

**DECLARATION OF PROTECTIVE COVENANTS**

**OF**

**MEADOW LAKE AIRPARK**

**EL PASO COUNTY, COLORADO**

THIS DECLARATION OF PROTECTIVE COVENANTS (this "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by FALCON DEVELOPMENT CORPORATION, a Colorado corporation ("Declarant" in this Declaration).

**BACKGROUND AND PURPOSE**

A. Declarant is the owner in fee simple of certain real property (the "Property") in the County of El Paso, State of Colorado, which Property is described as Lots 1 through 9, MEADOW LAKE AIRPORT FILING NO. 14, and shall be commonly referred to as the MEADOW LAKE AIRPARK (the "Development").

B. Declarant intends to subdivide the Property into residential lots (the "Lots"), and place protective covenants, conditions, easements and restrictions on the Property in order to establish, protect and maintain the quality residential environment, character, values and amenities of the Property.

C. The Development constitutes a "planned community," as that term is defined in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.* (the "Act"). As provided in Section 38-33.3-116, C.R.S., the Development is only subject to Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107 of the Act, by virtue of the limitations on Assessments contained in Section 7.06 of this Declaration. Except as stated in this paragraph, the Act shall not apply to this Declaration, the Association, the Property or the Development.

D. Declarant, pursuant to the notes set forth in the plat of Meadow Lake Airport Filing 14, shall convey to the lot owners included within the Development sufficient water rights to satisfy the replacement plan as set forth in Findings and Order of the Colorado Ground Water Commission Determination of Water Rights Nos. 9-BD and 10-BD.

**DECLARATION**

Declarant, for itself and its grantees, successors and assigns, does hereby impose and establish upon the Property, and all of the Property shall hereafter be subject to, all of the following restrictions, covenants, easements and conditions, all of which shall be deemed to run with the land and shall inure to the benefit of and be binding upon Declarant, its grantees, successors and assigns, and all parties having or acquiring any right, title or interest in

or to the Property or any part thereof.

**ARTICLE I**  
**DEFINITIONS**

The following words and phrases, when used in this Declaration, shall have the meanings specified in this Article I.

- 1.01 “Accessory Building” shall mean any detached garage, hangar, building or structure used for storage or for any other purpose that is located on a Lot.
- 1.02 “Applicant” shall mean any Person, other than Declarant, desiring to build, erect or install any Improvement on a Lot or on any portion of the Property who submits plans for the Improvement to the ARC.
- 1.03 “Architectural Review Committee” (“ARC”) shall have the meaning set forth in Article IV herein.
- 1.04 “Assessment” shall have the meaning set forth in Article VII herein.
- 1.05 “Association” shall mean the Meadow Lake Airpark Homeowners Association, a Colorado nonprofit corporation, its successors and assigns. The address of the Association shall be 7959 Cessna Drive, Meadow Lake Airport (00V), Peyton, Colorado 80831; *provided, however*, the Association may change its address from time to time by notice to the Owners.
- 1.06 “Association Documents” shall mean this Declaration, the Association’s bylaws and articles of incorporation, any recorded plat of the Property, and Rules and Regulations, as they may be amended from time to time.
- 1.07 “Association Properties” shall mean all real and personal property, together with any and all Improvements now or hereafter owned by the Association or which the Association hereafter maintains, holds or uses for the common use and enjoyment of all of the Owners. The Association Properties shall include, without limitation, the drainage and taxiway easements identified in the recorded plat of the Property that is the responsibility of the Association to maintain.
- 1.08 “Board” shall mean the Board of Directors of the Association.
- 1.09 “Builder” shall mean any Person other than Declarant that purchases one or more Lots for the purpose of constructing a Residence or Residences for later sale to consumers.
- 1.10 “County” shall mean El Paso County, Colorado.
- 1.11 “Declarant” shall mean Falcon Development Corporation, a Colorado corporation, its successors and assigns. A Person shall be deemed a successor or assign of Falcon Development Corporation as Declarant only if specifically designated in a recorded instrument as a successor or assign of Declarant under this Declaration, and only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the recorded instrument. Notwithstanding the foregoing, a successor to Falcon Development Corporation by consolidation or merger shall automatically be deemed a successor or assign of Falcon Development Corporation as Declarant under this Declaration without the requirement of recording an instrument.
- 1.12 “Declaration” shall mean the Declaration of Protective Covenants of Meadow Lake Airpark, El Paso County, Colorado.
- 1.13 “Development” shall mean Lots 1-9, inclusive, in Meadow Lake Airport Filing No. 14, El Paso County, Colorado, as shown in a plat recorded in the records of El Paso County, Colorado.

- 1.14 “First Mortgage” shall mean a deed of trust on a Lot having a priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute. The beneficiary named in such deed of trust shall be referred to as a “First Mortgagee.”
- 1.15 “Improvement” shall mean anything that alters the previously existing exterior appearance of any land, including but not limited to Residences, buildings, outbuildings, patios, swimming pools, garages, hangars, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), or other utilities.
- 1.16 “Lot” shall mean a parcel of land designated as a Lot in a recorded plat of the Development, together with all appurtenances and Improvements associated therewith, now existing or subsequently created.
- 1.17 “Member” shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.
- 1.18 “Notice and Hearing” shall have the meaning set forth in Section 5.06 herein.
- 1.19 “Period of Declarant Control” shall mean until Declarant no longer owns any real property in the Property, or such earlier date as may be designated by Declarant pursuant to a recorded notice terminating the Period of Declarant Control.
- 1.20 “Person” shall mean a natural individual, trust or legal entity.
- 1.21 “Property” shall mean the real property described as the Development, and all real property that Declarant makes subject to the Declaration in the future pursuant to a recorded instrument.
- 1.22 “Residence” shall mean an Improvement on a Lot that is intended or used for residential occupancy.
- 1.23 “Rules and Regulations” shall mean those rules and regulations, if any, adopted by the Board as provided in Section 5.05 (d) of this Declaration, as the same may be amended from time to time.
- 1.24 “Specific Assessment” shall have the meaning set forth in Section 7.16 herein.

## ARTICLE II

### DEVELOPMENT AND EXPANSION

2.01 Subdivision and Development by Declarant. All lands and all Improvements thereon and uses thereof contained within the Development shall be subject to this Declaration. Declarant shall have absolute and complete discretion with respect to the designation of Lots and the manner in which the planning and build-out of the Property is to progress.

2.02 Expansion. For as long as Declarant owns real property within the Property, Declarant may add real property to the Property. Such real property need not be contiguous to land already subject to this Declaration. Additional real property described in any recorded instrument that incorporates this Declaration will become part of the

Property and subject to this Declaration. Any real property included in the Property that is not owned by Declarant will be included only with the consent of the owner of the real property.

2.03 Withdrawal. For as long as Declarant owns real property within the Property, Declarant reserves the right to withdraw any parcel of the Property from the jurisdiction of this Declaration; provided, however, that any real property owned by an Owner shall only be withdrawn with the Owner's consent.

2.04 Subdivision of Lots. Declarant may subdivide any Lot within the Development into two or more Lots, if allowed by the El Paso County zoning and subdivision regulations; *provided, however*, that Declarant may subdivide a Lot owned by an Owner only with that Owner's consent.

### ARTICLE III

#### ARCHITECTURAL AND LIVING ENVIRONMENT STANDARDS

3.01 Land Use, Building Type and Occupancy. All of the Property shall be used for single-family residential purposes and aircraft hangar use only. All Lots abutting a taxiway easement must contain both a Residence and an aircraft hangar, subject to prior approval by the ARC. No more than one Residence may be permitted on any Lot. No Lot may be subdivided or further divided by an Owner. Garages shall be used only for the storage of motor vehicles and accessories, and shall not be converted to living space without the prior approval of ARC as described in Article IV herein. No building shall be permitted on any Lot unless such building has been duly constructed thereon. The removal of a Residence, structure or other Improvement from another location to a Lot shall not be permitted. This residential use restriction shall not prohibit the use of a residential-type structure as a construction and/or sales office by a Builder upon Declarant's approval or by an Applicant upon ARC approval.

3.02 Quality and Size of Residences. It is the intention and purpose of this Declaration to assure that all Residences contain a high quality of workmanship and material. Residential dwellings shall contain a minimum of one thousand four hundred (1,400) square feet exclusive of garage, hangar, patio and deck areas. All Residences must include a private garage for not less than two motor vehicles, which may be incorporated into and made a part of the required aircraft hangar. All hangars must contain a minimum of one thousand six hundred (1,600) square feet.

3.03 Architectural Review. No Improvement shall be commenced, erected, placed or maintained on any Lot without prior approval of the ARC as provided in Article IV herein.

3.04 Minimum Setbacks. No building may be constructed within any public or private easement. Where a hangar door faces an adjoining property line, there shall be a minimum of forty (40) feet to the adjoining property line. For the purpose of this Section 3.04, taxiways, eaves, fireplaces, steps and open porches may encroach into a setback area, but this shall not be construed to permit taxiways, eaves, fireplaces, steps, porches or

any other portion of a building on a Lot to encroach upon another Lot.

3.05 Easements and Utility Right of Way. Easements for installation and maintenance of utilities, taxiways and drainage facilities are reserved as shown on the recorded plat of the Property. Within these easements, no structure, planting or other material shall be placed or permitted to remain which damages or interferes with the installation and maintenance of utilities or use of the taxiways, or which may change the direction or flow of drainage channels in the easements. Specifically, drainage easements, taxiway easements and all related facilities in those easements shall be maintained by the Association, except for Improvements or facilities for which a public authority or utility company is responsible. All easements depicted on the recorded plat of the Property are for the benefit of the Owners, their families, guests and invitees, except as otherwise indicated.

3.06 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon to cause annoyance, embarrassment, discomfort, or a nuisance in the neighborhood. No offensive or hazardous activity shall be permitted on any Lot or in any Residence. No annoying lights, sounds or odors shall be permitted to emanate from any Residence. Refuse piles or other unsightly materials or objects shall not be allowed to be placed or remain in open storage upon Lots, including on or within easements.

3.07 Trucks, Campers, Cars and Trailers. No truck, camper, trailer, boat, tractor, commercial vehicle, mobile home, motor home, motorcycle or utility trailer or other tow trailer may be kept on any Lot or elsewhere on the Property unless enclosed in a structure which has been approved by the ARC. No such vehicles shall be parked in the street right-of-way, on driveways, or where visible to the surrounding properties or adjacent streets. For purposes of this restriction, a truck having three-quarter ton or less manufacturer's rating capacity, commonly known as a pickup truck, shall not be deemed a commercial vehicle. During normal day-to-day activity, all cars and other vehicles must remain parked in the applicable Owner's driveway or garage; no car or other vehicle may be parked on the street or any easement at any time.

3.08 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, excavation or other out-building will be permitted on any Lot, except as may be determined to be necessary during construction and specifically authorized by the ARC prior to installation.

3.09 Accessory Buildings. All Accessory Buildings, including structures described in Sections 3.10 and 3.11, shall be of the same or similar colors, siding and roofing materials as the Residence constructed or planned on the Lot and shall harmonize in appearance with such Residence. Accessory Buildings must be approved in advance of construction by the ARC.

3.10 Mechanical Work. No stripped down, partially wrecked or junk motor vehicles may be stored on any Lot or elsewhere on the Property except in an enclosed structure approved by the ARC. No maintenance,

servicing, repair, dismantling, or repainting of any vehicle, boat, machine or device may be carried on except in an approved completed and enclosed structure.

3.11 Maintenance Equipment. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. The ARC must approve all storage structures and screening of maintenance equipment prior to commencement of construction.

3.12 Weeds and Insects. All Lots and yards are to be kept free of weeds and harmful insects.

3.13 Clothesline and Storage. No outdoor clotheslines or poles or other drying facilities will be placed so as to be visible from neighboring properties or any street. No dog runs, service yards, wood piles or storage areas shall be so located as to be visible from neighboring properties or any street.

3.14 Towers, Dishes and Antennas. Plans for all towers, dishes and antennas must be approved by the ARC prior to installation. Except as otherwise approved in advance by the ARC, no aerial, antenna or other device for reception of radio, television, microwave or other electronic signals may be maintained on the roof of any building, nor shall such structure be mounted at any location so as to be visible from neighboring properties or adjacent streets.

3.15 Solar Energy Devices. All solar energy devices erected or installed on any Lot must be designed by a licensed architect and approved in advance by the ARC. Plans for solar energy devices submitted to the ARC must bear the architect's stamp. All solar energy devices must comply with any requirements imposed by the County or other applicable governmental authority.

3.16 Fences. All fencing must be approved by the ARC in advance of construction. Except as otherwise approved in advance by the ARC, no fence may be erected on any Lot or the Property unless the fence is constructed of wood material and does not exceed six (6) feet in height. No fencing shall be allowed within any easement.

3.17 Drilling and Mining Operations. No drilling (other than properly permitted water wells and septic systems), development operations, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. Wells, tanks, derricks, tunnels, mineral excavations, shafts or any other structure or excavation related to a mining or drilling operation shall not be erected, maintained or permitted on any Lot.

3.18 Signs. Except as otherwise provided by law, no signs, billboards, poster boards or advertising structures of any kind shall be erected or maintained on any Lot or Improvement for any purpose whatsoever, except

for one sign for privacy or identification of not more than one (1) square foot area in size, and one sign of not more than five (5) square feet in size advertising the Residence for sale or rent. This restriction does not apply to any temporary signs erected by Declarant or Builders to market homes or Lots within the Development.

3.19 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot, except that dogs, cats or other household pets may be kept in reasonable number and provided they do not create a nuisance. No animals may be kept, bred or maintained on a Lot for any commercial purpose.

3.20 Garbage and Refuse Disposal. No Lot, including easements, shall be used or maintained as a dumping ground for rubbish. Trash, garbage, ashes, rubbish, grass and shrub clippings, building materials, scrap materials or other waste shall not be kept on a Lot except in sanitary containers.

3.21 Commercial Enterprises. No commercial enterprises shall be conducted or maintained upon, in front of, or in connection with any Lot, nor shall any Lot be used in any way for other than strictly single-family residential purposes, except that professional offices may be maintained within the Residence in accordance with applicable County zoning ordinances and upon specific approval by the ARC in each case. However, this Section 3.21 shall not apply to any sales or construction office located on any Lot which is maintained by Declarant or a Builder during the construction and sales period, and such normal sales or construction office activity shall in no way be impaired by this Declaration.

3.22 Landscaping. Each Lot must be maintained in an attractive and well-groomed manner as determined in the discretion of the ARC.

3.23 Changes or Alterations. No change in color or other exterior appearance of buildings, fences or other structures, or alterations to a Residence, structure, fence, landscaping plan or any other previously approved Improvement shall be made until the proposed change or alteration has been submitted to and approved by the ARC as provided in Article IV herein.

3.24 Soils, Grading and Maintenance. The soils within the State of Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of any Improvement if the Improvement and the Lot containing it are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains thereby resulting in consolidation and/or collapse of the soils. Each Owner should take special note and care to insure and maintain water drainage away from the Residence and not to interfere with the drainage patterns established by the grading plan for the Property and the finished Lot grading set by a Builder. Lot drainage patterns cannot be directed to adjacent Lots, but must be maintained within the boundaries of the Lot generating the drainage and then to adjacent

streets or drainage easements.

3.25 Residential Colors and Exteriors. Exterior colors shall be earth tones or subdued tones of beige, tan, gray or brown. Stronger accent colors may be used provided they are not bright colors such as neon colors, purple, lime green, chartreuse, orange, yellow, pink or red. Light colored wood shall be finished with a wood preservative that contains at least ten percent (10%) color pigment. The exterior portions of all Residences shall be constructed of or finished with manufactured finish material or natural stone or brick or shall be painted or stained upon completion so that all exposed surfaces shall have a finished appearance. Garages and hangars shall conform to the exterior of the residential dwelling. No Residences may be constructed of steel; however, Accessory Buildings may be constructed of steel upon prior written approval of the ARC.

3.26 Lighting. Lights used for the illumination of parking areas and driveways shall be directed away from adjacent properties and rights of way so as to confine direct rays to the Lot in question.

#### **ARTICLE IV** **ARCHITECTURAL REVIEW**

4.01. Architectural Review and Approval. To carry out the administration and enforcement of the architectural provisions of this Declaration, there is hereby formed an Architectural Review Committee (“ARC”). Declarant shall act as the ARC until such time as Declarant: (i) no longer owns property within the Development; (ii) a Residence has been completed on every Lot in the Development and sold to an Owner other than a Builder; or (iii) such earlier time as Declarant assigns its rights to a successor, which may include the Association. Upon assignment to the Association, the Association, through its Board, shall have the architectural review, approval and enforcement functions set forth in this Declaration. The Board may delegate its architectural review and approval functions to a committee appointed by the Board.

4.02 Approval Procedure. Any Applicant desiring to build, erect or install any Improvement, or to alter, remove, add to or change any previously approved or existing Improvement, on any Lot or other portion of the Property, shall submit two sets of plans to the ARC. The plans shall show the shape, dimensions, materials, floor plans, location, exterior elevations, alterations, grading, drainage and color scheme for the Improvement. All plans submitted for approval by the ARC must include both a Residence and an aircraft hangar, and shall include a construction schedule for the completion of all Improvements. Incomplete submittals will be returned to the Applicant without review. The Applicant shall provide an address to which the ARC’s written decision may be mailed. The ARC may charge reasonable fees to cover expenses incurred in the professional review of plans submitted pursuant to this Declaration.

The Applicant should submit the plans on a date sufficiently far in advance of commencement of construction to enable the ARC to complete its review of the plans within the time limits set forth in this Section

4.02. Following submittal of plans, the ARC shall have twenty-five (25) days in which to provide its written decision to the Applicant, which decision may be: (i) approval; (ii) approval subject to certain conditions, or (iii) disapproval. If necessary, the ARC may have an additional twenty (20) days for review of the plans as long as notice of such extension is provided to the Applicant within the original 25-day review period. In the event the ARC fails to give such written notice to the Applicant within the time limit specified above, approval of the plans shall be deemed granted and specific written approval by the ARC will not be required. The ARC shall return one set of plans to the Applicant and retain the other set of plans, along with a written record of its decision, for a period of one year from the date of the ARC's written decision on the Applicant's plans. If there is no written decision by the ARC, the ARC will retain the plans for a period of thirteen months after the Applicant's submittal of the plans to the ARC. Thereafter, the ARC may destroy such plans, specifications and records without any liability being imposed on it thereby. Approval of any plans will automatically expire one (1) year after approval if construction is not commenced within such one-year period, and if approval has expired, the Applicant must submit a new request to the ARC for approval.

4.03 Approval Standards. In approving or disapproving plans and specifications, the ARC shall have the right to take into consideration, among other things, the specific requirements and provisions of this Declaration; the use and suitability of the proposed Improvement; the materials with which the Improvement is to be built; the quality of workmanship; the topography, size and shape of the Lot upon which the Improvement will be installed, the harmony of the external appearance of the Improvement with its surroundings; and the degree, if any, to which the proposed Improvement will result in interference with views or cause intrusions of sound, light or other effect on neighboring Lots beyond those to be reasonably expected in a quality residential area from considerate neighbors. All plans must meet all applicable standards of the Federal Aviation Administration. Owners of Lots acknowledge that architectural review is inherently a subjective process and that the ARC is given wide discretion in carrying out its function. The decisions of the ARC shall be final and binding unless they are clearly arbitrary and there is no competent evidence to support the ARC's decision.

4.04 Variances. The ARC shall have the authority to grant for a Lot a variance from any covenant set forth in this Declaration that is within the authority of the ARC. Such variance will only be made upon the ARC's finding of exceptional and extraordinary circumstances where literal enforcement of the covenant will create a material hardship to the Applicant, and that such a variance is not contrary to the interests of the Development, the Association or other Lot Owners. A variance may also be granted to comply with governmental ordinances, the El Paso County Development Code, rules, policies or laws that currently exist or may exist in the future. A variance may be made subject to terms and conditions approved by the ARC. If a variance is denied, the Applicant may not bring another application for a similar variance for the same Lot for a period of one (1) year after submittal of the original request.

4.05 No Liability. Neither the Declarant, the Association, the ARC, nor any member or agent thereof, shall be liable in damages to any person or entity submitting plans for approval or requesting a variance, nor to any

Owner of a Lot or any other portion of the Property, by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval, or failure to approve or disapprove any plans, specifications or variances. Approval by the ARC shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Applicant to comply with all codes, ordinances and regulations. Any Applicant submitting or causing to be submitted any plans and specifications to the ARC agrees and covenants that the Applicant will not bring any action or suit to recover damages against Declarant, the Association, the ARC or its members, individually or collectively, or their advisers, employees or agents. It is the intent of this Declaration that the ARC shall be recognized as a nonprofit organization for purposes of C.R.S. §13-21-115.5, §13-21-115.7 and §13-21-116 (and any successor statutes), and that individuals serving on the ARC shall, to the fullest extent permitted by such statutes, be protected from personal liability.

## **ARTICLE V**

### **MEADOW LAKE AIRPARK HOMEOWNERS ASSOCIATION**

Meadow Lake Airpark Homeowners Association is a Colorado nonprofit corporation organized to promote the common interests of the Members. The Association shall have the power to do anything that may be necessary or desirable to further the common interests of the Members, to review and approve plans, to maintain Association Properties for which the Association is obligated to maintain pursuant to this Declaration, to administer and enforce the covenants contained in this Declaration, and to improve and enhance the attractiveness, desirability and safety of the Development.

5.01 Association Structure. The Association shall have the duties, powers and rights set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws. In case of conflict between this Declaration and the Articles and Bylaws, the Declaration shall control, and in case of conflict between the Articles and Bylaws, the Articles shall control. As more specifically set forth hereinafter, the Association shall be managed by a Board of Directors.

5.02 Board of Directors. The Association shall be managed by its Board of Directors, which shall consist of not less than two (2) nor more than nine (9) Persons. All members of the Board shall be either representatives of Declarant or Members of the Association. Declarant reserves the right to appoint and remove officers and members of the Board during the Period of Declarant Control. The terms and qualification of the members of the Board shall be fixed in the Bylaws. The Board may, by resolution, delegate portions of its authority to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized committee, officer, agent or employee thereof without a vote of Members, except as otherwise specifically provided in this Declaration or required by Colorado law. All lawful

decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon the Association and all Members, Owners and other Persons.

5.03 Membership in the Association. Each Owner of a Lot shall be a Member of the Association. Membership shall automatically pass with fee simple title to the Lot and is not severable from the Lot. Declarant shall hold one (1) membership interest in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign some or all of the Owner's rights as an Owner and as a Member to a contract purchaser, tenant or First Mortgagee, and may arrange for such person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the sales contract, tenancy or First Mortgage. All rights and privileges of Association membership shall be subject to the Association Documents.

5.04 Voting Rights of Members.

(a) Entitlement. There shall be one (1) vote for each Lot then existing within the Property. Each Owner of a Lot shall have one vote for each such Lot. Declarant shall be entitled to a number of votes equal to the number of Lots owned by Declarant.

(b) Joint or Common Ownership. If any Lot is owned by more than one person, the vote to which such Lot is entitled shall also be held jointly or in common in the same manner as title to the Lot. However, the vote for such Lot shall be cast, if at all, as an undivided unit, and neither fractional votes nor split votes shall be allowed. If the common or joint Owners are unable to agree among themselves as to how their vote shall be cast as an undivided unit, they shall lose their right to cast their vote on the matter in question. If only one of the joint or common Owners is present at an Association meeting where a vote may be cast, that Owner shall be entitled to cast the vote belonging to the joint or common Owners, unless another joint or common Owner shall have delivered to the secretary of the Association prior to the meeting a written statement to the effect that the Owner wishing to cast the vote has not been authorized to do so by the other joint or common Owner or Owners.

(c) Proxies. The use of proxies in voting by the Members shall be permitted, and the rules and regulations regarding the use of proxies shall be addressed in the Association's Bylaws, as the same may be amended from time to time.

5.05 General Duties and Powers of the Association.

(a) Acceptance of Property and Facilities Transferred by Declarant. The Association shall accept title to any real or personal property transferred to the Association by Declarant or by any Person with Declarant's permission, together with the responsibility to perform any and all associated Association functions, provided that such

property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Such transferred property will be an Association Property. No representation, express or implied, is made that the Declarant will transfer property to the Association, except as specifically provided in this Declaration. In particular, the Declarant hereby transfers to the Association all of its rights, duties and obligations in and with regard to the maintenance of any and all drainage and taxiway easements as shown on any recorded plat of the Property or any portion thereof, whether such plat is recorded prior or subsequent to the recording of this Declaration.

(b) Acquisition of Property and Improvements. The Association may acquire real or personal property or interests in such property for the common benefit of Members.

(c) Management and Care of Association Properties and other Property. The Association shall maintain, operate and repair all Association Properties and keep the same in a condition as may be necessary or desirable for their intended uses. In connection therewith, the Association may construct or reconstruct Improvements on the Property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Property, whether or not owned by the Association, in any circumstance where such maintenance is required pursuant to a plat, ordinance or other governmental obligation affecting some or all of the Development.

(d) Adoption of Rules and Regulations. The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the repair and maintenance of the Association Properties, and the use of any other property within the Development, including Lots. Any such Rules and Regulations shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Written notice of the adoption, amendment or repeal of any Rule or Regulation shall be provided to all Members by the Association, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of any copying cost. Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the Declaration shall prevail.

(e) Power to Employ Managers, Consultants, and Employees. The Association shall have the power to hire consultants or contractors, and delegate to them the performance of any functions for which the Association has responsibility under this Declaration, including, without limitation, the repair, maintenance and improvement of the Association Properties and for review and approval of plans. Notwithstanding such delegation, the Association and the Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. The Association may also employ or contract with one or more consultants, which may be Declarant, or an affiliate of Declarant, to assist in operating and managing the Association.

(f) Enforcement of Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of the Association Documents and shall take such action as the Board deems necessary to cause compliance by each Member, Owner and other Persons. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the Association Documents by any one or more of the following means: (a) by entry upon any property after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner or occupants thereof, for the purpose of enforcement of or causing compliance with the Association Documents; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of the Association Documents, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of the Association Documents; (d) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or Owner of the Association Documents, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting, after Notice and Hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member, Owner or other Person for breach by such Member, Owner or other Person of the Association Documents; and (f) by exercising any right or remedy permitted by law or in equity.

(g) Borrowing and Pledge of Future Assessments. Upon a majority vote of the Board, the Association may borrow funds for capital or other expenses and grant a security interest in the Association's right to levy and collect assessments as collateral for such borrowing.

5.06 Notice and Hearing. Under certain circumstances where the Board determines a hearing is necessary, and as further provided in this Declaration and Rules and Regulations, an Owner or other Person alleged to be in violation of any provision within an Association Document shall be given written notice of the violation and the scheduling of a hearing by the Board or its designated representative to hear evidence concerning the violation and render a decision. The notice shall provide the day, time and location of the hearing. The notice shall be hand-delivered or sent by U.S. Mail, postage prepaid, to the last known address of the Owner or Person alleged to be in violation not less than ten (10) days prior to the scheduled hearing date. The Association may audiotape the hearing. The Association and the Owner or other Person shall have the opportunity to present evidence in support of their respective positions. Within ten (10) days of the hearing, the Board or designated representative will issue its decision. The hearing will occur whether or not the Owner or other Person attends the hearing, absent extraordinary circumstances as determined by the Board or designated representative. The decision shall be final and binding unless clearly arbitrary and there is no competent evidence to support the decision.

5.07 Transfer of Records. Within sixty (60) days after the expiration of the Period of Declarant Control, Declarant shall deliver to the Association all records and other tangible property of the Members and the Association held by or controlled by the Declarant.

5.08 Association Easements. An easement to perform its maintenance or other rights or obligations

pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over, in and under all property within the Development, together with the right to make such use of the Property as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

5.09 Membership in Meadow Lake Airport Association. Each Member of the Association shall also be required to be a member of the Meadow Lake Airport Association (hereafter referred to as the “Airport Association”), and as such all Members of the Association shall be entitled to the rights and privileges, and shall be required to comply with the obligations, of membership in the Airport Association. Dues and assessments for the Airport Association shall be assessed by and paid directly to the Airport Association.

## ARTICLE VI

### DECLARANT’S DEVELOPMENT RIGHTS

6.01 Period of Declarant’s Rights and Reservations. In addition to other rights of Declarant described elsewhere in this Declaration, Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Development during the Period of Declarant Control. Those rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant’s prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents.

6.02 Declarant’s Development Rights. Declarant has the right, but not the obligation, to perform any of the following:

- (a) to complete any Improvements shown on any plat covering the Property or any portion thereof;
- (b) to exercise any development rights set forth in this Declaration;
- (c) to maintain anywhere within the Development, sales offices, management offices, signs advertising the Development and model homes;
- (d) to store building materials, supplies and equipment on land owned by Declarant within the Development; and
- (e) to use easements benefiting or burdening any of the Property for the purpose of making, maintaining, reconstructing or repairing improvements within the Association Properties.

Declarant may delegate any of the above rights to any Builder in the sole discretion of Declarant.

6.03 Right to Complete Development. After the Period of Declarant Control has ended, Declarant shall retain the right to complete development of the Property as Declarant may elect. The Association and its Board shall not take any action impairing this continuing right of Declarant.

**ARTICLE VII**  
**ASSESSMENTS**

7.01 Purpose of Assessments. The Assessments shall be used to pay expenses incurred in connection with the management, ownership, maintenance, repair, replacement, and insurance of the Association Properties and other properties for which the Association has maintenance responsibility, including, without limitation, the drainage and taxiway easements.

7.02 Declarant's Obligation. Until Assessments are first levied by the Association, Declarant shall pay the expenses of the Association.

7.03 Obligation for Assessments. Each Owner, for each Lot owned within the Development, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner and amounts, and at the times prescribed herein, the Assessments as described in this Declaration. Assessments shall be both a personal obligation of the Owner and a lien against the Owner's Lot. Joint or common Owners shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise avoid personal liability for the payment of the Assessments by non-use of the Association Properties, by non-use of any service provided by the Association for Owners, by abandonment or leasing of the Owner's Lot, or by asserting any claims against the Association, the Declarant or any other Person. Owners of Lots having the exclusive use and benefit of particular Association Properties or having services performed by the Association that are not performed for all Owners may be obligated to pay additional Assessments. In addition to the Assessments, each Owner shall have the obligation to pay real property ad valorem taxes and any special assessments imposed by Colorado governmental entities against a Lot. All property dedicated to and accepted by a governmental entity shall be exempt from Assessments.

7.04 Assessments. By way of example but not by way of limitation, Assessments may be intended to cover the following Association expenses:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments levied upon the Association Properties,
- (c) premiums for all Association insurance;
- (d) common services to Owners as approved by the Board;
- (e) maintenance of Association Properties and any facilities or Improvements located thereon;
- (f) other repairs and maintenance that are the responsibility of the Association;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal, accounting and other professional fees of the Association;
- (i) any deficit remaining from a previous Assessment year;

- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of the Association Properties;
- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies;
- (l) dues and assessments charged from time to time by the Airport Association;
- (m) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

7.05 Assessment Procedure.

(a) The obligation for any Owner to pay Assessments shall commence when the ownership of the Lot is transferred to a purchaser other than Declarant.

(b) Promptly after this Declaration is recorded in the County records, the Board shall set the total annual Assessment for 2007, based upon an estimated budget for the Association for that year. No later than sixty (60) days before the beginning of each year thereafter, the Board shall set the total annual Assessment based upon an estimated budget of the Association's requirements for the following Assessment year. The Board shall mail or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider approval of the budget. Unless a majority of Owners reject the budget, the budget is approved, whether or not a quorum is present at the meeting. If the proposed budget is rejected, the budget last approved by the Owners must be continued until such time as the Owners approve a subsequent budget. At a minimum, the amount of the annual Assessment shall be fixed at an amount adequate to clean, maintain and repair (to include replacement as may be necessary) the road/taxiway.

(c) After the Owners approve the budget, the Board shall mail or deliver to each Owner, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth such Owner's annual Assessment. The Assessment shall be payable in advance in annual or quarterly installments, or as designated by the Board, due and payable on due dates declared by the Board. Assessments shall be applicable to all Lots, including those owned by Declarant. The Board may adopt Rules and Regulations requiring the Owner, at the time when Assessments first commence upon that Owner's Lot as provided in this Article VII, to prepay the Assessments for the balance of the current period and an additional period which shall not exceed an additional twelve (12) months.

(d) If, during the fiscal year of the Association, and after the Association budget has been approved, the Board determines the necessity of raising additional funds to cover Association expenses, the Board may request the approval by the Members of an additional Assessment amount; provided, however, the total Assessment for the fiscal year does not exceed the limitations set forth in Section 7.06 below.

(e) The Board shall require the first Owner of each Lot, at the time of conveyance from Declarant, to make a one-time payment in an amount equal to two (2) months' assessments, which sum shall be used for working capital and to enroll that Owner in the Association and for all matters related thereto and shall be placed in the working capital account of the Association. Such a payment shall not relieve an Owner from making any regular

monthly assessment payment as the same comes due and shall not be refundable. Upon termination of the Period of Declarant Control, the Declarant shall pay the working capital for any unsold Lots in the Development, but shall be reimbursed by subsequent purchasers. During the Period of Declarant Control, the Declarant may not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

7.06 Maximum Assessments. The maximum average Assessment against each Lot, exclusive of (i) assessments or fees that are charged to some, but not all, Owners of Lots that have the exclusive use and benefit of particular Association Properties or have services performed by the Association that are not performed for all Owners, and (ii) any insurance premiums paid by the Association, may not exceed four hundred dollars (\$400.00) annually. The \$400.00 limitation shall be adjusted annually at the beginning of the fiscal year of the Association in accordance with any increase or decrease in the United States Department of Labor Bureau of Labor Statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year (“CPI”).

7.07 Rate of Assessments. Assessments shall be set to meet the expected needs of the Association. The rate for Assessments shall generally be determined by dividing the total Assessments payable for any Assessment period as determined by the budget, by the number of Lots then subject to this Declaration. The resulting quotient shall be the amount of the Assessments payable with respect to each Lot. If, however, in the sole opinion and discretion of the Board, certain Lots impose greater costs on the Association than do other Lots, or receive greater benefit from Association activities, Lots may be placed into different classes and Assessments in different amounts may be established for each such class, with the intent that each class will pay its reasonable and fair share of the Association's overall expenses.

7.08 Failure to Fix Assessment. The failure of the Board to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

7.09 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board determines in its discretion.

7.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorney fees, court costs, witness expenses, and all related expenses (collectively, “collection expenses”), and to pay a reasonable late charge as determined by the Board. Any Assessment not paid within ten (10) days after the date of any notice of default shall bear interest from the due date at a rate determined by the Board, not to exceed twenty-one percent (21%) per annum.

7.11 Notice of Default and Acceleration of Payments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in foreclosure of the lien for the Assessment against the Owner's Lot. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

7.12 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of an Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and collection expenses, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 7.13 below.

7.13 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien"). In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this Section 7.13. The Board may elect (but is not required) to file a claim of Lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which have accrued, (c) the legal description and street address of the Lot against which the Lien is claimed, and (d) the name of the record Owner. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. Except as modified by Section 9.05 of this Declaration with regard to the lien of First Mortgagees, the Lien for the benefit of the Association shall have priority over all other liens, except liens recorded prior to the recording of this Declaration, and shall also be prior to any homestead rights of an Owner, whose rights are, with respect to a Lien, waived by the acceptance of a deed to the Lot upon which the Lien is asserted. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filings fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction

in accordance with the laws of the State of Colorado applicable to foreclosures of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage and convey the same.

7.14 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board, and upon the written request of any Owner and any person having, or intending to acquire, any right, title or interest in the Lot of such Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable.

7.15 No Offsets. All Assessments shall be payable in the amounts specified in the levy, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or Board is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association, or the non-use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

7.16 Specific Assessments. In addition to levying Assessments authorized herein, the Board may levy a Specific Assessment against any Owner and that Owner's Lot if the willful or negligent acts or omissions of the Owner cause any violation of this Declaration or other Association Document or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. By way of example, but not by way of limitation, if the Association must perform an act of maintenance or repair which is the obligation of an Owner to perform, the Board may levy a Specific Assessment against the Owner and the Owner's Lot in the amount of the reasonable cost incurred by the Association in remedying the Owner's default. Except for a default consisting solely of a failure to timely pay any Assessment, a Specific Assessment under this Section 7.16 shall be levied only after Notice and Hearing. The amount of the Specific Assessment shall be due and payable to the Association upon notice by the Board that the Specific Assessment is owing. The Specific Assessment imposed on an Owner under this Section 7.16 shall include the cost of such maintenance, repair or replacement performed by the Association, together with any administrative, legal, financing and collection expenses, and the Association shall have a lien to secure payment of such Specific Assessment as provided in this Article VII. Imposition or non-imposition of Specific Assessments under this Section 7.16 shall not preclude the Association from pursuing all other legal or equitable rights and remedies against an Owner or other Person responsible for the loss or damage, or otherwise defaulting on an obligation imposed on such Owner by this Declaration.

**ARTICLE VIII**  
**INSURANCE**

The Association shall maintain insurance of types, in amounts, upon terms and with companies as the Board shall determine is prudent and/or as is required by applicable law. The Board will review annually the Association's insurance coverage. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event a joint duty of repair and maintenance of the damaged or destroyed property exists, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Association, at the election of the Board. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements on a Lot owned by each Owner shall be the responsibility of such Owner.

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of all or a portion of the Association Properties, or other property maintained by the Association, is caused by the willful or negligent act or omission of any Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as a Specific Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner's liability shall be determined by the Board after Notice and Hearing and shall not be subject to judicial review unless the decision is arbitrary and is not based on any competent evidence.

**ARTICLE IX**  
**MISCELLANEOUS**

9.01 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for **twenty (20)** years following the date this Declaration was originally recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by written agreement of the Members with at least **sixty-seven percent (67%)** of the voting power of the Association, which written agreement shall be duly acknowledged by the Members in the same manner as a deed and recorded in the real property records of the County.

9.02 Amendment of Declaration by Declarant. Declarant may amend or repeal any provisions, covenants, conditions or restrictions of this Declaration by the recordation of an instrument setting forth such amendment or repeal and upon the satisfaction of one or more of the following conditions:

- (a) The conveyance of the first Lot by recorded deed to an Owner other than Declarant or any Builder has not yet occurred;

- (b) A government agency requires an amendment or repeal as a condition to making, purchasing, insuring or guaranteeing mortgages, or an amendment or repeal is required in order to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, HUD, FHA or other government mortgage agency; or
- (c) An amendment or repeal is necessary or useful for the exercise of Declarant's development rights as set forth in this Declaration, including but not limited to the inclusion of additional land within the scope of this Declaration and the creation of additional Lots.

9.03 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or the Association, any provision, covenant, condition or restriction contained in this Declaration may be amended or repealed upon approval by Members with at least **sixty-seven percent (67%)** of the voting power of the Association.

9.04 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of the Association's financial statement, within ninety (90) days following the end of any fiscal year; (d) receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, or to the Association's Articles of Incorporation or Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association Properties following a decision of the Association to assume self-management of the Association Properties; (i) receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds \$10,000, and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties; and (j) receive written notice of any lapse, termination or material modification of an Association insurance policy.

9.05 Priority of First Mortgage over Assessments. Each First Mortgagee which recorded its First Mortgage before Assessments have become delinquent and which obtains title to the Lot encumbered by the First Mortgage shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Members. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be. Assessments accruing subsequent to the time the First Mortgagee acquired title to the Lot, as herein established, including Assessments accruing during any applicable period of redemption, shall be an obligation of the First Mortgagee and its successors, and a lien upon the Lot.

9.06 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be served either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

9.07 Persons Entitled to Enforce Declaration. The Association (acting by authority of the Board) or any Member (acting on such Member's own behalf), shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration or other Association Documents. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents or available at law or in equity.

9.08 Violations of Law. Any violation of any federal, state, county or municipal law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

9.09 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

9.10 Costs and Attorney Fees. In any action or proceeding under this Declaration or other Association Document to enforce any provision of this Declaration or other Association Document, the party who prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees and expert witness fees.

9.11 Limitation on Liability. The Association, the Board, the ARC and Declarant, and any agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

9.12 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the common areas of the Development, specifically including the easements, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall have been specifically set forth in a writing signed by Declarant.

9.13 Governing Law. This Declaration shall be construed and governed in accordance with the laws of the State of Colorado, disregarding any choice of law provision of Colorado law which might cause the laws of another jurisdiction to be applicable. Venue shall be deemed proper in El Paso County District Court.

9.14 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

9.15 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

9.16 Merger and Consolidation. The Association may merge with another association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Development, together with the covenants, conditions and restrictions established upon any other property, as one plan. The Association shall have the right to merge into and with another association upon a vote of the respective boards of directors of such associations.

9.17 Resolution of Questions of Construction. If any doubt or question arises concerning the true intent or meaning of any of the provisions, covenants, conditions and restrictions contained in this Declaration, the Declarant, during the Period of Declarant Control, and thereafter, the Board (the "Interpretive Authority"), shall determine the proper construction of the provisions in question and shall set forth the meaning, effect, and application of the provision in a written instrument duly acknowledged by the Interpretive Authority and recorded in the County records. This determination will thereafter be binding on all parties so long as it is not arbitrary or capricious.

IN WITNESS WHEREOF, Declarant, Falcon Development Corporation, has executed this Declaration as of the day and year first written above.

Falcon Development Corporation  
a Colorado corporation

By: \_\_\_\_\_  
President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2007, by David E. Elliott as President of Falcon Development Corporation.

Witness my hand and official seal.

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

[SEAL]

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