

THIS DECLARATION CONTAINS NO RESTRICTION BASED ON RACE,  
COLOR, GENDER, RELIGION OR NATIONAL ORIGIN.

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
CLEARVIEW P.U.D.  
(A COMMON INTEREST LIMITED EXPENSE PLANNED COMMUNITY)**

THIS DECLARATION of Protective Covenants, Conditions and Restrictions (this  
"Declaration") is made by CLEARVIEW DEVELOPMENT OF JOHNSTOWN,  
LLC AND MICHAEL HARROUN ("Declarant".)

**RECITALS:**

- A. Declarant is the owner of all property depicted on the CLEARVIEW P.U.D. (the "Subdivision Plat") recorded in the records of the Clerk and Recorder, Weld County, Colorado, a subdivision in the Town of Johnstown, County of Weld, State of Colorado (the "Property").
- B. The Property is subject to this Declaration.
- C. Declarant desires to create a common interest limited expense planned community, pursuant to the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq., as it may be amended from time to time (the "Act"), in which portions of the Property will be designated for separate ownership and the remainder of which will be owned by the Association, as defined herein, provided; however, that such planned community shall constitute a limited expense planned community, as provided in C.R.S. 38-33.3-116, as amended from time to time, and as provided by the Act, shall be subject only to 38-33.3-105, 38-33.3-106 and 38-33.3-107 of the Act. Other provisions of the Act shall be inapplicable to the Property and this Declaration.

**SUBMISSION OF REAL ESTATE**

Declarant hereby declares that, in addition to all applicable governmental laws and ordinances, the following terms, covenants, conditions, easements, liens, reservations, restrictions, uses, locations, and obligations are adopted and shall be deemed to run with the land, and shall be a burden and benefit to any person or persons acquiring or owning and interest in the Property and any improvements thereon, their grantees, successors, heirs, personal representatives, administrators, devisees, transferees, or assigns.



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
2 of 21 R 105.00 D 0.00 Weld County CO

## ARTICLE I

### 1. DEFINITIONS.

a. "Association" shall mean and refer to the **CLEARVIEW P.U.D. HOMEOWNERS ASSOCIATION, INC., a Colorado Non-Profit Corporation**, its successors, and assigns. Members of the Association shall be the Owners of Lots in the Clearview P.U.D.

b. "Owner" shall mean and refer to the record owner, including the Declarant, whether one or more persons or entities, of the fee simple title of any Lot which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation. While nothing herein shall limit the ability of an owner to rent an owner's residence, multi-family dwelling, apartment or other dwelling to residential tenants, such tenants shall not be considered "owners" under the terms of this Declaration.

c. "Property" or "Clearview P.U.D." shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within this Declaration and/or the jurisdiction of the Association by annexation, or otherwise.

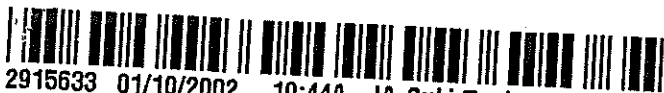
d. "Common Area" shall mean and refer to all real property owned or controlled by the Association for the common use and enjoyment of the Owners, and shall include all parking and median landscaping, and Open Space Outlots, as depicted on the Clearview P.U.D. Plat. "Common Area" shall also include the Roads and Easements, as defined herein, except to the extent such Roads and Easements are dedicated to and accepted for maintenance by the Town of Johnstown, Colorado, or Weld County, Colorado.

e. "Roads and Easements" shall mean and refer to all roads, streets and easements shown on the recorded plat of the Clearview P.U.D.

f. "Lot" shall mean and refer to any plot of land shown on any recorded subdivision plat of the Property, together with any improvements thereon, with the exception of the Common Area.

g. "Architectural Review Committee" shall mean and refer to the Architectural Review Committee, hereinafter further defined and organized.

h. "Common Expenses" shall mean and refer to maintenance, insurance, taxes, repair, operations, management and administration expenses, legal and accounting expenses, and other expenses declared by the provisions of this Declaration and by the



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
3 of 21 R 105.00 D 0.00 Weld County CO

Bylaws and Articles of Incorporation of the Association to be Common Expenses, and all sums lawfully assessed against the Common Area by the Association. Common Expenses shall include, without limitation, the cost to irrigate and maintain all landscaping to the Common Area, maintaining all fencing erected by Declarants adjacent to the Common Area, and maintenance of all signage and lighting for the entryway to the Clearview P.U.D.

i. "Declarant" shall mean and refer to **CLEARVIEW DEVELOPMENT OF JOHNSTOWN, LLC AND MICHAEL HARROUN**, and/or its successors and assigns, who, by written instrument executed by the then-current Declarant, and recorded in the Weld County, Colorado real estate records, agrees to an assignment of all or a portion of the duties and/or rights of Declarant, as described herein.

## ARTICLE II

### 1. ASSESSMENT LIMITATIONS.

a. Limited Expense Planned Community Assessment Limitation. The annual average Common Expense liability of each Lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid the Association, may in no event exceed Four Hundred Dollars (\$400.00) (or such greater amounts as may in the future be allowed under the Act with respect to the existence of limited expense planned communities), as adjusted pursuant to Section 2 of this Article, and the Property in this Declaration is subject only to C.R.S. 38-33.3-105, 38-33.3-106 and 38-33.3-107, of the Act, as amended from time to time, which provisions are hereby incorporated into this Declaration.

b. Consumer Price Index Increases to Assessment Limitation. Regardless of the effective date of this Declaration, the Four Hundred Dollar (\$400.00) limitation set forth in Section 1(a) of this Article shall be deemed to have increased annually on July 1, 2000, and on July 1 of each succeeding year, in accordance with any increase in the United States Department of Labor, Bureau of Labor Statistics, Final Consumer Price Index for the Denver/Boulder Consolidated Metropolitan Statistical Area for the preceding calendar year. The limitation shall not be increased if the final Consumer Price Index for the preceding calendar year did not increase, and shall not be decreased if the final Consumer Price Index for the preceding calendar year decreased.

## ARTICLE III

### 1. OWNER'S RIGHTS.

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



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
4 of 21 R 105.00 D 0.00 Weld County CO

(i) The right of the Association, through its Board of Directors, to charge reasonable fees, fines and assessments (including attorney's fees relating to the collection of the same) with respect to the maintenance, use or misuse of the Common Area or any other portion of the Property, or the non-compliance of any owner with this Declaration.

(ii) The right of the Association, through its Board of Directors, to suspend the voting rights and right to use of the Common Area or portions thereof by an Owner for any period during which any assessment, fee, fine or lien imposed by the Association against an Owner's Lot remains unpaid.

(iii) The right of the Association, through its Board of Directors, to suspend the right to use of the Common Area or portions thereof by an Owner for any period during which the Owner fails to comply with the terms of this Declaration.

(iv) The right of the Association, through its Board of Directors, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

b. **Association Rules and Regulations.** The Association shall have the right and power, through its Board of Directors, to adopt such rules and regulations as it, in its discretion, shall determine from time to time to regulate and govern the use of, and construction of improvements on, the Common Area and the Clearview P.U.D. Such rules and regulations may include the imposition of reasonable fines, fees, and assessments (including attorney's fees incurred in collection of the same.)

c. **Delegation of Use.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property.

#### **ARTICLE IV.**

1. **ADMINISTRATION.** The administration of the Property by the Association shall be governed by this Declaration, the Articles of Incorporation and the Bylaws of the Association.

2. **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.**

a. **General Membership.** Membership in the Association will be comprised of Owners of Lots in the Clearview P.U.D. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Membership shall pass by operation of law upon the sale of any Lot, which sale may be by deed or by installment land contract.

b. **Voting Classes.** The Association shall have two (2) classes of voting members, as follows:

(i) Each Lot owned by an Owner, other than Declarant, shall be allocated one (1) vote in the Association, as more fully provided in the Bylaws of the Association. When more than one person or entity owns an interest in a Lot, all such persons and/or entities shall aggregately be considered one Member of the Association. The vote for such Lot shall be exercised as the Owners thereof among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot (in the event that the multiple Owners of a Lot cannot determine among themselves which Owner may cast the vote for the applicable Lot, the Association shall be entitled to rely on the vote of the first Owner named on the current recorded deed relating to the applicable Lot, or in the event of current multiple recorded deeds, the Association may rely on the vote of the first Owner listed on the first of such multiple deeds which is recorded in the Weld County, Colorado records).

(ii) Each Lot owned by Declarant shall be allocated ten (10) votes in the Association, as provided in the Bylaws of the Association.

#### ARTICLE V

#### 1. COVENANT FOR COMMON AREA MAINTENANCE RESPONSIBILITIES.

a. Covenant for Maintenance of Common Area. The Association, through its Board of Directors, will provide for the maintenance of the Common Area. The Association shall maintain the Detention Ponds as depicted on the approved Engineering Plans. The Detention Ponds shall be landscaped with non-irrigated Buffalo Grass. Complete landscaping on the Detention Ponds shall occur when 80% of the entire Development is complete because of erosion control issues. However, if Declarant does not begin construction on a future filing of the Development within three (3) years from the date of this Agreement, the Association will be required to complete landscaping of the Detention Ponds within three (3) years from the date of this Agreement. Declarant shall have, in its sole discretion, control of when initial installation of landscaping of the Common Area is to be commenced and completed.

b. Insurance. The Association, through its Board of Directors, shall maintain such insurance coverage, as a Common Expense, as it in its sole discretion shall determine from time to time.

c. Delegation. The Board of Directors of the Association may from time to time enter into such management agreements or arrangements with such persons, firms, or corporations as it shall so elect to perform the duties of the Association and shall pay such compensation for such services as it, in its sole discretion, shall so determine. Subject to the right of the Declarant to appoint the members of the Architectural Review Committee, the Board of Directors of the Association shall appoint on an annual basis, an Architectural Review Committee which will perform the functions hereinafter described. The Board of Directors may appoint other committees to assist the Association in the performance of the Association's duties.

## ARTICLE VI

### 1. ASSESSMENT FOR COMMON EXPENSES.

a. **Personal Obligation of Owners for Assessments.** Each Owner for any Lot by acceptance of a deed therefor, whether or not is shall be so expressed in such deed, is deemed to covenant and agree to pay the estimated assessments imposed by the Association to meet the Common Expenses attributable to the Property. Assessments for the estimated Common Expenses shall be due monthly or at such other intervals as may be set by the Association from time to time. The Association shall prepare and deliver by mail to each member at such intervals as may be set by the Association from time to time, a statement for the estimated Common Expenses.

b. **Amount of Assessments.** Assessments made for the Common Expenses shall be based on the cash requirements deemed to be the aggregate sum the Association shall, from time to time, determine is to be paid by the Owners, to provided for payment of all estimated expenses growing out of or connected with the maintenance or operation of the Common Area, which sum may include, among other things, Common Expenses, expenses for management, taxes and special assessments, casualty and public liability and other renovations, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from a previous period, and the creation of reasonable contingency or other reserve, sinking, or surplus fund, as well as other costs and expenses related to the Common Area. In no event shall the annual average Common Expense liability of each Lot be restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, exceed the amounts described in Article II above.

c. **Notice of Assessments.** The Board of Directors of the Association shall fix the amount of the assessment to be made against each Owner at least thirty (30) days in advance of the assessment period. The due date shall be established by the Board of Directors and set forth in the notice of the assessment.

d. **Exempt Property.** All property dedicated to and accepted by a local public authority, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Colorado shall be exempt from the assessments created herein. However, no lands or improvements devoted to dwelling use shall be exempt from said assessments.

2. **DESTRUCTION OF COMMON AREAS.** If the Common Area or a portion thereof is destroyed by fire or other casualty, the Board of Directors may replace or repair



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
7 of 21 R 105.00 D 0.00 Weld County CO

the Common Area if the Board of Directors determines that such replacement or repair is in the best interest of the Owners of the Property.

## **ARTICLE VII**

### **1. LIEN FOR NONPAYMENT OF ASSESSMENTS.**

#### **a. Effect of Nonpayment of Assessments; Remedies of the Association.**

Each Owner shall be allocated a fraction of the total Common Expenses, which fraction shall have as its numerator the number of Lots owned by each Owner, and the denominator of which shall be the total number of Lots in the Property. Each Owner shall pay the Owner's proportionate share of the Common Expenses and expenses of administration, maintenance, and repair of the Common Area and any other expenses set forth in this Declaration, or lawfully assessed by the Association. Payment thereof shall be in such amounts and at such times as may be determined by the Association. If any Owner shall fail or refuse to make any such payments of the Common Expenses when due, the amount thereof, including late charges and interest, shall constitute a lien against the Lot of the Owner, together with the Owner's interest in the Common Area, and upon the recording of notice thereof by the Association, such liens shall be constituted upon such Owner's interest in said Lot prior to all other liens and encumbrances, recorded or unrecorded, except only (a) taxes, special assessments, and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this state, and other state or federal taxes which by law a lien on the interest of such Owner prior to pre-existing recorded encumbrances thereon, and (b) all sums unpaid on a first mortgage of first trust deed of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such lien.

**b. Evidence of Lien.** To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed on behalf of the Association by an officer of the Association and shall be recorded in the office of the Clerk and Recorder of the County of Weld. Such lien may be enforced by the foreclosure of the Association of the defaulting Owner's Lot in like manner as mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all of the members of the Association. In any such foreclosure, the Owner shall be required to pay all the costs and expenses of such proceedings; the costs, expenses and attorney's fees for filing the notice of claim of lien; and all reasonable attorney's fees in connection with such foreclosure and all such unpaid amounts, including late charges and interest, shall constitute a lien on the Lot of the Owner, together with the Owner's interest in the Common Area, and shall have the same priority, and shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments herein described. The Owner shall also be required to pay to the Association all assessments during the period of a foreclosure, and the Association shall



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
8 of 21 R 105.00 D 0.00 Weld County CO

be entitled to the appointment of a receiver to collect the same. The Association shall send to each first mortgagee a copy of the notice of lien provided for herein. Any encumbrancer holding a lien on a Lot may, but shall not be required to, pay any unpaid Common Expenses payable with respect thereto; and upon such payment, such encumbrancer shall have a lien on such Lot for the amounts paid of the same rank as the lien of his or its encumbrance.

## ARTICLE VIII

### 1. OWNER'S OBLIGATION FOR PAYMENT OF ASSESSMENTS.

a. Personal Obligation to Pay Assessments. The amount of expenses assessed by the Association against each Owner shall be the personal and individual debt of the Owner at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. No Owner may exempt himself or itself from liability for his or its contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area, or by abandonment of the Lot of the Owner.

b. Liability of Grantee. The grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or its proportionate share of expenses up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid to the grantee therefore; provided, however, that upon payment of a reasonable fee not to exceed twenty dollars (\$20.00) and upon written request, any such prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, if any, with respect to the subject Lot, the amount of the current assessment and the period that it covers, and the date the assessment comes due, credit for advance payments or for prepaid items which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be sent by the Association to the prospective grantee within twenty (20) days of such request, then such grantee shall not be liable for, nor shall the Lot, if conveyed to the grantee, be subject to a lien for any unpaid assessments against the subject Lot.

## ARTICLE IX

1. LAND USE AND BUILDING TYPE. Unless permitted by the Architectural Review Committee, in its sole discretion, no Lot shall be used except for residential purposes (including multi-family and apartments.) Notwithstanding the foregoing, Owners may use their residences for in-home businesses if (i) consistent with applicable governmental zoning ordinances, (ii) traffic is not unreasonably increased in the Clearview P.U.D., and (iii) such use is approved in advance by the Architectural Review Committee, in its sole discretion; provided, further, that the Architectural Review Committee can revoke such use in its sole discretion at any time. Except as provided herein, or except as may otherwise be allowed by the Architectural Review Committee, in its sole discretion, no building shall be erected, altered, placed, or permitted to remain



on any Lot other than single-family dwellings and multi-family and apartment dwellings of a height, size and location as approved in the sole discretion of the Architectural Review Committee. Except as provided herein, no building, structure, fence, trellis, or other improvement shall be erected, altered, placed or permitted to remain on any Lot except as approved in the sole discretion of the Architectural Review Committee.

2. **MINIMUM SQUARE FOOTAGE.** Except for multi-family and apartment dwellings approved by the Architectural Review Committee, or except as otherwise permitted by the Architectural Review Committee in its sole discretion, no dwelling shall be erected, altered, or permitted to remain on any Lot unless the finished floor space area thereof, exclusive of basement, open porches, garages, and attached out-buildings, and based on exterior measurements, is not less than:

- a. 1200 square feet for a one-story dwelling;
- b. 1400 square feet for more than a one-story dwelling.
- c. The height, size and location of multi-family and apartment dwellings shall be established from time to time by the Architectural Review Committee, in its sole discretion.

3. **BUILDING LOCATION AND SETBACK REQUIREMENTS.** The location and set-back of each building on any Lot shall be determined in the sole discretion of the Architectural Review Committee, which setback and location restrictions and limitations shall be at least consistent with all applicable governmental zoning ordinances, subdivision regulations and building codes. The Architectural Review Committee may, in its sole discretion, require and enforce varied and more restrictive setback and location requirements with respect to the various Lots located in the Clearview P.U.D. No portion of any improvement or building on a Lot may encroach upon another Lot.

4. **OTHER PROVISIONS RELATING TO THE CONSTRUCTION OF IMPROVEMENTS.**

a. **Garages and Storage Sheds.** Unless otherwise consented to in writing by the Architectural Review Committee in its sole discretion, no detached garages, storage sheds, garden houses, or other buildings shall be constructed on any Lot.

b. **Exterior Dwelling Roofs.** All roofs must be approved by the Architectural Review Committee and, unless otherwise approved by the Architectural Review Committee, in its sole discretion, all exterior dwelling roofs shall be, at a minimum, at least a 25-year warranty laminated composition shingled roof.

c. **Sanitation and Appearance of Lots During Construction.** During the construction of a dwelling on a Lot, the Owner of such Lot is responsible for ensuring that the Owner or Owner's builders (i) provide a portable toilet at the construction site; (ii) provide suitable receptacles for construction waste; (iii) do not deposit excess



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
10 of 21 R 105.00 D 0.00 Weld County CO

concrete, building materials and waste on the Common Area, adjacent Lots, ditches, or on the Roads and Easements, and that all such materials are appropriately removed from the Property by at least the time the construction of the dwelling is complete; (iv) pay for and repair any damage to Common Area, Roads and Easements, drainage ways, or any other portion of the Property occurring during the construction of the dwelling.

d. **Architectural Design.** The overall building design and the overall design of any improvements constructed on a Lot, including, but not limited to, size, exterior materials and colors and solar energy systems, shall be subject to the approval of the Architectural Review Committee, in its sole discretion. The Architectural Review Committee may adopt from time to time an Architectural Control Handbook (the "**Architectural Control Handbook**"), setting forth such matters which may include the size, exterior materials, colors, and systems which may be permitted on the Property. The Architectural Control Handbook may be changed at any time without notice, in the sole discretion of the Architectural Control Committee.

e. **Site Planning.** Overall site planning and grading of each Lot shall be subject to the approval of the Architectural Review Committee, in its sole discretion.

5. **PERMITTED USES.** No noxious or offensive activity shall be carried on upon any Lot, or the Common Area, nor may anything be done which may be or may become an unreasonable nuisance or annoyance to the Property or other Owners. No Lot shall be used as a parking or storage area for vehicles or materials of any kind, other than personally owned automobiles of the Owner, and except for reasonable term while a structure on said Lot is under construction. No Lot or other portion of the Property shall be used by an Owner as a parking or storage area for personally owned automobiles intended for commercial purposes to the extent that such automobiles constitute an unreasonable nuisance or annoyance to the Property or other Owners as to the size or quantity thereof. The Architectural Review Committee may from time to time formulate and adopt guidelines indicating the number and size of personally owned automobiles intended for commercial purposes which may be parked or stored on the Property by an Owner.

No campers, trailers, motor homes, buses, tractors/trailers, "RV's" (recreational vehicles) or boats shall be stored or parked on the Property in excess of forty-eight (48) consecutive hours during any month, except if stored in an enclosed garage. No motor vehicles of any kind, including cars, trucks, trailers, motorcycles, or the like, may be stored, junked, or otherwise maintained anywhere on any Lot or any other portion of the Clearview P.U.D. in any idle or unworkable condition. No motor vehicle or machine will be overhauled or rebuilt on any portion of the Property, unless entirely enclosed in a garage or other improvement approved by the Architectural Review Committee in its sole discretion. Except as otherwise provided herein, only those vehicles and machines in good running condition which are currently licensed and registered are permitted on any portion of the Property.

6. **MINERAL EXTRACTION.** No mining or extraction of minerals shall be permitted on any Lot, including seismic or other mineral or extraction testing.
7. **WATER AND SANITATION.** Any residence constructed on any lot shall be connected with any public or community water or sewage disposal system, which may be formed or created to serve the Clearview P.U.D. Privies, outhouses, chemical toilets, etc. are expressly prohibited except for reasonable period of time during the construction of a residence on a particular Lot.
8. **DRAINAGE.** Each Owner is responsible for providing adequate water drainage from the Owner's Lot into existing storm drains or street gutters so that such water does not drain onto adjacent Lots. No chemicals or petroleum products shall be allowed to drain into storm drains or street gutters. But, this Paragraph will not prevent the application in normal quantities of customary insect, animal, or plant control substances, fertilizers, and plant floods on Lots even if run-off from the Lots could carry these substances into the storm drain system. No basement sump pumps shall be allowed on any Lot. All basements shall have a professionally designed and installed perimeter footing drain system that shall cause any water drainage to gravity flow into existing sewer underdrains to detention pond trickle channels.
9. **REFUSE AND RUBBISH.** All property and premises shall be kept in a clean and sanitary condition at all times. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage, or any other form of solid, semisolid, or liquid waste. Rubbish, garbage, or other waste shall be kept and disposed of in a sanitary container. All containers or other equipment for the storage or disposal of garbage, trash, rubbish, or other refuse shall be kept in a clean, sanitary condition and shall be kept inside the residence or individually housed or screened from view. No trash, litter, or junk shall be permitted to remain exposed upon the premises and visible from public roads or adjoining or nearby premises. Burning of trash will not be permitted at any time in the Clearview P.U.D., during construction or otherwise.
10. **YARD MAINTENANCE AND LAWN SEEDING.** Each Lot owned by an Owner other than Declarant will be completely landscaped with grass or other landscaping accepted in writing by the Architectural Review Committee. Each lot shall have a maximum irrigated area equal to fifty percent (50%) of the total lot area. Each Owner, other than Declarant, will prepare a landscape plan, complete with a timetable for starting and completion, which plan will be submitted for written approval to the Architectural Review Committee contemporaneously with the submission of the dwelling plans and specifications described below or within ninety (90) days after the dwelling is complete. Unless otherwise approved by the Architectural Review Committee, in its sole discretion, any Lot shall have completed landscaping in accordance with the timetable described in the landscape plan but not later than one (1) year after the dwelling inhabited. All Owners of Lots other than Declarant shall cut and control all weeds and vegetation growing on all Lots, whether vacant, occupied, or those with improvements under construction.

11. **APPEARANCE OF LOTS.** Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so they are visible from any neighboring Lot or streets, except as necessary during the period of construction.

In the event any structure is destroyed, either wholly or partially, by fire or any other casualty, said structure shall be promptly rebuilt or remodeled to conform with this Declaration; or if the structure is not to be rebuilt, all remaining portions of the structure, including the foundation and all debris, shall be promptly removed from the Lot.

12. **SIGNS.** No signs shall be located on any Lots except reasonably-sized signs offering the Lot for sale and except builders' or suppliers' signage during the period of construction, or unless approval for such other sign or signs is obtained in writing by the Architectural Review Committee, said Committee reserving the right to disapprove all such requests for signs except those described above.

13. **ANIMALS.** No animals, livestock, cattle, swine, fowl, poultry, or insects of any kind shall be housed, raised, or left on any Lot either temporarily or permanently except commonly accepted domestic household pets may be kept, provided they are not kept or maintained for any commercial purpose. Animal pens shall be maintained on a regular basis to assure a neat and orderly appearance and a clean and healthy atmosphere.

14. **CLOTHESLINES.** No clotheslines are to be installed on any Lot.

15. **EXTERIOR ANTENNAE.** No outside radio or television antennae or satellite dishes shall be permitted on any Lot or any part of the Common Area unless approved by the Architectural Review Committee in its sole discretion, or except as otherwise allowed by State or Federal law.

16. **RESUBDIVISION.** The erection of more than one dwelling per Lot or the Resubdivision of Lots is prohibited unless consent of the Architectural Review Committee is first obtained in writing. Additionally, no Lot may be resubdivided or have two principal buildings located thereon without approval of the Architectural Control Committee and the County of Weld, or such other governmental entity having jurisdiction over the Property.

17. **FENCES.** The construction of all fencing, screening, awnings, trellises and the like, shall be constructed in a professional manner and/or by professional companies, and such companies shall be subject to the approval of the Architectural Review Committee. All Fencing, screening, awnings, trellises and the like shall be maintained in good repair and shall be of the size, color, and material as approved by the Architectural Review Committee, in its sole discretion, and as may be further described in the Architectural Control Handbook adopted by the Architectural Control Committee.



## ARTICLE X

1. **ARCHITECTURAL REVIEW.** There shall be created a committee called the Clearview P.U.D. Architectural Review Committee. No building shall be erected, placed, or altered on any Lot, nor shall any wall, fence, or other enclosure, deck, patio, porch, solar collector, or other improvement, be located thereon, until construction plans and specifications, including, without limitation, exterior colors for painted and stained surfaces, plot plan and configuration, size and square footage of improvements, have been submitted to and have been approved by the Architectural Review Committee, in its sole discretion, as to quality of workmanship and materials, harmony of design with surrounding structures, exterior colors, location with respect to topography and grade.

Two (2) complete sets of plans and specifications (including landscaping plans) with complete detail shall be furnished to the Architectural Review Committee. All plans and specifications must be complete, legible, and understandable but need not be professionally drawn or prepared. The Architectural Review Committee reserves the right to reject plans and specifications if they, in their sole discretion, deem them to be incomplete or insufficient. Additionally, the Architectural Review Committee reserves the right to waive or vary from any of the requirements described in this Declaration. The Architectural Review Committee may retain one (1) set as part of its permanent files. The following items must be included in such plans and specifications in addition to other items which the Architectural Review Committee may require, in its sole discretion from time to time, and shall, without limitation, be subject to approval of the Architectural Review Committee in its sole discretion:

- a. Size and square footage finished space including floor plans;
- b. Exterior elevations;
- c. Exterior colors and samples of exterior materials. All colors must conform to the requirements of the Architectural Review Committee, as may be described in the Architectural Control Handbook;
- d. Such plans must demonstrate that the improvements are in harmony with the design of surrounding structures and show variations in the exterior design to avoid monotony of repetition with other surrounding structures;
- e. Plot layout with respect to topography, grade and drainage in relation to existing dwellings and drainage.

2. **MEMBERSHIP TO THE COMMITTEE.** The Architectural Review Committee shall consist of not less than one (1) nor more than three (3) persons. The initial number and members to the Architectural Review committee shall be determined by the Declarant. If the Architectural Review Committee consists of more than one member, a majority of the Architectural Review Committee may designate a representative to act for it. The Architectural Review Committee shall have the authority

to charge a sum no to exceed **One Hundred Fifty Dollars (\$150.00)** as a review fee for each set of plans and specifications submitted to it for approval. Until Declarant sells or conveys all Lots owned by Declarant, Declarant shall have the right to appoint the members (or their successors) of the Architectural Review Committee. Upon the sale of all Lots owned by Declarant, the Architectural Review Committee shall be appointed on an annual basis by the Board of Directors of the Association from among the Lot Owners. In the event of the death or resignation of any member of the Architectural Review Committee, the remaining members shall have the authority to designate a successor.

3. **PROCEDURE.** The Architectural Review Committee's approval or disapproval as required in this Declaration shall be in writing or indicated on the builder's or Owner's set of plans and specifications. In the event the Architectural Review Committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, the plans and specifications will be deemed to be approved; and the related covenants described in this Declaration shall be deemed to have been fully complied with; provided, however, that such approval will only be deemed to have occurred with regard to matters sufficiently and specifically described in plans and specifications which are actually received by the Architectural Review Committee.

All buildings and improvements shall be constructed in accordance with the plans and specifications approved by the Architectural Review Committee. Any changes to approved plans and specifications shall require resubmission to, and approval by, the Architectural Review Committee.

4. **ADOPTION OF GUIDELINES.** The Architectural Review Committee may from time to time formulate and adopt guidelines and procedures consistent with this Declaration for the purpose of clarifying or assisting in the exercise of its duties contemplated by this Declaration. Additionally, the Architectural Review Committee may formulate guidelines and rules regarding the adoption of architectural and construction standards and the regulation of use of Lots on the Property, the contents of which guidelines may not necessarily be reflected by this Declaration; provided, however, that to the extent the contents of any guideline is not contemplated in this Declaration, such guideline must be approved by the Board of Directors of the Association in accordance with the Bylaws of the Association. Copies of the adopted guidelines and procedures may be obtained from the Architectural Review Committee upon request and payment of an amount equal to the cost of copying such guidelines and procedures.

5. **NON-WAIVER.** The approval or disapproval by the Architectural Review Committee of any plans, drawings, or specifications for any work or construction done or proposed, or in connection with any other matter requiring the approval of the Architectural Review Committee under this Declaration, shall not be deemed to constitute a waiver of any right to approve or disapprove any similar plan, drawing or

specification or matter whenever subsequently or additionally submitted for approval by any Owner.

6. **ESTOPPEL CERTIFICATE.** Within thirty (30) days after written demand therefor is delivered to the Architectural Review Committee by any Owner, and upon payment to the Association of a reasonable fee from time to time to be fixed by the Architectural Review Committee, the Architectural Review Committee shall provide an Owner with an estoppel certificate executed by any one of its members, certifying with respect to any Lot of said owner, that as of the date thereof either (a) all improvements and other work made or done upon or within said Lot by the Owner, or otherwise, comply with this Declaration, or (b) such improvements and work do not so comply, in which event the certificate shall also (i) identify the non-complying improvements and work and (ii) set forth with particularity the cause or causes for such non-compliance.

## **ARTICLE XI**

1. **RESERVED DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS.** Declarant reserves the right for the maximum time limit allowed by law (or, to the extent no such time limit is fixed by law, for a period of twenty (20) years after the recording of this Declaration) to perform the acts and exercise the rights specified below (the "Reserved Declarant Rights".) Declarant's Reserved Declarant Rights include the following:

a. **Completion of Improvements.** The right to complete improvements indicated on the Subdivision Plat of the Clearview P.U.D.

b. **Sales Management and Marketing.** The right to maintain sales offices, management offices, signs advertising the Property or portions thereof for sale, and models on the Property. The Declarant shall have the right to determine the number of models and the size and location of any sales offices, management offices, and models. The Declarant shall also have the right to relocate any sales offices, management offices, and models from time to time at its discretion. After the Declarant ceases to be the owner of a Lot, the Declarant shall have the right to remove any sales offices, management offices, and models from the Property.

c. **Master Association.** The right to make the Property subject to another non-profit Association formed to govern the Property and one or more common interest communities.

d. **Merger.** The right to merge, consolidate or annex the Property with another common interest community.

e. **Control of Association and Executive Board.** The right to appoint or remove any officer or director of the Association or any member of the Architectural Review Committee, so long as Declarant is the Owner of any Lot in the Clearview P.U.D.



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
16 of 21 R 105.00 D 0.00 Weld County CO

f. **Amendment to Declaration.** The right to amend this Declaration in connection with the exercise of the following rights (collectively, the “Development Rights”).

- (i) Add real estate to the Property;
- (ii) Create Lots and additional Common Area;
- (iii) Subdivide Lots or convert Lots into Common Area;
- (iv) Withdraw all or any portion of the Property from the provisions of this Declaration;

(v) Declarant shall have the absolute unilateral right, power and authority to modify, revise, amend or change any of the terms or provisions of this Declaration, all as amended or supplemented, if the Veteran’s Administration (“VA”), the Federal Housing Administration (“FHA”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”), the Federal National Mortgage Association (“Fannie Mae”), the Governmental National Mortgage Association (“Ginnie Mae”), or any successor agencies or entities thereto, or any agencies or entities provisions similar programs, shall require such action as a condition precedent to the approval by such agency entity of the Property, or any part thereof, or any Lots thereon, for approved mortgage financing purposes under applicable VA, FHA, Freddie Mac, Fannie Mae, Ginnie Mae, or similar programs.

(vi) Notwithstanding any provision to the contrary in this Declaration, Declarant shall have the absolute unilateral right, power and authority to modify, amend, revise or change any of the terms and/or provisions of this Declaration, all as amended or supplemented, to reflect the different residential character of the tracts of land or lots within the overall Clearview P.U.D. Declarant may be allowed to develop or multi-family and/or apartment dwellings and commercial/retail on the Property. It is not presently possible to determine the exact mix or location of such units, and so Declarant reserves the unilateral right to amend this Declaration and all of its terms to provide for the location and mix of said units, and among other things, to provide that the owners of multi-family and/or apartment and commercial/retail dwellings have membership rights and voting rights in the Association, and that such properties have obligations and design and use standards appropriate to their individual ownership and usage characteristics.

g. **Amendment of Plat.** The right to amend the Clearview P.U.D. plat in connection with the exercise of any Development Rights.

h. **The Transferability of Rights.** Any of the Declarant’s rights may be transferred to any person or entity by an instrument describing the rights transferred and recorded in the Weld County, Colorado records. Such instrument shall be executed by the transferor or Declarant and the transferee.

**ARTICLE XII**

1. **COVENANTS TO RUN WITH THE LAND.** This Declaration and these provisions are to run with the land and shall be binding upon all parties and all persons claiming under them until January 1, 2021 at which time this Declaration and said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then record Owners of the Lots it is agreed to amend this Declaration and said covenants in whole or in part. Provisions for maintenance of Common Area and open space located in the Property shall not be permitted to lapse with the other covenants unless other provisions are made for the continuation of maintenance. This Declaration may be amended in whole or in part at any time by a duly written and recorded instrument executed by the then record Owners of a majority of the Lots. Notwithstanding any provision to the contrary in this Declaration, until Declarant has sold all Lots owned by Declarant, amendment to this Declaration shall require the consent of Declarant.

**NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS DECLARATION, THE ASSOCIATION CANNOT BE DISSOLVED WITHOUT THE WRITTEN CONSENT OF THE TOWN OF JOHNSTOWN, OR SUCH OTHER GOVERNMENTAL ENTITY HAVING JURISDICTION OVER THE PROPERTY.**

2. **DELINQUENCY.** Any assessment or other amount due from an Owner as provided for in the Declaration, which is not paid when due, shall be delinquent. With respect to each amount not paid within thirty (30) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed \$50.00 or ten percent (10%) of the amount due, whichever is greater, regardless of the number of individual amounts due. If any such amount or assessment is not paid within thirty (30) days after the delinquency date, the assessment or amount shall bear interest from the date of delinquency at the rate of eighteen percent (18%).

3. **ASSOCIATION'S PERFORMANCE OF AN OWNER'S DUTIES.** In the event any Owner fails to comply with the provisions of this Declaration, the Association shall be entitled to take whatever lawful actions are necessary to enforce the provisions hereof including performing such duties on behalf of the Owner including as an example, but not limited to, unapproved storage of recreational vehicles, unapproved fencing, or other construction. If the performance of an Owner's duties by the Association requires the Association or its delegates to enter onto the Lot of an Owner for such purposes which shall include but not be limited to cutting of weeds, erosion control, and trash clean up, such entry shall be deemed to have occurred with the consent of the Owner and shall not constitute a trespass. The Association shall be entitled to recover all costs, expenses and attorney's fees incurred by the Association in performing the duties of an Owner. If the Owner fails or refuses to pay the Association for such amounts within thirty (30) days from the date invoiced by the Association, the amounts, including late

charges and interest, shall constitute a lien against the Owner's Lot together with the Owner's interest in the Common Area, and shall have the same priority, and shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments described in this Declaration.

4. **TOWN OF JOHNSTOWN'S PERFORMANCE OF THE ASSOCIATION'S DUTIES.** If the Association fails to reasonably maintain the Common Area, The Town of Johnstown, or such other governmental entity having jurisdiction over the Property, shall have the right to maintain said Common Area and to charge back the Association or Owners for the cost incurred by the Town.

5. **LEGAL PROCEEDINGS.** If any Owner violates or attempts to violate any of the covenants or provisions described in this Declaration, it shall be lawful for the Association or any other Owner to prosecute any proceedings at law or in equity against the person or persons violating any such covenant, and either to prevent him or them from so doing or to recover damages or other dues for such violation.

If any Owner, or an Owner's family, invitees, licensees, tenants, or subtenants, violates the terms of this Declaration, such Owner shall be liable to the Association for all costs, expenses and reasonable attorney's fees incurred by the Association in enforcing the terms of this Declaration, regardless of whether suit is filed by the Association. If the Owner fails or refuses to pay the Association for such amounts within thirty (30) days from the date invoiced by the Association, the amounts, including late charges and interest shall constitute a lien against the Owner's Lot together with the Owner's interest in the Common Area, and shall have the same priority, and shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments described in this Declaration.

6. **IMPOSITION OF CHARGES AND FINES.** The Association, through its Board of Directors, may recover reasonable attorney's fees and other legal costs for collection of assessments and other actions to enforce the power of the Association, regardless of whether or not suit is initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws of the Association, and the rules and regulations of the Association.

7. **CUMULATIVE REMEDIES.** The liens for unpaid assessments and unpaid amounts due from Owners and the rights to foreclosure and sale described in this Declaration shall be in addition to and not in substitution for any other rights and remedies which the Association and its assigns may have by law, including a suit to recover a money judgment for such unpaid amounts and assessments.

8. **CONDEMNATION OF COMMON AREA.** If at any time, or from time to time, all or any portion of Common Area, or any interest therein, is taken for any public or quasi-public use, under any stature, by right of eminent domain or by private purchase in lieu of eminent domain, any award in condemnation shall be paid to the Association and deposited into its operating fund. No Owner shall be entitled to participate as a party,



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
19 of 21 R 105.00 D 0.00 Weld County CO

or otherwise, in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interest of all Owners.

9. **INVALIDATION.** Invalidation of any one of the covenants or provisions in this Declaration by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

10. **LIABILITY OF ARCHITECTURAL REVIEW COMMITTEE AND BOARD OF DIRECTORS.** No member, director or officer of the Board of Directors of the Association, the Architectural Review Committee, or any other committee or office established hereunder shall be personally liable to any Owner or any other person for any error or omission of the Board of Directors, the Association, the Architectural Review committee, any committee established hereunder, their employees or representatives; provided that such member, director or officer has not acted with intentional bad faith or malice toward any Lot Owner.

11. **EXECUTION.** This Declaration may be executed in counterparts by the undersigned.

12. **OBLIGATIONS RELATING TO CONSOLIDATED HOME SUPPLY DITCH AND RESERVOIR COMPANY DITCH.** Consolidated Home Supply Ditch and Reservoir Company ("Home Supply") controls and maintains a ditch (the "Ditch") through the Property. Each Owner acknowledges and agrees as follows:

- a. Home Supply has the authority to cut and remove trees within the sixty foot (60') Ditch right-of-way (the "Ditch Right-of-Way") and Home supply may, at any time, remove any and all trees located within the Ditch Right-of-Way. Neither the Association nor any Owner shall plant or otherwise landscape in the Ditch Right-of-Way.
- b. Home Supply has the authority to install and maintain a road within the Ditch Right-of-Way along each bank of the Ditch for the lawful purposes of Home Supply.
- c. Neither the Association nor any Owner will place any fence within the Ditch Right-of-Way, and particularly across the Ditch Right-of-Way. Neither the Association nor any Owner will install any gates or fences which would impede the right of Home Supply to access the Ditch Right-of-Way, without the prior written approval of Home Supply. Any fences approved by Home Supply within the Ditch Right-of-Way must prevent damage by humans and livestock and other sources to the Ditch. Livestock shall not be permitted to water from the Ditch. Any fence approved by the Association shall be constructed of a non-flammable (chain-link) type fence along the boundary of the Company's Ditch Right-of-Way.

- d. The Association and each Owner acknowledge that subsurface waters may arise on and under the Property and there are periods of time when, due to water flowing within the Ditch system and otherwise, that portions of the Property will receive significant amounts of subsurface water that is very near to the surface, or resides on the surface. Due to this problem, the utility of certain portions of the Property for construction of structures could potentially be unavailable. The Association and each Owner acknowledge that Home Supply has no plans to alter its operations to cure this potential surface and subsurface water issue.
- e. The Association and each Owner (with respect to that Owner's Lot) will maintain the existing irrigation and drainage patterns so that the quality of water entering the Ditch from irrigation and from precipitation and other sources be maintained, so that there is no change in point or type of drainage into the Ditch. The Association and each Owner (with respect to that Owner's Lot) will prevent pollutants and other hazardous materials from entering the Ditch.
- f. The Association and each Owner acknowledge that (i) no livestock watering, swimming, tubing, canoeing, or other use of the Ditch or water in the Ditch is allowed; (ii) no dumping of refuse, including but not limited to household garbage, waste materials, grass clippings, tree and shrub prunings, motor oil, chemicals, pesticides or herbicides shall be permitted to enter the Ditch; (iii) no pumps for lawn or other irrigation are allowed in the Ditch; and (iv) no use of the Ditch Right-of-Way for hiking, biking, horseback riding, motorcycling, off-road vehicular travel, or other motorized or non-motorized vehicle travel shall be permitted within the Ditch Right-of-Way.

**THE PROVISIONS OF THIS SECTION 12, OR ARTICLE XII, MAY NOT BE AMENDED WITHOUT THE WRITTEN CONSENT OF HOME SUPPLY.**

13. **NOTICE OF RAILROAD OPERATION.** The Association, each Owner and all potential purchasers of Lots acknowledge that a railroad is operated adjacent to, or on the boundary of the Property and such operations include all of the sights, sounds, fumes and nuisances which may be associated therewith.

Dated this 9<sup>TH</sup> day of NOVEMBER, 2001.



2915633 01/10/2002 10:44A JA Suki Tsukamoto  
21 of 21 R 105.00 D 0.00 Weld County CO

CLEARVIEW DEVELOPMENT OF  
JOHNSTOWN, LLC

By: [Signature]  
Brian J. Bartels, Manager

[Signature]  
MICHAEL HARROUN

STATE OF COLORADO  
COUNTY OF WELD

The foregoing instrument was acknowledged before me this 9<sup>TH</sup> day of NOVEMBER, 2001 by Brian J. Bartels as Manager of Clearview Development of Johnstown, LLC.

Witness my hand and official seal.

My commission expires: JAN. 5, 2003

[Signature]  
Notary Public

STATE OF COLORADO  
COUNTY OF WELD

The foregoing instrument was acknowledged before me this 9<sup>TH</sup> day of NOVEMBER, 2001 by Michael Harroun.

Witness my hand and official seal.

My commission expires: JAN. 5, 2003

[Signature]  
Notary Public