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***AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS OF
TAMARAC HILLS***

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
TAMARAC HILLS**

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by Tamarac Hills Homeowners Association, Inc., a Colorado nonprofit corporation (the "**Association**").

R E C I T A L S

A. Beaumont Properties, Inc., as "Declarant" and as owner of certain real property, executed that certain Declaration of Covenants, Conditions and Restrictions recorded in the real property records of Denver County, Colorado on March 12, 1984, at Reception No. 2385716 ("**Original Declaration**").

B. The Original Declaration imposed upon the real property described in the Original Declaration and all property thereafter annexed, certain terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which run with and are binding upon said real property.

C. By virtue of the Original Declaration, a Planned Common Interest Community was created upon the real estate and certain covenants, conditions, restrictions, easements, reservations, and rights-of-way set forth therein for the purpose of protecting the value and desirability of said property and the general welfare of the Owners of such Common Interest Community.

D. On June 23, 2000, the District Court for Denver County, Colorado granted the Association's Petition for Approval of the Declaration pursuant to the requirements of C.R.S. §38-33.3-217(7). The Court found that the Association filed a petition for approval of the Declaration with the Court which was not objected to by: (i) Owners representing more than thirty-three percent (33%) of the undivided interest in the General Common Elements, (ii) thirty-three percent (33%) of the first mortgagees, (iii) the Declarant, (iv) the Federal Housing Administration ("FHA"), or (v) the Veteran's Administration ("VA"). The Court also found that the Declaration did not terminate the Original Declaration and that the Declaration did not alter the allocated interests of the Owners within the Antlers Condominium Association. A copy of this Order is attached and incorporated by reference as Exhibit A hereto.

E. Pursuant to C.R.S. §38-33.3-217(7), upon recordation of the Declaration and the Court Order approving the Declaration, the Declaration, as amended, shall be effective as if all of the approval requirements set forth in the Original Declaration were met.

F. Based on the foregoing approval by the District Court for Denver County, Colorado pursuant to C.R.S. §38-33.3-217(7), and the provisions of the Original Declaration, all provisions of the Original Declaration have been amended and restated by virtue of this Declaration, and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and instruments creating covenants, conditions, restrictions and reservations on the Real Estate shall be superseded and replaced by this Declaration.

NOW THEREFORE, the Original Declaration is amended and restated as follows:

ARTICLE 1

DEFINITIONS

Section 1.0 Definitions. The following words, where used in this Declaration, or in any supplemental or amended declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

"Act" shall mean the Colorado Common Interest Ownership Act, §38-33.3-101 *et seq.*, C.R.S. (1996 Cum. Suppl.), to the extent its provisions are applicable to communities created before July 1, 1992 or as otherwise expressly adopted in this Declaration.

"Architectural Review Committee" or "Committee" shall mean the committee appointed by the Board of Directors pursuant to this Declaration for the purpose of administering the architectural approval and design review provisions contained herein and in any Rules and Regulations which may be adopted by the Board of Directors.

"Articles" shall mean the Articles of Incorporation for Tamarac Hills Homeowners Association, Inc. currently on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

"Assessments" shall mean the Common Expense Assessments and Default Assessments levied herein.

"Association" shall mean and refer to Tamarac Hills Homeowners Association, Inc., a Colorado nonprofit corporation, organized under the laws of the State of Colorado, and its successors and assigns.

"Board of Directors" or "Executive Board" shall mean the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

"Bylaws" shall mean the Bylaws adopted by the Association, as amended from time to time.

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon, but excluding the Lots, and shall include any Common Area located upon any real property.

"Common Expenses" shall mean (i) all expenses expressly declared to be common expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area or any other items for which the Association is responsible for maintaining; (iii) insurance premiums for the insurance carried under Article 12; and (iv) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

"First Lien Security Interest" shall mean any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Denver, Colorado, having priority of record over all other recorded liens except those governmental liens and Common Expense Assessment liens made superior by statute.

"First Mortgage" shall mean any Mortgage upon a Lot which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

"First Mortgagee" shall mean any person or entity named as a mortgagee or beneficiary in any first Mortgage, or any successor to the interest of any such person under such First Mortgage.

"Governing Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

"Improvements" means any structures or changes to structures placed, erected, commenced, altered or maintained upon the Property or a Lot, including without limitation buildings, fences or walls, or any changes or alterations thereto, including painting and alteration in drainage or flow of surface or subsurface water.

"Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map including the Property, together with all appurtenances thereto, improvements and Residences now or hereafter located thereon, with the exception of the Common Area.

"Member" shall mean and refer to every person or entity who holds membership in the Association, by virtue of being a record owner, including contract sellers, of a Lot subject to the Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

"Mortgage" shall mean any mortgage, deed of trust, or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

"Mortgagee" shall mean any person or entity named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

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

"Plat" means the subdivision plats of the Tamarac Hills Community depicting the Property and Common Area subject to this Declaration and recorded in the records of the Clerk and Recorder of Denver County, Colorado, as such may be amended from time to time.

"Property" shall mean and refer to that certain real property described in the Original Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

"Residence" shall mean the improvements constructed on a Lot intended for use and occupancy by a single family.

"Tamarac Hills Community" shall mean the planned community created by the original Declaration, as amended and restated by this Declaration, consisting of the Property, Common Area, and any improvements constructed on the Property and the Common Area.

ARTICLE 2

DIVISION OF REAL PROPERTY

Section 2.1 Division of Real Property. The Property is hereby divided into 80 Lots, together with all improvements thereon and all easements and rights located thereon or appurtenant thereto as provided herein, and the Common Area. There are 79 Residences constructed on the Property.

Section 2.2 Description of Lots.

(a) Each Lot shall be inseparable and may be leased, devised or encumbered only as a single family Residence.

(b) Title to a Lot may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner, for each Lot. The parties, if more than one, having the ownership of a Lot shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for

performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

(c) Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed.

(d) No Owner of a Lot shall bring any action for partition or division of the Common Area.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 3.1 The Association. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership shall be the sole qualification for membership.

Section 3.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser of his Lot.

Section 3.3 Compliance with Governing Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Governing Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots.

Section 3.4 Books and Records. The Association shall make available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Governing Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws, except those documents which the Board, pursuant to a written policy, determines to be confidential. The Association may charge a reasonable fee for copying such materials.

Section 3.5 Manager. The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The employment shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on thirty (30) days notice, with or without cause, and without a cancellation fee. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

Section 3.7 Voting. Each Lot shall be allocated one vote. When more than one person holds an interest in any Lot, all such persons shall become members. The vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3.8 Non-Liability of Officials. To the fullest extent permitted by law, the Board of Directors, the Architectural Review Committee, or any other committees or any members thereof, shall not be liable to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which the Board of Directors, or such committees or officers reasonably believed to be within the scope of their respective duties.

ARTICLE 4

PROPERTY RIGHTS

Section 4.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of members;
- (b) the right of the Association to borrow money for the purpose of improving the Common Area and facilities and to pledge future assessments or mortgage the Common Area as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;
- (c) the right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid, and for any infraction of its published rules and regulations, after notice and the opportunity for a hearing;

(d) the right of the Association to promulgate and publish rules and regulations which each member shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area; and

(e) the right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements thereon.

Section 4.2 Delegation of Use. Any member may delegate, in accordance with the Bylaws and rules and regulations adopted by the Board of Directors, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the recreational amenities of the Community through rules and regulations and/or reasonable fees charged for such use.

Section 4.3 Owner Liability. Owners shall be liable to the Association for damage to the Common Area caused by the negligent or intentional actions of the Owner, his family, tenants, guests, invitees, and contract purchasers who utilize the Property and the Association may assess Owners individually for the cost of repairing, replacing or otherwise correcting the damage.

ARTICLE 5

EASEMENTS

Section 5.1 Easement for Encroachments. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by the original construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist.

Section 5.2 Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the Common Area for ingress, egress, installation, replacing, repairing and maintaining all Common Areas, Lots, fences, and utilities, including but not limited to water, sewers, gas, telephones and electricity and cable. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, across and under the roofs and exterior walls of said Lots. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area to perform the duties of maintenance and repair of the Lots or Common Area provided for herein. If any portion of any exterior wall of a structure is situated within five feet of any adjoining Lot line, a valid easement shall and does exist, five feet in width along the adjoining Lot and adjacent

to the said Lot line, which easement may be used for the purpose of construction, reconstruction, maintenance and repair of said exterior wall of a structure that is situated within five feet from the nearest point of said easement. In those instances where Declarant's original construction establishes a secondary emergency access for egress from a residence requiring an easement on and over a portion of an adjacent Lot, then a valid easement for such emergency ingress and egress shall and does exist.

ARTICLE 6

COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Each Lot shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance assessments, utility assessments, individual assessments and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If any Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason.

Section 6.2 Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purposes of promoting the recreation, health, safety, and welfare of the Owners and for the improvement and maintenance of the Common Area and Lots as specifically set forth in this Declaration.

Section 6.3 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all homeowners' Lots equally.

Section 6.4 Unit Specific Assessments. The Association shall have the right to add to any Owner's assessment as provided in this Article those amounts expended by the Association for the benefit of any individual Unit and the Owner thereof, including, but not limited to: fines; improvement, repair, replacement and maintenance specific to a Unit; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any

Owner, his guests, employees, licensees, lessees or invitees; and all other expenditures or charges which the Executive Board, in its sole discretion, chooses to allocate to a Unit and which are readily determined to be allocable to a particular Unit.

Section 6.5 Annual Assessment/Commencement of Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year, including the establishment of a reserve fund. The budget shall be submitted to the Unit Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing a majority of the votes in the Association. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 6.6 Individual Assessments. If any extraordinary maintenance, repair or restoration work to areas which the Association maintains is required on fewer than all of the Lots the costs thereof may, at the discretion of the Board, be borne by the Owners of those affected Lots only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) may, at the discretion of the Board, be borne by that Owner.

Section 6.7 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 6.8 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Area, or any portion thereof, of a party wall, or of the exterior of any building is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association or another Owner for such maintenance, repair, or replacement shall be a personal obligation of such negligent or wrongful Owner, and if not repaid to the Association or other Owner within seven (7) days after notice of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, such expenses, costs, and fees shall automatically become a default assessment determined and levied against such Lot, and the Association or other Owner may proceed in accordance with the applicable provisions of this Article.

Section 6.9 Effect of Nonpayment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within thirty (30) days after the due date thereof, or as established by the Board of Directors, shall bear interest at the rate of interest as determined by the Board of Directors on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within thirty (30) days of the due date thereof shall cause the total amount of such Owner's Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may suspend the voting rights of the Owner during any period of delinquency and may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or quarterly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or quarterly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 6.10 Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Lot, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorney fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under this Article.

Section 6.11 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for Real Estate taxes and other governmental assessments or charges against the Lot. This Section does

not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot Owner from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.12 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Board of Directors and upon the written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Board of Directors of the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. Unless such statement shall be issued (which shall include posting in the United States Mail) within fourteen (14) days of such written request, all unpaid Assessments which become due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest in the Lot subsequent to requesting such statement. If the request is made by a prospective purchaser, both the lien for the unpaid Assessment and the personal obligations of the purchaser shall be released automatically if: (1) the statement is not furnished within the fourteen (14) day period provided for above; (2) after that period an additional written request is made by such purchaser and is not complied with within ten (10) days; and (3) the purchaser subsequently acquires the Lot.

Section 6.13 Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 6.14 Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

ARTICLE 7

ARCHITECTURAL APPROVAL/DESIGN REVIEW

Section 7.1 Required Approvals of Exterior Improvements and Changes. No building, fence, wall or other structure shall be commenced, erected, placed, altered, or maintained upon the Property, nor shall any exterior addition to or change or alteration, including painting and alterations in the drainage or flow of surface or subsurface water, be made on any Lot ("**Improvements**") until complete plans and specifications shall have been first submitted to

and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Architectural Review Committee ("**Committee**"). The Committee may approve or disapprove the plans and specifications under this Section and may also require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks, drainage patterns, and grading plan, as well as such other materials and information as may be required by the Design Guidelines.

Section 7.2 Establishment of the Architectural Review Committee. An Architectural Review Committee may be appointed by the Board of Directors. The Committee shall consist of an odd number of not less than three (3) or more than five (5) members, as determined by the Board. In the absence of any appointments, the members of the Board shall be the members of the Committee. The Committee shall meet from time to time as is necessary to perform its duties. In the event an Architectural Review Committee is not established, the Board of Directors shall perform all duties of the Architectural Review Committee as provided in this Article and the governing documents of the Association. A majority of the Committee shall have the power, by the exercise of its best judgment, to approve or disapprove or condition the approval of all proposed structures, improvements, construction, decoration and landscaping on the Property which conform to and harmonize with the existing surroundings and structures.

Section 7.3 Design Guidelines. The Association, through its Board of Directors, and upon recommendation from the Architectural Review Committee, shall have the power to make, establish and promulgate guidelines, or rules and regulations, relevant to the function of the Architectural Review Committee, including, but not limited to, minimum design standards, minimum landscaping standards, procedures and fines or penalties for violation of the provisions of this Article.

Section 7.4 Drainage. Owners are responsible to maintain the existing drainage on their Lot. No change, modification or alteration to grading, drainage or flow of surface or subsurface water may be made on any Lot until complete plans and specifications have been submitted to and approved in writing by the Committee. Neither the Committee nor Board or any member thereof shall be liable to any Owner or the Association for any loss, damage or injury arising out of an Owner's failure to maintain the existing drainage or the approval of any such plans.

Section 7.5 Review Procedures. The Architectural Review Committee shall reply to all submittal of plans made in accordance herewith in writing within forty five (45) days after receipt of a complete application. The Committee shall review and investigate all applications regarding improvements or changes and shall approve or disapprove all submittals of plans and specifications within forty five (45) days of receipt of the complete application and such additional materials as may be requested by the Committee. In the event the Committee fails to approve or disapprove a request within forty five (45) days, the approval of the Committee shall

be deemed given. All communications and submittals shall be addressed to the Architectural Review Committee at such address as the chairman of the Committee shall hereafter designate in writing addressed and mailed to the Owners. However, if a Manager has been employed by the Association, the application may be submitted to the Manager or to the Committee. It is the intent of this Article that the Committee shall exercise broad discretionary powers in applying these provisions to its review process. The Committee's decisions shall be final and conclusive except for an arbitrary abuse of discretion or actions taken outside the scope of its authority. The Committee shall have the authority to resolve all questions of interpretation under this Article, in accordance with their general purpose and intent. All decisions of the Committee may be appealed to the Executive Board.

In reviewing plans submitted to it, the Committee shall take into consideration the design, style and construction of the proposed Improvement, its location on the Lot, the harmony of its design, architecture and location with the terrain and surrounding neighborhood and shall determine whether such proposed improvement is consistent with the general terrain, the architecture of other buildings located upon the properties subject to this Declaration and whether or not the construction or alteration of the Improvement will adversely affect or decrease the value of other Lots because of its design, location, height, type of materials or other aesthetic considerations.

Section 7.6 Prosecution of Work After Approval. After approval, proposed Improvements shall be accomplished as promptly and diligently as reasonably possible and in complete conformity with the description thereof, any materials submitted to or approved by the Committee, and any conditions imposed by the Committee. Construction must commence within 6 months after the date of approval and must be completed within 12 months after the date of commencement. Failure to commence and complete the Improvement in accordance with this provision or to complete the Improvements in accordance with the description and materials furnished to, and the terms, conditions, and requirements imposed by, the Committee, shall constitute a violation of this Article and the approval of such proposed Improvements previously granted by the Committee shall thereupon be null and void and the owner will be required to apply for new approval.

Section 7.7 Variances. The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in a development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Property or Common Area nor deviate substantially from the general intent and purpose of this Declaration. In the event that the request for a variance is disapproved by the Architectural Review Committee, the applicant shall have the right of appeal to the Board of Directors.

Section 7.8 Waivers. The approval or consent of the Architectural Review Committee, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 7.9 Liability. Neither the Architectural Review Committee nor any member thereof nor the Board of Directors nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Review Committee's or the Board of Directors' respective duties under this Declaration, including any changes to drainage patterns or the approval or denial of any plans, unless due to the willful misconduct or bad faith of the Architectural Review Committee or its member or the Board of Directors or its member, as the case may be. The Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of any plans or specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building, zoning or other codes.

ARTICLE 8

MAINTENANCE

Section 8.1 Association Responsibility.

(a) The Association shall provide all repair, replacement, improvement and maintenance of the Common Area and all improvements located thereon including without limitation any landscaping, sprinkler system, any roadways, utility lines (to the extent not maintained by utility companies), any light fixtures, sidewalks and pathways, except that each Owner shall be responsible for cleaning and maintaining any sidewalk, pathway, or driveway leading to the Residence, including snow removal, to the extent the Association does not contract for snow removal within these areas.

(b) Although Owners are responsible for repairing, maintenance and replacement of landscaping, trees and shrubs on their Lot, the Association may elect to repair, maintain or replace landscaping on Lots in front of the fences which are located along the sides of each residence, pursuant to rules and regulations adopted by the Board of Directors.

(c) The Association may also undertake, but shall have no obligation to undertake, such emergency repairs as the Board of Directors believes necessary to prevent imminent danger to life or property.

Section 8.2 Association Discretion. The Association shall, in its sole discretion, assume the obligation for repair or maintenance of other exterior features not expressly included

Section 8.2 Association Discretion. The Association shall, in its sole discretion, assume the obligation for repair or maintenance of other exterior features not expressly included herein. The Association shall, in its sole discretion, ascertain whether the maintenance obligation is the duty of the Association and is necessary. The Association, in its sole discretion shall determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used.

Section 8.3 Access. For the purpose of performing the maintenance referred to in this Article, and inspections related thereto, the Board of Directors, through its duly authorized agents, contractors, employees or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board of Directors or its agents, contractors or employees, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 8.4 Owner Maintenance. Each Owner shall be responsible for all maintenance and repairs within a Lot and on a Residence which are not provided by the Association, including without limitation, maintenance of the Residence, any fixtures, furnishings, equipment and appliances located on the Lot, landscaping and any patio or deck. All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement or utility service, nor do any act or allow any conditions to exist which will adversely affect the use and enjoyment of the other Lots or the provision utility services to such Lots. No Owner shall, in whole or in part, change the landscaping or drainage pattern on or adjacent to his Lot by the addition or removal of any items thereon without the prior written consent of the Architectural Review Committee. Owners are responsible for maintaining proper drainage on their Lot. If an Owner fails to fulfill his responsibilities under this Section, the Board may, at its option, take such action as it deems appropriate, including without limitation performing the Owner's obligations, after ten (10) days' notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Lot.

Section 8.5 Party Walls.

(a) Definitions. For purposes of this Section 8.5, "Party Wall" shall mean and refer to any fence or retaining wall on or immediately adjacent to a Lot line and which separates two or more Lots, but excluding the exterior walls of Residences which are part of the original construction on the Lots. This provision does not apply to perimeter fences and perimeter retaining walls, which are governed by Section 8.6 below.

(b) General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

(c) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by Owners who make use of the Party Wall in proportion to such use.

(d) Destruction of Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration in proportion to such use without prejudice, subject however, to the right of any such Owners to call for a larger contribution for negligent or willful acts or omissions.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to and run with the land and shall pass to such Owners and successors in title.

(f) Arbitration and Mediation. In the event of any dispute arising or concerning a Party Wall, the provisions of Section 10.1 shall apply.

Section 8.6 Perimeter Retaining Walls and Perimeter Fences. Owners shall be responsible to maintain perimeter retaining walls and perimeter fences located on Lots. Notwithstanding the foregoing, the Association may in its sole discretion elect to maintain and repair perimeter retaining walls and perimeter fences located on Lots as a Common Expense. This election may be revoked by the Association in its sole discretion at any time. This provision does not apply to Party Walls, which are governed by Section 8.5 above.

Section 8.7 Negligence. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject as set forth herein.

ARTICLE 9

USE RESTRICTIONS

Section 9.1 Authority. The Board shall have the authority to issue and amend restrictions on use, occupancy and alienation of the Lots. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Existing Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

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

(b) The Board may add, delete, modify, create exceptions to, or amend use guidelines and restrictions, or Rules and Regulations, including Design Guidelines, in accordance with this Declaration and established legal principles.

(c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.

(d) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.

(e) All penalties imposed are collectible as Assessments.

Section 9.2 Right of Owners Regarding Rules and Regulations. Except as otherwise provided in Section 9.3, the Board may not adopt any Rule in violation of the following provisions:

(a) Equal Treatment. Rules and Regulations shall be reasonably and uniformly applied. Rules and Regulations shall be effective fifteen (15) days after delivery of written notice of adoption, amendment or repeal, together with a copy of the currently effective Rules and Regulations.

(b) Household Composition. No Rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit, which shall include traditional and non-traditional family groups, unmarried couples, and unrelated persons holding title as tenants in common and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair share use of the Common Elements.

(c) Activities within Lots. No Rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

(d) Alienation. No rule shall prohibit transfer of any Lot, or require consent of the Association or Executive Board for transfer of any Lot.

Section 9.3 Single Family. Each Lot shall be occupied only by a single family and Owners thereof, its servants and guests, and only as a Residence, and for no other purpose. "Single family," for the purpose of this Declaration, shall be defined as an individual or two or more persons related by blood, marriage or adoption, or a group of unrelated persons living as a single housekeeping unit or pursuant to the Codes of Denver County. The Board of Directors may make reasonable rules which limit the maximum occupancy permitted upon Lots in the Project. Commercial and business uses with any adverse external effect on the nature, perception, operation, or ambiance of the community as a first class residential community, as reasonably determined by the Board of Directors, are prohibited.

Section 9.4 Restrictions Regarding Leasing of Lots. The Board may establish Rules and Regulations to simplify lease and rental procedures. Every Owner who leases a Lot shall notify the Association with the rental occupant information as may be further defined in the Rules and Regulations.

Section 9.5 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept, provided that they are kept pursuant to the Rules and Regulations of the Association. No animals of any type may be kept for commercial purposes. The Board of Directors may institute such rules as it deems advisable for the control of pets and may impose such fines as are necessary, in its sole discretion, to enforce such rules and this Declaration.

Section 9.6 Structures. No temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from commencement until completion. All types of refrigerating, cooking or heating apparatus shall be concealed from view from the front of the Lot, except for those apparatus originally installed by the developer.

Section 9.7 Signs. No signs of any character shall be allowed other than as set forth in this Declaration or in Rules and Regulations that may be adopted by the Board of Directors.

Section 9.8 Common Areas. No planting or gardening shall be done, and no signs, fences, hedges or walls or other structures shall be erected or maintained upon the Common Area except such as are installed in accordance with the initial construction of the buildings, located thereon or as approved by the Association's Board of Directors or the Architectural Review Committee.

Section 9.9 Antenna. All exterior placement or installation of antenna, satellite dishes and other over the air reception devices less than one meter in diameter designed for reception of video signals within the Property shall be subject to rules and regulations to the

extent permitted by federal law. Devices over one meter in diameter and radio reception devices may be installed only with the prior written approval of the Architectural Review Committee.

Section 9.10 Unsightliness. No unsightly objects or materials, as further set forth in the Rules and Regulations, shall be allowed to be placed or to remain upon the Property. Each Lot at all times shall be kept clean and no trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other materials shall be permitted to remain exposed upon any Lot so that the same are visible from the street.

Section 9.11 Vehicular Parking, Storage, and Repairs.

(a) All vehicles must be parked and stored in compliance with the Association Rules and Regulations.

(b) Commercial vehicles, house trailers, camping trailers, boat trailers, hauling trailers, running gear, boats, motorcycles, trucks, vans, self-contained motorized vehicles and other recreational vehicles (excluding sport utility vehicles) shall not be parked within the Tamarac Hills Community except in enclosed garages or as otherwise permitted by the Architectural Review Committee, provided that such vehicles may be parked temporarily for loading, unloading, delivery or emergency.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Lot unless it is done within completely enclosed structures located on the Lot which screen the sight and sound of the activity from the street and from adjoining property provided however that such activities shall not be performed for commercial purposes or the operation of a business. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 9.12 Abandoned or Inoperable Vehicles. No abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, housetrailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion and removed from the Property at least once within any five-day period, or any vehicle which does not have an operable propulsion system installed therein; *provided, however*, that the foregoing restrictions shall not include otherwise permitted vehicles parked by Owners while on vacation or during a period of illness. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours

thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

Section 9.13 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may be, or may become, an nuisance to, or cause annoyance, embarrassment, or disturbance to others.

Section 9.14 No Annoying Light, Sounds, or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, searchlights, speakers, horns, whistles, bells or other light or sound devices shall not be located or used on any portion of the Community except with the prior written approval of the Architectural Review Committee.

Section 9.15 Hazardous Activities. No activities shall be conducted on the Property, nor on improvements constructed on the Property, which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 9.16 Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, on the Common Area, or on any Lots unless placed in a suitable clean container suitably located, solely for the purpose of garbage pickup. No garbage, refuse, trash or cuttings shall be placed out for the purpose of pickup any sooner than 4:00 p.m. on the day before the scheduled trash pickup. The burning of trash in outside incinerators, barbeque pits or the like is prohibited. No dumpsters shall be permitted on the Common Area or on any Lot unless approved by the Board.

Section 9.17 Use of the Common Area.

(a) No use shall be made of the Common Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

(b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(c) No use shall ever be made of the Common Area which will deny reasonable ingress and egress for a substantial period of time to any Owner having access to his Lot from any street or sidewalk.

Section 9.18 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Tamarac Hills Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Executive Board, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 9.19 Restrictions on Grading. Each Owner shall be responsible for the continual maintenance of his Lot in order to ensure that the grading of the Lot does not differ from the final grade originally established by the Declarant or as approved by the Committee pursuant to Article 7 of this Declaration.

Section 9.20 Restrictions on Landscaping. Landscaping with drip irrigation may be permitted within 5 feet of the foundation of a Residence. Sod and/or other landscaping requiring irrigation other than drip irrigation may be prohibited or required to be removed if located within 5 feet of any Residence.

ARTICLE 10

COVENANT VIOLATION AND ENFORCEMENT

Section 10.1 Arbitration and Mediation. Regardless of the other terms of this Declaration, claims, disputes or other matters in question between the Owners, or from an Owner against the Association, against the Architectural Review Committee, against a Board member, officer or committee member, which arise in connection with the Declaration or in respect of the Community shall be resolved by binding arbitration or mediation. Mediation shall only be binding if agreed to by the parties to the mediation. All arbitration or mediation shall be conducted in accordance with the rules and procedures, although not the personnel, employees or offices of, the American Arbitration Association, currently in effect unless the parties to the arbitration agree otherwise. All other aspects of the arbitration or mediation shall be governed by the provisions of the Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, et seq. Arbitrations (and mediations agreed to) are final and binding upon the parties and the parties waive their rights to seek remedies in Court, including the right to a jury trial. The applicable statute of limitations for any claims brought pursuant to this covenant shall be the limitations period designated by Colorado law for the specific cause of action or claim underlying the dispute. Demand for arbitration, mediation or other binding dispute resolution shall be made in writing with the other party and shall be made within a reasonable time after the claim, dispute, or other matter has arisen. If the other party does not respond within 30 days after the demand is made, the other party is deemed to have consented to the forum chosen. In no event shall the demand for arbitration or mediation be made after the date when institution of legal proceedings based upon the claim, dispute or other matter in question would be barred by the applicable statute of limitations.

Section 10.2 Who May Enforce. Except as limited by arbitration and/or mediation of disputes as provided in this Declaration, or as provided by law, enforcement of this Declaration shall be by the Association or by an Owner by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision of this Declaration, either to restrain violation and/or to recover damages, and such Owner's Lot shall be subject to foreclosure to enforce any lien created by this Declaration. The omission or failure of the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 10.3 Attorney Fees. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any provision of the Governing Documents, the Association or any person or class of persons adversely affected by the failure to comply may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counterclaims, cross-claims, and third-party claims, in any legal proceeding to enforce provisions of the Governing Documents, or in any arbitration, the court or arbitrator may award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim.

Section 10.4 Notice of Violation. In the event of a failure or refusal to comply strictly with any provision of this Declaration, a notice may be mailed by the Association, its agent or the Architectural Review Committee to such violator setting forth the nature of the violation. Such notice may also state the action required by the Owner to cure the violation, the time required for such action and the nature of the action contemplated by the Association if the violation is not cured by the Owner. Any action taken by the Association to correct such violation shall be at the sole cost and expense of such Owner (including any reasonable attorney fees and costs incurred in conjunction therewith), and the Association shall charge and assess such Owner for the full cost thereof.

Section 10.5 Violation of Covenants Creates Liens. A violation of this Declaration shall create a lien against an Owner's Lot. The Association may elect to prepare and record a Notice of Lien with respect to each such violation.

Section 10.6 Covenant Enforcement - Remedies. Except as provided in this Declaration with regard to arbitration and/or mediation of certain disputes, the remedies provided in the Governing Documents for the enforcement of this Declaration are cumulative and the selection of less than all methods of enforcement shall not constitute an election of remedies so as to preclude other methods of enforcement subsequently or simultaneously.

Section 10.7 Limitations on this Article. Nothing in this Article is intended to limit or contravene, nor shall any provision thereof be construed to limit or contravene, any appropriate provision of the Governing Documents.

Section 10.8 Covenant Enforcement — Temporary or Permanent Restraining Orders. The Association may, in addition to other remedies, commence an action for an injunction and for damages and for the issuance of a temporary or permanent restraining order. By virtue of ownership of a Lot, each Owner waives the rules of court and statutes of the State of Colorado regarding any further notice of application to court for a temporary or permanent restraining order and waives the requirement of the posting of any bond as a condition thereof. This waiver shall extend to all persons or entities deriving any interest in said land by or through said Owner, including lienors and encumbrances.

ARTICLE 11

INSURANCE/CONDEMNATION

Section 11.1 Duty to Insure Lots and Improvements on Lots. Each Owner shall obtain and maintain in full force and effect, at all times, all necessary and appropriate insurance coverage for their Lot and the improvements on their Lot. Lot Owners are advised to carry casualty and liability insurance for their benefit and at their expense.

Section 11.2 Association Insurance. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. The Association shall maintain, to the extent reasonably available, policies with the following terms or provisions:

11.2.1 All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Lot Owner and shall provide that such policies may not be canceled or modified without at least forty-five (45) days prior written notice to all of the Lot Owners and the Association.

11.2.2 All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association as insureds.

11.2.3 Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Common Area, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

Section 11.3 Hazard Insurance on the Common Property. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Area, and any property owned or maintained by the Association. If obtainable, the

Association may obtain any additional endorsements deemed advisable by the Board of Directors.

Section 11.4 Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Common Area, in such limits as the Board may from time to time determine, but not in any amount less than One Million Dollars (\$1,000,000) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Property. All liability insurance shall name the Association as the insured.

Section 11.5 Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 11.6 Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 11.7 Association Professional Liability Insurance. The Association shall obtain liability insurance to protect the officers and directors, manager, Architectural Review Committee members and anyone acting at the direction of the Board.

Section 11.8 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 11.9 Insurance Premium. Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 11.10 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association.

Section 11.11 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Lot Owners, the Association and the Lot Owners hereby waive and release all claims against one another and the Board of Directors, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 11.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association. The Association shall hold any insurance proceeds in trust for the Association and Lot Owners.

Section 11.13 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Lot Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act.

ARTICLE 12

MISCELLANEOUS AND GENERAL PROVISIONS

Section 12.1 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 12.2 Covenants to Run. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the owners of all of the lands within the Property.

Section 12.3 Termination. Termination of this Common Interest Community shall be in accordance with the Act.

Section 12.4 Amendment of Declaration by Lot Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon the affirmative vote of greater than fifty percent (50%) of the votes in the Association. Said votes may be obtained in any method allowed by the Governing Documents of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Denver County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 12.5 Repeal of the Act. In the event that the Act is repealed, the provisions of the Act in effect immediately before its repeal shall control this Declaration.

Section 12.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 12.7 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 12.8 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 12.9 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 12.10 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 12.11 Registration. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices and demands intended to be served upon the Board of Directors or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of the State of Colorado, together with a copy addressed to the President of the Association at his registered address.

Section 12.12 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one (1) year after the date of recording of this document.

Section 12.13 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

The undersigned, being the president and the Secretary of Tamarac Hills Homeowners Association, Inc., hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from at least sixty-seven (67%) of the Owners and from at least sixty-seven (67%) of the First Mortgagees, as evidenced by written instruments filed with the records of the Association, and/or has obtained a court order approving this Amended and Restated Declaration.

TAMARAC HILLS HOMEOWNERS ASSOCIATION, INC.,
a Colorado nonprofit corporation

By: James B. Eichberg
President

ATTEST:

By: Quinn Kalund
Secretary

STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing was acknowledged before me this 27 day of July, 2000, by James B. Eichberg, as President of Tamarac Hills Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 11-17-04

Jennife Keenan
Notary Public



STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing was acknowledged before me this 27 day of July, 2000, by Daina Kalnins, as Secretary of Tamarac Hills Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 11-17-04

Jennife Keenan
Notary Public



EXHIBIT A
COURT ORDER

Attached

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Case No. 00CV2054, Courtroom 8

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND COURT ORDER PURSUANT
TO C.R.S. §38-33.3-217(7)**

TAMARAC HILLS HOMEOWNERS ASSOCIATION, INC., a Colorado Nonprofit
Corporation,

Petitioner.

THIS MATTER came before this Court for hearing on June 23, 2000. After reviewing all the pleadings filed in the matter and the testimony and evidence presented at hearing the following Findings of Fact and Conclusions of Law are made:

Findings of Fact

1. The Tamarac Hills Homeowners Association, Inc. ("Association") notified its Owners on January 14, 2000 and on March 23, 2000 of the proposed amendments to the Declaration of Covenants and Restrictions Recorded on March 12, 1984 in the real property records of the City and County of Denver, Colorado at Reception No. 2385716, pursuant to the notice requirements set forth in the Association's Bylaws and C.R.S. §38-33.3-217(a)(1).

2. The members of the Association discussed the proposed initiatives at a meeting on February 7, 2000. After the discussion, the Association solicited the votes of the owners.

3. The Association obtained approval from owners representing seventy percent (70%) of the property owners. Article XI, Section 1(a) of the Declaration requires approval of owners representing sixty-seven percent (67%) of the lot owners.

4. Notice of the Petition was mailed to all of the property owners within the Association, all of the known mortgage holders, and to the Declarant.

5. A hearing regarding the petition was held on June 23, 2000 before this Court.

6. Owners representing _____ percent (___%) of the lot owners filed written objections with this Court prior to the hearing conducted on June 23, 2000. This percentage of owners objecting to the Petition is less than thirty-three percent (33%) of the undivided interest in the general common elements.

Conclusions of Law

7. The Declaration requires approval from owners representing sixty-seven percent (67%) of the lots to make amendments to it. The Association obtained more than one-half the requisite percentage of votes.

8. The Declaration does not require the approval of the federal housing administration or the veterans administration.

9. The Association notified the Owners on two separate occasions of the proposed amendments and discussed the proposed amendments at one meeting of the Owners.

10. The Association submitted a Petition to this Court containing a summary of the information and exhibits required by C.R.S. §38-33.3-217(7)(b).

11. The Association has otherwise complied with the requirements of C.R.S. §38-33.3-217(7).

12. The proposed Amendment does not terminate the Declaration.

Based upon these Findings of Fact and Conclusions of Law and pursuant to the requirements of C.R.S. §38-33.3-217(7)(e) and (f), it is hereby ORDERED that the proposed Amendment to the Declaration of Protective Covenants is approved by this Court and shall have the same legal effect as if were adopted pursuant to the amendment requirements set forth in the Declaration. It is further ORDERED that the Association record a copy of the approved Amendment together with a copy of this Order with the Clerk and Recorder's office for the City and County of Denver, Colorado.

DATED this 23 day of June, 2000.

BY THE COURT:

DISTRICT COURT
City & County of Denver, Colo.
Certified to be full, true and correct
copy of the original in my custody.

JUN 23 2000



Honorable

John W. Coughlin

W:\CLIENT\Tamarac Hills\Petition ORDER.wpd

CLERK OF THE DISTRICT COURT
By Cristal Candelaria
Deputy Clerk

Tamarac Homeowners Association
Architectural Control Committee Report on Roofing Replacement Criteria

February 12, 1998

The ACC was asked by the Board to make a recommendation governing the type(s) of roofing materials to be allowed on homes in the Tamarac Hills complex. This letter presents the ACC recommendations. We move its adoption.

Exploration: The ACC (Ed Ives, Fred Albi and Al Knott) investigated the relative cost and attributes of modern, fire resistant, cementitious tile roofs versus top quality asphalt shingle roofs by asking for formal re-roofing quotes from roofing contractors. An oral report on relative costs and attributes was made to the Board by Al Knott in the late Fall of 1997. Fred Albi and Al Knott had the ridge line shingles on their homes replaced with new cedar shakes. A member of the Board recommended a concrete based tile which was checked out by Al Knott. Fred Albi explored the question of gain or loss in market price of our homes if the home were re-roofed using asphalt shingles.

Findings:

1. As presented in the oral report of Fall 1997:
 - Currently all of our homes are roofed with rough cut cedar shakes. Replacement costs will run from \$3000 to \$5000.
 - Cost of top quality asphalt shingles is approximately 80 percent of the cost of re-roofing with shakes.
 - Our homes would very likely depreciate in value if we went to asphalt shingles.
 - Companies were generally reluctant to quote on cementitious tile roofing.
 - Cementitious tiles such as Fire Free (the material historically recommended by the ACC) would likely be 150 percent of the cost of replacement with asphalt shingles.
2. In talking to the manufacturers of the new cementitious materials, glowing reports of adequacy and longevity were received. In talking to the only roofer who advertised Fire Free, it was learned that he had discontinued installing the product due to customer complaints. All three roofers contacted for quotes failed to formally quote on the cementitious materials. Their cost *estimates* ("generally 150% higher") may have been based on a reluctance to try something new, rather than the actual cost of the product.
3. Al Knott runs a testing laboratory which has explored the failure of roofing systems over the years. He has found that:
 - asphalt shingles are easy to install, and are the lowest cost material in common use,

- top grade asphalt shingles and shake shingles give a similar service life,
- the normal service life in Denver is 15 to 30 years,
- both materials are subject to hail damage and are replaceable through insurance,
- shakes are generally considered more up-scale and desirable in appearance and quality,
- shakes are more combustible than asphalt shingles. (Insurance companies now will not insure shake roofs through a homeowners association due to the number of adjacent shake roofs and the danger of fire spread from roof to roof. Insurance for shake roofs is available through individual homeowner policies. Some cities are banning shake roofs in new construction by code.)
- the modern cementitious tiles have not been around long enough to establish a good or bad reputation,
- *Permatek* is NOT recommended by Al Knott because even though warranted for 50 years in the sales brochures, its service life is around 4 years. It fails by cracking in the body of the tile due to moisture uptake, and by peeling of the surface.

Recommended Policy:

1. It is the recommendation of the ACC that asphalt shingles not be allowed,
 - (a) due to the significant change in character and appearance of our homes, and,
 - (b) due to the likely general loss in property value.
2. It is the recommendation of the ACC that our shake shingles be locally repaired by replacement of individual shingles, and by re-nailing or total replacement of the ridge line shingles for the immediate future (10 years). The reasons for this recommendation are that:
 - (a) our roofs still have significant service life left to give,
 - (b) ridge lines fail first, and their re-nailing or replacement lengthens roof life, and
 - (c) it is our opinion that the cementitious tile industry has not yet developed a certifiably reliable product.
3. If full replacement is desired by a homeowner, replacement using shake shingles, a modern cementitious tile, or by slate tile, will be considered by the ACC upon application by the homeowner through the normal channels of application. The application should include sales and warrantee information on the roofing product. Greys and browns generally matching the character of the current roofs will likely be acceptable to the committee.

Respectfully submitted:

Ed Ives Ed Ives (by phone) AA

Fred Albi Fred Albi

Al Knott Al Knott

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF**

**TAMARAC HILLS HOMEOWNERS ASSOCIATION, INC.
(A Nonprofit Corporation)**

FILED COPY
SECRETARY OF STATE
03-28-2000 13:37:54

TAMARAC HILLS HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation (hereinafter referred to as the "**Association**") hereby certifies to the Colorado Secretary of State that:

FIRST: The Association desires to amend and restate its Articles of Incorporation currently in effect as hereinafter provided.

SECOND: The provisions set forth in these Amended and Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments thereto. These Amended and Restated Articles of Incorporation correctly set forth the provisions of the Articles of Incorporation, as amended.

THIRD: The Articles of Incorporation of the Association are hereby amended by striking in their entirety Articles 1 through 11, inclusive, and by substituting in lieu thereof the following:

**ARTICLE 1.
NAME**

20001063427 M
\$ 60.00
SECRETARY OF STATE
03-28-2000 13:37:54

The name of this corporation is Tamarac Hills Homeowners Association, Inc. ("**Association**").

**ARTICLE 2.
DURATION**

The duration of the Association shall be perpetual.

**ARTICLE 3.
DEFINITIONS**

The definitions set forth in the Declaration of Covenants, Conditions and Restrictions of Tamarac Hills shall apply to all capitalized terms set forth herein, unless otherwise defined herein.

**ARTICLE 4.
NONPROFIT**

The Association shall be a nonprofit corporation, without shares of stock.

ARTICLE 5.
PURPOSES AND POWERS OF ASSOCIATION

The purposes for which the Association is formed are as follows:

(a) To operate and manage the Common Interest Community known as "Tamarac Hills," and to operate and manage the Real Estate and Common Elements included within the Community, situated in the City and County of Denver, State of Colorado, subject to the Declaration, Bylaws and such rules and regulations as the Board of Directors may from time to time adopt, for the purposes of enhancing and preserving the value of the Lots and the Common Elements in the Community for the benefit of the Members;

(b) To eliminate or limit the personal liability of a Member of the Board of Directors to the Association or to the Members for monetary damages for breach of fiduciary duty as a Board Member, as allowed by law;

(c) To perform all acts and services and exercise all powers and duties in accordance with the requirements for an association of owners charged with the administration of the Real Estate and Common Elements under the terms of the Colorado Common Interest Ownership Act, as amended (the "**Act**"), and as set forth in the Declaration;

(d) To act for and on behalf of the Members of the Association in all matters deemed necessary and proper for the protection, maintenance and improvement of the lands and improvements owned by the Members and this Association and to act for and on behalf of the Real Estate and Common Elements, including, without limitation, representing the Association before any city council or other governmental body having jurisdiction over the Association or services proved to the Association; and

(e) To do any and all permitted acts suitable or incidental to any of the foregoing purposes and objects to the fullest extent permitted by law, and do any and all acts that, in the opinion of the Board, will promote the common benefit and enjoyment of the occupants, residents and Lot Owners of the Community, and to have and to exercise any and all powers, rights and privileges which are granted under the Act, the Declaration, Bylaws and the laws applicable to a nonprofit corporation of the State of Colorado.

The foregoing statements of purpose shall be construed as a statement of both purposes and powers. The purposes and powers stated in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. The Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association.

ARTICLE 6.
MEMBERSHIP RIGHTS AND QUALIFICATIONS

The authorized number and qualifications of Members of the Association, the voting and other rights and privileges of Members, Members' liability for dues and assessments, and the method of collection of dues and assessments shall be as set forth in the Declaration and Bylaws of the Association.

Any person who holds title to a Lot in the Community shall be a "Member" of the Association. There shall be one (1) membership for each Lot owned within the Community. This membership shall be automatically transferred upon the conveyance of that Lot.

The Association may suspend the voting rights of a Member for failure to pay assessments or for failure to comply with the Governing Documents of the Association or with any other obligations of the Members under the Declaration and Bylaws after notice and the opportunity for a hearing.

ARTICLE 7.
EXECUTIVE BOARD/BOARD OF DIRECTORS

The business and affairs of the Association shall be conducted, managed and controlled by a Board of Directors (Executive Board). The initial Executive Board shall consist of no fewer than five (5) nor more than seven (7) Members, and this number may be changed by a duly adopted amendment to the Bylaws.

Members of the Board of Directors shall be elected at the annual meeting of the Members in the manner determined in the Bylaws.

Board Members may be removed and vacancies of the Board of Directors shall be filled in the manner provided in the Bylaws.

ARTICLE 8.
OFFICERS

The Board of Directors may appoint a President, one or more Vice-Presidents, a Secretary, a Treasurer and such other officers as the Board believes will be in the best interests of the Association. The Officers shall have such duties as may be prescribed in the Bylaws and shall serve at the pleasure of the Board of Directors.

ARTICLE 9.

AMENDMENT

Amendment of these Articles shall require the assent of fifty-one percent (51%) or more of the votes submitted in person or by proxy at a meeting called for this purpose at which at least a quorum is present, *provided, however*, that no amendment to these Articles of Incorporation shall be contrary to or inconsistent with the provisions of the Declaration. Further, an Amendment may also be made pursuant to the assent of a majority of the votes submitted by mail, so long as at least a quorum of the Members register votes by mail.

ARTICLE 10.

CONVEYANCES AND ENCUMBRANCES

Association property may be conveyed or encumbered by authority of the Association, acting through the Board of Directors. Conveyances or encumbrances shall be by an instrument executed by the President or a Vice President and by the Secretary or an Assistant Secretary, or executed by such other person or persons to whom such authority may be delegated by the Board.

ARTICLE 11.

DISSOLUTION

In the event of the dissolution of the Association as a corporation, either voluntarily or involuntarily by the Members hereof, by operation of law or otherwise, then the assets of the Association shall be deemed to be owned by the Members at the date of dissolution, as a part of their Lot, in proportion to their allocated interests, unless otherwise agreed or provided by law. The Association may be dissolved in any manner permitted by law.

ARTICLE 12.

GENERAL

This Association is one which does not contemplate pecuniary gain or profit to the Members thereof and is organized for nonprofit purposes. This Association does not afford pecuniary gain to its Members incidentally or otherwise, but Members shall be reimbursed for authorized, reasonable costs they may incur for or on behalf of the Association.

ARTICLE 13.

INTERPRETATION

Express reference is hereby made to the terms and provisions of the Declaration, which shall be referred to when necessary to interpret, construe or clarify the provisions of these Articles. In the event of conflict, the terms of the Declaration shall control over these Articles of Incorporation.

FOURTH: By resolution of the Board of Directors of the Association, pursuant to and in accordance with Colorado law, the Board of Directors of the Association set forth the foregoing Amended and Restated Articles of Incorporation. The foregoing Amended and Restated Articles of Incorporation received the approval of at least two-thirds (2/3s) of a quorum of each class of Members present at a duly constituted meeting.

IN WITNESS WHEREOF, Tamarac Hills Homeowners Association, Inc. has caused these presents to be signed in its name and on its behalf by its President and attested by its Secretary on this 14th day of March, 2000 and its President acknowledges that these Amended and Restated Articles of Incorporation are the act and deed of Tamarac Hills Homeowners Association, and, under the penalties of perjury, that the matters and facts set forth herein with respect to authorization and approval are true in all material respects to the best of his/her knowledge, information and belief.

TAMARAC HILLS HOMEOWNERS ASSOCIATION, INC.,
a Colorado non-profit corporation

By: James B. Erickson 3/14/2000
ITS, President

ATTEST:

By: Christine Kalman ITS
3/14/00, Secretary