

**AMENDED DECLARATION OF  
PROTECTIVE COVENANTS FOR REAL PROPERTY  
IN THE RESERVE AT TEXAS CREEK,  
FREMONT COUNTY, COLORADO**

THIS AMENDED DECLARATION is made effective as of the date on which it is recorded in the real property records of Fremont County, Colorado by Dandyland Sales, LLC, a Colorado Limited Liability Company, hereafter referred to as "Declarant." This Amended Declaration is intended to completely supersede the Declaration of Protective Covenants for Real Property in The Reserve at Texas Creek, Fremont County, Colorado, as recorded on January 27, 2008 at Reception No. 815727 of the real property records of Fremont County, Colorado.

WITNESSETH:

WHEREAS, Declarant, is the owner of real property located in the County of Fremont, State of Colorado described and depicted on a Plat recorded on October 19, 2005, at Reception No. 811697 of the real property records of Fremont County, Colorado (hereinafter "Property"), as of May 1, 2008, and commonly known as The Reserve at Texas Creek.

WHEREAS, the previous declarant of the Property, Prayer Mountain, LLC, was dissolved on November 3, 2008, and is no longer a legally recognized entity within the State of Colorado as evidenced by the records maintained by Colorado Secretary of State.

WHEREAS, Declarant intends to protect the living environment and preserve the values of the Property, as defined herein, and does hereby DECLARE that the Property as shown on the Plat shall be held and conveyed subject to the following terms, covenants, restrictions, and conditions which shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its grantees, successors and assigns, and any person, grantee, successor, heir, executor, administrator, devisee or assign acquiring or owning an interest in the Property and Improvements thereon subject to this Amended Declaration.

Notwithstanding any other provision herein, by this Amended Declaration, the Declarant does not submit the Property to the provisions of the Colorado Common Interest Ownership Act, CRS §§ 38-33.3-101, *et seq.*, which is not applicable to the Property pursuant to CRS §38-33.3-116. Nothing herein shall be construed so as to bring these covenants or the Property within the provisions of Colorado Common Interest Ownership Act, §§ 38-33.3-101, *et seq.* The Property shall be subject only to the following protective covenants set forth below:

RECEPTION#: 866450,  
08/13/2009 at 11:36:20 AM, 1 OF 14, R \$71.00

NORMA HATFIELD, CLERK AND RECORDER  
FREMONT COUNTY, CO

**ARTICLE 1  
DEFINITIONS**

A. **Amended Declaration**. The Amended Declaration is this document, including any subsequent amendments.

B. **Association**. The Association is RTC Property Owners Association, Inc., a Colorado non-profit corporation. The Association shall have the following powers:

(1) to operate in accordance with this Amended Declaration;

(2) to promote the health, safety, welfare and common benefit of the owners and residents of The Reserve at Texas Creek; and

(3) to do any and all permitted acts and to have and exercise any and all powers, rights, and privileges that are granted to an Association of Property Owners under the laws of the State of Colorado, this Amended Declaration, the Bylaws, the Rules, and any other governing documents of The Reserve at Texas Creek and the Association.

C. **Board**. The Board is the board of directors of the Association.

D. **Bylaws**. The Bylaws are the Bylaws of the Association, as they may be amended from time to time.

E. **Common Elements**. The Common Elements are all the real estate of the Common Interest Community other than a Lot, including, but not limited to, private streets, traffic control facilities, perimeter fences surrounding the entire Property, drainage facilities, and appurtenant easements, if any, all of which shall be owned by the Association.

F. **Common Expenses**. The Common Expenses are the expenses or financial liabilities for the operation of The Reserve at Texas Creek or its Association. **Common Expense Assessments** are the funds required to be paid by each Lot Owner in payment of such Owner's Common Expense liability. These expenses include:

(a) expenses of administration, maintenance, construction, improvement, repair, or replacement of the Common Elements;

(b) expenses of utilities not separately metered and billed directly to the Lot Owners;

(c) expenses declared to be Common Expenses by the Documents or by the Act;

(d) expenses agreed upon as Common Expenses by the Association; and

(e) reasonable reserves established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

In addition, the costs and expenses imposed on the Association, benefiting fewer than all the Lots, shall be a Common Expense but, except as otherwise stated herein, assessed exclusively against those Lots benefited.

E. Declarant. The Declarant is Dandyland Sales, LLC, a Colorado limited liability company, or its successor.

F. Director. A Director is a member of the Board.

G. Documents. The Documents are this Amended Declaration and the Plat recorded on October 19, 2005, at Reception No. 811697 of the real property records of Fremont County, Colorado, the Articles of Incorporation of the Association, the Bylaws, and the Rules, as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.

H. Improvements. Improvements are any construction, structure, equipment, fixture, or facilities existing, or to be constructed on, the Property including, but not limited to, Residences, buildings, paving, utility wires, pipes, and light poles.

J. Lot. If used herein, the term "Lot" shall mean a parcel of land designated by number and as assigned on the Plat recorded on October 19, 2005, at Reception No. 811697 of the real property records of Fremont County, Colorado.

K. Majority or Majority of Lot Owners. The Majority or Majority of Lot Owners means the Owners of more than 50 percent of the votes in the Association.

L. Manager. A Manager is a person, firm, or corporation employed or engaged to perform management services for the Association.

M. Member. As used herein, the term "Member" is a member of the Association. The Owner of a Lot shall automatically become a member of the Association. Said membership is appurtenant to the Lot of said Owner and the ownership of the membership for a Lot shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his/her Lot. If the fee simple title to a Lot is held by more than one Person, the Owners of such Lot shall designate one representative to be the Member of the Association representing the interest of that Lot. Memberships in the Association shall be limited to Owners of Lots at The Reserve at Texas Creek.

N. Notice and Comment. Notice and Comment is the right of an Owner to receive notice of an action proposed to be taken by, or on behalf of, the Association and the right to comment thereon. The procedures for Notice and Comment are set forth in this Amended Declaration.

O. Notice and Hearing. Notice and Hearing is the right of an Owner to receive notice of an action proposed to be taken by, or on behalf of, the Association and the right to be heard thereon. The procedures for Notice and Hearing are set forth in this Amended Declaration.

P. Person. A Person is an individual, corporation, trust, partnership, Limited Liability Company, association, joint venture, government, government subdivision or agency, or other legal or commercial entity authorized by law to hold title to real property in Colorado.

Q. Plat. Plat means that certain document entitled "The Reserve at Texas Creek, A Subdivision of portions of the S1/2N1/2, the S1/2 Section 11, the W1/2W1/2 Section 12, the N1/2N1/2, and the S1/2NW1/4 Section 14, Township 47 North, Range 12 East of the N.M.P.M., Fremont County, Colorado" recorded on October 19, 2005, at Reception No. 811697 of the real property records of Fremont County, Colorado.

R. Property. Property is the land and all Improvements, easements, rights, and appurtenances that have been submitted to the provisions of this Amended Declaration and as legally described on the Plat recorded on October 19, 2005 at Reception No. 811697 of the real property records of Fremont County, Colorado.

S. Records. The Records are the real estate records in the Office of the Clerk and Recorder of Fremont County, Colorado.

T. Residence. A Residence shall be the building for single-family living, constructed on a Lot, including an enclosed garage attached thereto, or connected thereto, by an arbor or breezeway and any appurtenant private drive.

U. Rules. The Rules are the regulations for the conduct of Persons owning, occupying, or using Property within The Reserve of Texas Creek, as may be adopted by the Board from time to time pursuant to this Amended Declaration.

V. Utilities. Utilities include all electrical, cable, propane gas and telephone utility lines that shall be underground as per this Amended Declaration.

## ARTICLE 2 NAME OF SUBDIVISION AND ASSOCIATION

A. Name of Subdivision. The name of the subdivision is The Reserve at Texas Creek per the Plat recorded on October 19, 2005 at Reception No. 811697 of the real property records of Fremont County, Colorado.

B. Association. The name of the Association is RTC Property Owners' Association, Inc., a Colorado non-profit corporation.

## ARTICLE 3 DESCRIPTION OF LAND

The legal description of the land submitted to this Amended Declaration is provided on the Plat recorded on October 19, 2005 at Reception No. 811697 of the real property records of Fremont County, Colorado.

## ARTICLE 4 LOT AND BOUNDARY DESCRIPTIONS

A. Maximum Number of Lots. The Reserve at Texas Creek contains nineteen (19) lots.

B. Boundaries. Boundaries of each Lot are shown on the Plat, and each Lot is identified with its identifying number or letter.

C. Description of a Lot. Every deed, lease, mortgage, will, or other instrument shall legally describe a Lot by its identifying Lot number together with a reference to the Plat and this Amended Declaration, in the following form:

Lot No. \_\_\_\_\_, The Reserve at Texas Creek, as shown and described on the plat of The Reserve at Texas Creek, recorded on October 19, 2005, at Reception No. 811697, and in accordance with and subject to the Amended Declaration of Protective Covenants for Real Property in The Reserve at Texas Creek, Fremont County, Colorado, recorded \_\_\_\_\_, 20\_\_ , at Reception No. \_\_\_\_\_ of the records in the Office of the Clerk and Recorder of the County of Fremont, State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Lot but also any easements appurtenant to such Lot. The reference to the Plat and Amended Declaration in any instrument shall be deemed to include any and all supplements or amendments to the Plat and/or Amended Declaration, without specific reference thereto.

#### ARTICLE 5 MAINTENANCE OF THE PROPERTY

A. Individual Lots. It shall be the duty and obligation of each Lot Owner, at such Lot Owner's expense, to beautify and keep neat, attractive, sightly, and in good order and to maintain, repair, and replace the same. If the Owner does not discharge this obligation, then, following Notice and Hearing, the Association may arrange to have the work done and assess the Owner for the cost of such work plus twenty-five percent (25%) of such cost for inspection, administrative costs, and overhead of the Association and other incidental expenses.

B. Duties of Association. The Association shall maintain, repair, replace, beautify and keep neat, attractive, sightly, free from snow and in good order, to the extent that such functions are not expected to be performed by Fremont County or any other political subdivision thereof or of the State of Colorado, all of the roads, including, but not limited to, Prayer Mountain Pass or Prayer Mountain Path and Abbey Road. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of this Section B, Article 5. Such expenses are attributable to the Lot Owners as an assessment and will be assessed on a yearly basis.

C. Right of Access. Any person authorized by the Board shall have the right of access to all portions of the Property for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Property, provided that requests for entry on an Owners' Lot are made in advance and that any entry is at a time reasonably convenient to the affected Lot Owner. In case of an emergency, no request or notice is required, and the right of entry shall be immediate whether or not the Lot Owner is present at the time.

**ARTICLE 6  
ALLOCATED INTERESTS**

The interest allocated to each Lot has been calculated by the following formula:

A. Liability for the Common Expenses. The percentage of liability for Common Expenses allocated to each Lot is based on one share for each Lot compared with the total shares allocated to all Lots on the Property (i.e. at the present 1/19<sup>th</sup>). Each Lot Owner(s) shall pay an assessment per annum as determined by the Board, from time to time, and payable to the Association. Liability for the Common Expenses is based on ownership of the Lot.

B. Votes. The Owner of each Lot in the Subdivision, including the Declarant as to any Lot owned by the Declarant, shall have one vote in the affairs of the Association.

**ARTICLE 7  
RESTRICTIONS ON USE AND OCCUPANCY**

A. Improvements to Lots. The following restrictions on construction of Improvements apply to all Lots:

(1) Zoning. Zoning laws, ordinances, resolutions, rules, and regulations are considered to be a part hereof, and no provision of this Amended Declaration shall be interpreted to violate any present or future zoning laws, ordinances, resolutions, rules, or regulations.

(2) Water and Sewage. All water wells and sewage disposals systems placed upon any Lot shall comply with the requirements of Fremont County, the State of Colorado, Department of Health and Environment and the Colorado State Engineer's Office. One (1) water well will be permitted per Lot. No septic tank or leach filed system shall be closer than one hundred (100) feet to any Lot boundary. No sewage, waste water, trash, garbage or other debris shall be emptied, discharged, or permitted to drain into any body of water in or adjacent to the Property. All toilet facilities must be part of the single-family residence or permitted auxiliary buildings, if any, and shall be of modern flush type and connect to a proper underground septic tank system.

(3) Utilities. All electrical, cable and telephone utilities shall be underground. Propane tanks are permitted with underground gas lines.

(4) Setbacks. No single family residence or structure may be erected within fifty (50) feet of any road, excluding the Residence's private drive, on the Property, nor within twenty-five (25) feet of any boundary of a Lot.

B. Use Restrictions. The following use restrictions apply to all Lots:

(1) Current Use of the Property. Declarant currently grazes and pastures livestock upon the Property and reserves the right to continue grazing and pasturing livestock upon the Property subsequent to the transfer of title of a Lot or Lots to a Lot Owner. Any Lot Owner desiring to prohibit the grazing and pasturing

of livestock upon their Lot are required to construct and maintain in good repair a lawful fence as described in C.R.S. §35-46-101, *et seq.*

(2) Single-Family Residence. Upon the transfer of title of a Lot from the Declarant to a Lot Owner, each Lot is restricted to use as a single family Residence and accessory uses as permitted herein. A single-family residence is defined as a single housekeeping unit, operating on a nonprofit, noncommercial basis with a common kitchen and dining area. The single-family residence shall not be less than 1,500 square feet of living space, unless the Lot Owner is given prior written approval from the Association to construct the residence. The single-family residence cannot be a Housing & Urban Development manufactured home, mobile home, or Uniform Building Code modular home. No room or rooms in any Residence or parts thereof may be rented or leased, and no paying guests shall be quartered in any Residence. Nothing contained in this Section, however, shall be construed as preventing the renting or leasing of a Lot in its entirety to a single family, in which event a copy of the written lease shall be delivered to the Association.

(3) No Commercial Pursuits. Except for those activities conducted as a part of the marketing and development program of the Declarant or as described herein with regard to Declarant's current use of the Property, no industry, business, trade, or commercial activities shall be conducted, maintained, or permitted in any part of a Lot, nor shall any Lot be used or rented for transient, hotel, or motel purposes.

(4) Compliance with Laws. No immoral, improper, offensive, or unlawful use may be made of the Property, and Lot Owners shall comply with, and conform to, all applicable laws, ordinances, rules, and regulations of the United States, the State of Colorado, and the County of Fremont. The violating Lot Owner shall hold harmless the Association and other Lot Owners from all fines, penalties, costs, and prosecutions for any violation or noncompliance.

(5) Offensive Activities. No noxious, offensive, dangerous, or unsafe activity shall be carried on upon any portion of the Property, nor shall anything be done, either willfully or negligently or placed thereon, that is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to other Lot Owners or occupants.

(6) No Hazardous Activities. There shall be no activity or Improvement on any portion of the Property that is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, there shall be no hunting or trapping of any kind allowed on the Property. All Lot Owners shall comply with any and all fire bans or restrictions imposed by the County of Fremont, State of Colorado, United States Bureau of Land Management or United States Forest Service.

(7) Restrictions on Garbage and Trash. No refuse, garbage, trash, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or area appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up. No part of a Lot above or below ground shall be used or maintained as a dumping ground for trash, garbage, debris or other waste.

(8) Further Subdivision of Lots. The Owner of a Lot shall not further subdivide that Lot.

(9) Commercial Wood Harvesting. Commercial wood harvesting is prohibited. Diseased trees or noxious weeds will be the Lot Owner's obligation to clear and dispose of in a timely manner.

(10) Mineral Excavation. No portion of the Property, including, without limitation, any area within a Lot, shall be used to explore for or to remove any oil, gas, coal, sand, gravel, soil, hydrocarbons, or other minerals of any kind. No drilling, refining, quarrying, mining, crushing, manufacturing, or processing operations of any kind shall be permitted upon or in any portion of the Property; nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted.

(11) Access to Common Elements. No Owner shall place any structure whatsoever upon, or permit any structure to intrude upon or overhang, the Common Elements, and no Owner shall engage in any activity that would temporarily or permanently deny free access to any part of the Common Elements by all Owners. No use shall be made of the Common Elements that would deny ingress or egress by any Owner to such Owner's Lot.

(12) Prohibition Against Discrimination. Anything to the contrary herein notwithstanding, these covenants shall be construed as omitting restrictions, if any, based on race, color, national origin, creed, sex, marital status, ancestry, familial status, or disability.

C. Restrictions on Alienation. The following restrictions on alienation apply to all Lots and to the Common Elements:

(1) No Time-Sharing Plan. A Lot may not be conveyed pursuant to a time-sharing plan.

(2) Leases. A Lot may not be leased or rented for a term of less than 60 days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association. All leases of a Lots shall include a provision that the tenant will recognize the Association as landlord solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant; provided the Association gives the Owner of such leased Lot notice of the Association's intent to so enforce and a reasonable opportunity to cure the violation directly prior to the commencement of an enforcement action.

(3) Summary Process. The Association will have the right and power to exercise the landlord's rights of summary process against any tenant of a Lot Owner who violates the Rules; provided the landlord has received Notice and Hearing and is given a reasonable opportunity to cure the violation following the hearing.

## ARTICLE 8 EASEMENTS

A. Existing Easements. As described on the Plat, Prayer Mountain Pass or Prayer Mountain Path, a Common Element, is a sixty (60) foot ingress and egress



access and utility easement affecting Lots 1, 2, 12, 13, 14, 15, 16, and Outlot A. As described on the Plat, Abbey Road, a Common Element, is a sixty (60) foot ingress and egress access and utility easement affecting Lots 3, 4, 5, 6, and 7. All interior Lot lines are subject to utility easements which shall extend ten (10) feet on both sides of all Lot lines. Said easements run with the land and may be used for the benefit of all Lot Owners within the Property.

B. Easement for Emergency Access. There is hereby created a right of access across all portions of the Property for the passage of emergency vehicles and police, fire, and other emergency service workers.

C. Construction: Declarant's Easement. The Declarant reserves the right to perform work, repairs, and construction work on the Property, to store materials in secure areas, and to control, and have the right of access to, work and repair until completion. All work may be performed by the Declarant without the consent or approval of the Board. The Declarant has an easement through the Property as may be reasonably necessary for the purpose of discharging the Declarant's obligations as reserved in this Amended Declaration. This easement includes the right to convey access, utility, and drainage easements to utility providers, special districts, Fremont County, or the State of Colorado. Nothing within this Section C, Article 8, shall be construed to impose an obligation upon the Declarant to construct any Improvements upon the Property.

#### ARTICLE 9 AMENDMENTS TO AMENDED DECLARATION

A. In General. This Amended Declaration and the Plat may be amended only by vote or agreement of at least sixty-seven (67) percent of the Lot Owners.

B. Limitation of Challenges. An action to challenge the validity of an amendment may not be brought more than one year after the amendment is recorded.

C. Recordation of Amendments. Each amendment to the Amended Declaration must be recorded in the Records, and the amendment is effective only upon recording.

D. Unanimous Consent. Except to the extent expressly permitted or required by this Amended Declaration, an amendment may not change the boundaries of a Lot, change the Allocated Interests of a Lot, or the uses to which a Lot is restricted except by unanimous consent of the Lot Owners.

#### ARTICLE 10 INSPECTION OF BOOKS

A. Inspection of Books. The Association must maintain current copies of the Amended Declaration, Bylaws, Rules, books, records, and financial statements. The Association shall permit any Lot Owner, prospective purchaser, mortgagee or insurer, to inspect the books and records of the Association during normal business hours and upon written request to inspect the same.

#### ARTICLE 11 ASSESSMENT AND COLLECTION OF COMMON EXPENSES

A. Apportionment of Common Expenses. Common Expenses shall be assessed against all Lots in accordance with the formula set forth in Article 6. This shall include, but not be limited to, expenses incurred by the Association for the reasonable maintenance and replacement of the roads, Prayer Mountain Pass or Prayer Mountain Path and Abbey Road, notwithstanding the fact that such maintenance and replacement could be viewed as benefiting one particular Lot over another. The limitation on Common Expenses set forth in CRS §38-33.3-116(3) shall apply to all assessments as defined herein.

B. Common Expenses Attributable to Fewer than all Units.

(1) Any expense for services approved by the Board and provided by the Association to an individual Lot, or some Lots but fewer than all the Lots, at the request of the particular Lot Owner or Owners shall be assessed against the requesting Lot(s).

(2) If an expense is incurred by the action or inaction of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.

(3) Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against a Lot Owner pursuant to the Documents are enforceable as Common Expense Assessments.

C. Lien.

(1) The Association is hereby granted, and shall have, a lien on a Lot for a Common Expense Assessment levied against the Lot or fines imposed against its Lot Owner. Fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to the Documents are enforceable as assessments under this Section. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If a Common Expense Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(2) A lien 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 Amended Declaration; (2) a first Security Interest on the Lot recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot.

(3) Recording of the Amended Declaration in the Records constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment under this Section is not required.

(4) A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the Common Expense Assessment becomes due, except that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(5) This Section does not prohibit an action to recover sums for which Subsection (1) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(6) A judgment or decree in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party, which shall be additional Common Expense Assessments.

(7) A judgment or decree in an action brought under this Section is enforceable by execution under Colorado law.

(8) The Association's lien must be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

(9) In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Lot who shall collect all sums due from that Lot Owner or a tenant of the Lot Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments based on a periodic budget adopted by the Association pursuant to its' By-laws.

(10) If a holder of a first security interest in a Lot forecloses that security interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against that Lot which became due before the sale, other than the assessments that are prior to that security interest under Subsection (2) of this Section of the Amended Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Lot Owners, including the purchaser.

(11) Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

D. Certificate of Payment of Common Expense Assessments. The Association, upon written request, shall furnish a Lot Owner with a written statement setting out the amount of unpaid Common Expense Assessments against the Lot. The statement must be furnished within 14 calendar days after receipt of the request and is binding on the Association, the Board, and each Lot Owner. A reasonable fee, established by the Board, may be charged for such statement.

E. Annual Payment of Common Expenses. All Common Expenses assessed under Article 11 Sections A and B of this Amended Declaration shall be due and payable annually unless otherwise determined by the Board.

F. Commencement of Common Expense Assessments. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Lot to a Lot Owner occurs. Common Expense Assessments shall be levied against and payable by the Owners of all Lots, including Lots still owned by Declarant.

G. No Waiver of Liability for Common Expenses. No Lot Owner may become exempt from liability for payment of the Common Expense Assessments.

H. Personal Liability of Unit Owners. The Lot Owner of a Lot, at the time a Common Expense Assessment or portion of the assessment is due and payable, is personally liable for the Common Expense Assessment. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation.

## ARTICLE 12 PERSONS AND LOTS SUBJECT TO DOCUMENTS

A. Compliance with Documents. All Lot Owners, tenants, occupants of Lots, and, to the extent they own Lots, mortgagees and the Declarant shall comply with the Documents and shall be subject to all rights and duties under the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of the Documents are accepted and ratified by that Lot Owner, tenant, mortgagee, or occupant. All provisions recorded in the Records are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

B. Adoption of Rules. The Board may adopt Rules regarding the use and occupancy of Lots as they affect the activities of occupants, subject to Notice and Comment.

C. Enforcement. The Association, as well as any aggrieved Lot Owner, is hereby granted a right of action against any Lot Owner who fails to comply with the provisions of the Documents or to comply with decisions made by the Association. Each and every Lot Owner is also granted a similar right of action against the Association. In any action maintained under this Section, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

## ARTICLE 13 NOTICE AND COMMENT; NOTICE AND HEARING

A. Right to Notice and Comment. Before the Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment," or at any other time the Board determines, the Lot Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Lot Owner in writing, delivered personally or by mail to all Lot Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication that is routinely circulated to all Lot Owners. The notice shall be given not less than five days before the proposed action is to be taken. It shall invite comment to the Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Lot Owner to be heard at a formally constituted meeting.

B. Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed. The party proposing to take the action (e.g., the Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Lot Owners or occupants of Lots whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established

by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

C. Appeals. Any Person having a right to Notice and Hearing shall have the right to appeal to the Board from a decision of persons other than the Board by filing a written notice of appeal with the Board within 10 days after being notified of the decision. The Board shall conduct a hearing within 30 days, giving the same notice and observing the same procedures as were required for the original meeting.

#### ARTICLE 14 CONDEMNATION

If part or all of the Property is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with C.R.S., §38-33.3-107.

#### ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

C. Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

D. Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

E. Conflict. The Documents are intended to comply with the requirements of the Colorado Revised Statutes. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Amended Declaration and any other Document, this Amended Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused this Amended Declaration to be executed this 8<sup>th</sup> day of August, 2009 .

DANDYLAND SALES, LLC,  
a Colorado Limited Liability Company

By: William A. Tezak  
William A. Tezak, Managing Member

STATE OF COLORADO )

) ss.

COUNTY OF CHAFFEE )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of August, 2009 , by William Tezak as Managing Member of Dandyland Sales, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 5/25/2013

Dennis L. Ridley  
Notary Public

Dennis L. Ridley, Notary Public  
State of Colorado  
My Commission Expires 5/25/2013