, landscaping and alterations to residences, other structures, and property, within the Property, conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the Architectural Review Committee and/or the Board Architectural Committee may require that the applicant(s) reimburse the Association for the actual expenses incurred by the Architectural Review Committee and/or the Board Architectural Committee in the review and approval process. Such amounts, if any, shall be levied as part of the Common Expense Assessment against the Lot for which the request for Board Architectural Committee approval was made and, as such, shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection thereof, as more fully provided in this Declaration. Notwithstanding the foregoing, no Owner shall have the right to materially alter or modify any fencing, landscaping or grading within the Common Area.

Section 7.2 Acknowledgment of Owners. Owners acknowledge, accept and agree to the following:

- (a) Owners will not commence construction or installation of an improvement or any alterations to existing improvements, as more fully described above, including any changes to grade or any other disturbances or alterations to the surface of a Lot, until they have submitted improvement plans and specifications and received written approval from the Board Architectural Committee, with input and recommendation from the Architectural Review Committee;
- (b) Owners shall immediately comply with any request by the Association for additional information relating to an improvement or alteration prior to the Board Architectural Committee's approval of a request and/or prior to the completion of an improvement or alteration. Failure to comply with such a request by an Owner shall result in the withdrawal of Board Architectural Committee approval, if previously granted;
- (c) Board Architectural Committee approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;
- (d) Owners shall notify the Architectural Review Committee of completion of the improvement's installation, construction or alteration within twenty (20) days of such completion;
- (e) Upon completion of an improvement or alteration, Owners authorize the Architectural Review Committee or its representative(s) to enter onto the Lot for exterior inspection;
- (f) Failure of an Owner to notify the Architectural Review Committee of completion of an approved improvement or alteration, or refusal to allow inspection, shall result in the withdrawal of the Board Architectural Committee's approval;

(g) If the improvement as built or altered does not conform to the improvement or alteration as approved by the Board Architectural Committee, the Board Architectural Committee's approval will be deemed withdrawn, and upon written request of the Architectural Review Committee and/or the Board Architectural Committee, Owners shall, at their own expense and cost, promptly bring the improvement or alteration into compliance with the submitted and approved plans and specifications;

(h) In the event of withdrawal of Board Architectural Committee approval for any reason(s) cited in this Section, and upon written request from the Architectural Review Committee and/or the Board Architectural Committee, the Owner, at his or her expense and cost, shall promptly restore the Lot to substantially the same condition as it existed prior to commencement of the improvement's installation, construction or alteration, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

Section 7.3 Architectural Criteria. The Architectural Review Committee and the Board Architectural Committee shall exercise their reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the Board Architectural Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of the exterior appearance of structures and improvements with neighboring structures, surroundings and landscaping, and conformity with the specifications and purposes generally set out in this Declaration

Section 7.4 Establishment of the Committees. The Architectural Review Committee shall consist of a minimum of three members appointed by the Board of Directors. The Board Architectural Committee shall consist of a minimum of three members, all of whom must be members of the Board of Directors, appointed by the Board of Directors. The Board of Directors shall have the authority to remove any members of the Architectural Review Committee and/or the Board Architectural Committee, at its sole discretion.

Section 7.5 Architectural Guidelines. The Architectural Review Committee may propose architectural guidelines from time to time, which guidelines may be approved pursuant to the Bylaws and included in or with any Rules and Regulations of the Association.

Section 7.6 Reply and Communication. The Architectural Review Committee shall review applications submitted for architectural approval as required herein to ensure such applications comply with the architectural criteria set forth in the Governing Documents. The Architectural Review Committee shall then issue a recommendation to the Board Architectural Committee within thirty (30) days of the receipt of complete plans and other materials which the Architectural Review Committee may require. In the event the Board Architectural Committee fails to take any action on submitted plans and specifications within ten (10) days after the Architectural

Review Committee issues its recommendation to the Board Architectural Committee, approval shall be deemed to be granted; provided, however, nothing in this Section shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Governing Documents. All communications and submittals shall be addressed to the Architectural Review Committee in care of the Association.

Section 7.7 Conditions of Approval. As a condition of approval for a requested improvement, structure, architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such improvement, change, modification, addition or alteration. In the discretion of the Board Architectural Committee, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

Section 7.8 Commencement and Completion of Construction. All improvements, structures, architectural changes, modifications, additions or alterations approved by the Board Architectural Committee must be commenced within one (1) year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Board Architectural Committee, unless the Board Architectural Committee gives a written extension for commencing the work; provided, however, any request for an extension shall not be unreasonably denied. If an extension has been granted and work has not commenced within two (2) years following the original date of approval by the Board Architectural Committee, then such approval shall be deemed revoked by the Board Architectural Committee; provided, however, the Board Architectural Committee may give a written extension for commencing the work so long as the plans and specifications comply in all respects with the most current applicable building and zoning requirements of the County of Huerfano and the Planned Unit Development of Tres Valles West. Additionally, except with written Board Architectural Committee approval otherwise, and except for delays caused by labor strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Board Architectural Committee shall be completed within eighteen (18) months of commencement.

Section 7.9 Variations. The Board may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines. The Architectural Review Committee shall make recommendations to the Board as necessary in relation to any request for a variance from an Owner. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 7.10 Right to Appeal. An Owner whose plans have been disapproved or conditionally approved may appeal any decision of the Board Architectural Committee to the entire Board of Directors. The Board of Directors shall review the decision of the Board Architectural Committee pursuant to the criteria set forth in this Article and/or the architectural guidelines. Any decision of the Board Architectural Committee may be overruled and reversed on appeal by the Board of Directors by a written decision setting forth the reasons for the reversal when the Board of Directors conclude that the Board Architectural Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 7.11 Waivers. The approval or consent of the Board Architectural Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Board Architectural Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 7.12 Liability. The Board of Directors, the Architectural Review Committee, the Board Architectural Committee, and the members of thereof, as well as any representative of the Board designated to act on their behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board, the Architectural Review Committee, nor the Board Architectural Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

Section 7.13 Records. The Association shall maintain written records of all architectural approval applications submitted and all actions taken and decisions made with respect thereto. Such records shall be open and available for inspection and copying by any Owner and such Owner's designated agent(s) during reasonable hours of the business day according to any policy adopted by the Board.

Section 7.14 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

**ARTICLE 8
INSURANCE/CONDEMNATION**

Section 8.1 Insurance on the Lots. Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, or other property of that Owner located on such Lot, and liability insurance covering any injuries occurring to persons or property damages on a Lot.

Section 8.2 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 8.3 Hazard Insurance on Common Area. The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Area and the other property of the Association.

Section 8.4 Association Liability Insurance. The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for death, bodily injury or property damage. Coverage shall include, without limitation, liability for death, personal injuries and operation of automobiles on behalf of the Association.

Section 8.5 Association Fidelity Insurance. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 8.6 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 8.7 Directors' and Officers' Personal Liability Insurance. The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers, directors, committee members or in acting at the discretion of the Board on behalf of the Association.

Section 8.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without prior written notice to all of the Owners as provided by Colorado law and to the Association.

(d) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least ten (10) days prior to the expiration of the then-current policies.

(e) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(f) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

Section 8.9 Other Association Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 8.10 Insurance Premium. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 8.11 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 8.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 8.13 Duty to Repair. Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 8.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 8.15 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

Section 8.16 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Insurance Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

Section 8.17 Damage to or Destruction on Lots. In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

ARTICLE 9 GENERAL PROVISIONS

Section 9.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot;

(ii) suspending the right to vote;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action or not in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action or not shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 9.2 Attorney Fees. If an Owner fails to pay any Assessment as provided in this Declaration, the Association may require reimbursement from the Owner for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement from the Owner for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner shall be charged as an Assessment and shall constitute a lien against the Lot.

Section 9.3 Severability. 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.

Section 9.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 9.5 Amendment of Declaration by Owners. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least sixty-seven percent (67%) of the Members in the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Huerfano County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 9.6 Registration of Mailing Address. Each Owner shall register his or her mailing address with the Association, and all notices and demands intended to be served upon an Owner shall be sent to such Owner's registered mailing address. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be sent to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to 109 West Main Street, Trinidad, Colorado 81082, until such address is changed by the Association.

Section 9.7 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 9.8 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 9.9 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 9.10 Challenge to this Amendment. All challenges to the validity of this amendment or any future amendments must be made within one year after the date or recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 9.11 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 9.12 Conflict of Provisions. In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

The undersigned, being the president and the Secretary of Tres Valles West Owners Association., hereby certify that at least 67% of the Members and 67% of the First Mortgagees subject to the Original Declaration have approved this Declaration, provided that pursuant to Article X, Section I(vi) of the Original Declaration, any mortgagee that does not respond within 30 days of a request for approval of amendments shall be deemed to have approved such amendments.

TRES VALLES WEST OWNERS ASSOCIATION,
a Colorado nonprofit corporation,

By: Steven M Keppes
President

STATE OF COLORADO)
) ss.
COUNTY OF Huerfano)

The foregoing Declaration was acknowledged before me by Steven M Keppes as President of Tres Valles West Owners Association, a Colorado nonprofit corporation, on this 23rd day of June, 2011.

Maria B. Wyland
Notary Public

My commission expires: 7-5-2014

ATTEST: *Rodney Gerik*
Secretary

TEXAS
STATE OF COLORADO)
COUNTY OF Williamson) ss.

The foregoing Declaration was acknowledged before me by RODNEY GERIK, as Secretary, of Tres Valles West Owners Association, a Colorado nonprofit corporation, on this 23 day of June, 2011.

Kathryn L. Clark
Notary Public

My commission expires: 4/07/14

