

AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
ARABIAN ACRES
FILING NOS. 1-3

THIS DECLARATION is made on the date set forth below by the Arabian Acres Property Owners Association, a Colorado nonprofit corporation, with a mailing address of P.O. Box 33, Divide, Co 80814, and is effective upon recording in Teller County.

RECITALS

Declarations were recorded with the Teller County Clerk and Recorder by developers for Arabian Acres Filing No.1 on August 23, 1966, at Book Plat B and Page 61; and for Filings No. 2 and 3 on January 16, 1973, at Book 2 and Page 86-89 (The "Declarations").

The Arabian Acres Property Owners Association (the "Association") was established for the Arabian acres Subdivision, Teller County, Colorado (the "Subdivision"), by Articles of Incorporation, effective July 27, 1995.

The Association desires to create a Common Interest Community known as "Arabian Acres" on the real property described below and to amend and consolidate the Declarations into one uniform document for Filing Nos. 1-3 for the benefit of the property owners and in conformance with the Colorado Common Interest Ownership Act, 38-33.3-101 *et seq.*, C.R.S. (the Act), pursuant to 38-33.3-120, C.R.S.

For the purposes of the Act, Arabian Acres is a planned community. Copies of the Subdivision Plats for Filing Nos. 1-3 are on file with the Association and have been recorded in Teller County.

All Real Estate is and shall be held, transferred, sold, conveyed, and occupied subject to the terms, restrictions, limitations, conditions, covenants, obligations, liens and easements which are set forth in this Declaration, all of which shall run with the Real Estate and shall inure to the benefit of, and be binding upon, all parties having any right, title or interest in Real Estate and such person's heirs, grantees, legal representatives, successors and assigns.

REAL ESTATE- LEGAL DESCRIPTION

Filing No.1

A Subdivision located in the west ½ of Section 16, Township 13 South, Range 70 West of the 6th P.M., County of Teller, State of Colorado, more particularly described in deed filed in Book plat B, at Page 61 of the records in and for said county and state, Date: August 23rd, 1966 Filing # 193071 Book 307, Page 164

Filing Nos. 2&3

A Subdivision located in the West ½ of section 16, Township 12 South, Range 70 West of the 6th P.M., County of Teller, State of Colorado, more particularly described in deed filed in Book Page(s) 2nd filing, 3rd filing at Book 2 Page(s): 86,87,88,89 the records in and for said county and state.

DEFINED TERMS

Each capitalized term not otherwise defined in the Declaration or in recorded plats for this Planned Community shall have the meaning specified in the Act.

Architectural Control Committee. Shall mean and refer to the Architectural Control Committee as described in this Declaration and created by the Association.

Allocated Interests. The Common Expense liability and votes in the Association allocated to each Unit pursuant to the terms of this Declaration.

Bylaws. The Bylaws of the Association, as amended.

Common Elements. All real and personal property owned or controlled by the Association for the common use and enjoyment of the Owners.

Executive Board. Board of Directors of the Association.

Governing Documents. This Declaration and the Association's articles of Incorporation and Bylaws, as amended.

Lot. Real property as designated by plat.

Owner. One or more individuals or entities that hold the record title to any Unit, excluding those having such interest merely as security for the performance of an obligation.

Real Estate. Arabian Acres Filing Nos. 1-3, Teller County, Colorado.

Unit. A portion of the Real Estate designated for separate Ownership, together with any Improvements thereon, as described by reference to the numbered Lots of land shown upon the Plats. With regard to the term used in this Declaration or the Plats, each "Lot" shall be considered a "Unit" as that term is defined by the Act.

COMMON ELEMENTS

1. Described as the Pond, Recreational Area B6 Arabian Acres Map#2_3145-16 Sec 16 T13SR70W, Acct/Parcel ID R0015895/8545
2. Described as L4-B B7 ARABIAN ACRES 2, Map#3145-16 Sec 16 T13S R70W, Acct Parcel ID 0044474/8545.163020160.

NUMBER OF UNITS

The number of Units included in the Common Interest Community is Filing 1, 35 Units, Filing 2, 154 Units, Filing 3, 21 Units. Total Units 212 or the maximum number of Units/Lots on the recorded plats, whichever number is larger.

Every contract for sale, deed, lease, or security interest with another legal instrument shall legally describe a Unit by its identifying Lot number as shown on the applicable Plat.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Each Owner of any Unit shall be a member of the Association. Membership shall be appurtenant to and not be separated from Ownership of any Unit, and Ownership of a Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be members, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. One vote in the affairs of the Association is allocated to each Unit, and in no event shall more than one vote be cast with respect to any Unit, or no less than one vote be cast with respect to any Unit, and the vote cannot be split in any manner, and all votes shall be cast in accordance with the Association Bylaws.

TERM

This Declaration shall remain in full force and effect, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument approved by the Owners of a majority of the Units has been recorded agreeing to amend or terminate the Declaration in whole or in part, in conformance with the Act.

GENERAL STATEMENT OF COVENANTS

1. **COVENANTS BIND THE REAL ESTATE.** The Real Estate shall be held, sold and conveyed subject to the Covenants for the purpose of protecting the value and desirability of the Real Estate and any other purposes incidental thereto and all Covenants shall continue to run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representative, successor, and assigns and shall inure to the benefit of each Owner thereof and the Association.
2. **OWNERS' EASEMENTS OF ENJOYMENT.** Every Owner shall have a right and easement of enjoyment in and to the Common Elements, subject to the following provisions:

- A. Covenants, Association Bylaws and Rules and Regulations and any other applicable rule, regulation or contractual obligation;
- B. Any restrictions or limitations contained in any deed conveying Common Elements to the Association;
- C. The right of the Association to exercise all powers and duties pursuant to the Declaration, other applicable provisions of the governing documents and the Act;
- D. The right of the Executive Board to adopt and amend Rules and Regulations concerning all or any portion of the Common Elements and any Improvement located thereon, as the Association may determine is necessary or prudent;
- E. The right of the Association to enter into and execute contracts with any party for the purpose of providing management, maintenance or other materials and services to the Association and the Owners consistent with the purposes of the Association, this Declaration and the Act;
- F. The right of the Association to grant permits, licenses and easements over the Common Elements for utilities, roads, and other purposes deemed appropriate by the Executive Board;
- G. The right of the Association to dedicate or transfer all or any part of the Common Elements; and
- H. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements.

USE AND OTHER RESTRICTIONS

1. **Land Use and Building Types.** No Unit shall be used except for residential purposes. No building shall be erected, altered, or placed on any Unit other than one detached single family dwelling of not less than 1600 square feet and one private garage accommodating no more than three vehicles. Existing single family homes of under 1600 square feet constructed prior to the effective date of this Amended and Restated Declaration of Protective Covenants and any replacement of such dwelling due to a natural disaster are exempt from the 1600 square foot requirement provided the owner meets all other requirements existing at the time of construction and such construction is approved by the Architectural Control Committee. No outside toilets or permanent trailer homes shall be permitted.

All Improvements on each Unit shall meet the architectural control requirements contained in the Architectural Control Guidelines and Rules.

2. **Modular/Manufactured Homes.** Modular homes or manufactured homes are permitted in accordance with the existing Plat restrictions.
3. **Maintenance.** Each Owner shall be responsible for maintaining his or her Unit and all Improvements within the Unit. In addition to any other enforcement rights, if an Owner fails to properly perform his or her

maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Common Expense Assessment. The Association shall afford the Owner thirty days written notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. The Association shall provide the Owner with written notice three days prior to entry if the problem is not cured within a reasonable amount of time as determined by the Board in its discretion and stated in the written notice.

Maintenance shall include the items described below, including landscaping, drainage improvements, trash removal and general exterior structural maintenance, including periodic painting or staining.

4. **Trees and Ground Cover.** Owners agree not to disturb natural vegetation or cut timber from the premises except as necessary to clear land for construction upon approval of the Architectural Control Committee, or at the order of local authorities as may be necessary for the purposes of fire protection.
5. **Permits and Drainage Culverts.** Owners shall furnish at their expense, all required permits and drainage culverts required by Teller County for private roads/driveways to access Units.
6. **Setbacks.** Building setbacks shall be 25' from the front lot line or the side street line and 15' to any other lot line, or such distance as determined by Teller County regulations in affect at the time of construction. For the purposes of this covenant, eaves, steps, and porches shall be considered as a part of a building.
7. **Commencing and Finishing Construction.** Once construction on a single family residence or private garage has commenced, construction must be completed within 12 months, but may be extended in conjunction with Teller County rules, regulations or codes in effect at the time. Construction shall be deemed to have commenced upon the first substantial construction activity, including earthwork.
8. **Temporary Structures.** No basement, shed, garage, barn tent, trailer or trailer house, or structure of a temporary nature may be used as temporary or permanent living quarters. This covenant does not preclude vacation camping in tents, trailers or campers on a seasonal basis only, not to exceed 120 days during any calendar year.
9. **Nuisances.** No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
10. **Signs.** Only signs required by applicable building and fire codes or as allowed by the Act shall be permitted on any Unit. One professional real estate sign may be displayed by a builder or real estate agent to advertise the property during the construction and sale of the property. There are to be no additional real estate signs at the entrance of Arabian Acres

other than temporary “open House” signs, which must be removed at the end of each day.

11. **Animals.** No livestock or poultry of any kind shall be raised, bred or kept on any Unit, except for one horse, and dogs, cats, or other small domestic pets as permitted by Teller County. Domestic pets may be kept provided they are not bred or maintained for any commercial purpose. Domestic pets shall not be allowed to disturb the peace of Owners or residents in violation of the Teller County ordinances, codes or regulations. No animals shall be allowed to roam free within the Subdivision. The Association may impose fines for violations. Any pet constituting a nuisance may be ordered expelled from the Subdivision by the Association. Each Owner shall be responsible for any damage caused by his or her animals.
12. **Trash Removal.** All Units shall be used and maintained in a clean and sanitary condition. No litter, debris or rubbish, as defined under Teller County regulations, shall be deposited or allowed to accumulate on any Unit. Rubbish and other waste must be stored in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and must be kept out of sight of common areas or roadways until the day of pickup or disposal. The Association may impose fines for violations. The Association has the right to clean up any Unit that has been used for dumping rubbish or where rubbish has accumulated if the Owner fails to clean up the Unit within thirty (30) days after notice has been given by the Association. Written notice shall be sent to the Owner by the Association via certified mail notifying the Owner of the condition of the property and allowing thirty days for removal of all improperly stored debris or rubbish. The Association has the right to charge its costs associated with cleaning up the Unit to the Owner and may place a lien against the property for all expenses incurred by the Association.
13. **Firearms.** No hunting or discharge of firearms shall be allowed within the Subdivision unless a life-threatening situation exists, or as allowed by state statute, regulation, or code for the discharge of said firearms as determined by the appropriate law enforcement authorities. The Association may impose a fine for failure to comply with this covenant if it is determined that the discharge was in violation of any applicable state statute, regulation, or code.
14. **Hazardous Materials.** Storage, use or disposal of hazardous materials or radioactive material within the Real Estate is prohibited, unless specifically approved in advance by the Architectural Control Committee.

THE ASSOCIATION

1. **General Purposes and Powers.** The Association, acting in all instances through its Executive Board, unless otherwise required by the Act or this Declaration, shall perform such functions and manage and operate the Common Interest Community and the Real Estate as provided in this Declaration so as to further the interests of the Owners. The Association shall have all power necessary or desirable to effectuate such purposes and shall act pursuant to the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such designation of rights, duties and authority. In the event of a conflict between the provisions of this Declaration and the Articles of Incorporation or the Bylaws of the Association, the terms of this Declaration shall be controlling.
2. **Powers/Duties.** The Association shall have the following specific powers and duties:
 - A. The Association shall have all of the powers, authority and duties permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act 7-121-101, et seq., C.R.S.
 - B. The Association shall have all of the powers, authority and duties necessary and proper to manage the business affairs of the Common Interest Community.
 - C. The Association shall have all of the powers, authority and duties necessary and proper to own, operate, manage, lease, encumber, maintain, repair, reconstruct, replace, improve, and otherwise deal with the Common Elements, including the right to acquire additional Common Elements and to make Improvements thereon.
 - D. The Association shall establish and enforce Architectural Control Guidelines and other Rules and Regulations as it deems necessary to ensure the proper use, development, enhancement, repair, maintenance and replacement of real and personal property within the Common Interest Community, and to appoint persons to serve on the Architectural Control Committee.
 - E. The Association shall hold a meeting of the Unit Owners, as members of the Association, at least once a year and shall provide notice of such annual meeting as required by the Act.
3. **Enforcement.** The Association shall have the power to enforce provisions in its Governing Documents and shall take such action as the Executive Board deems desirable to cause such compliance by each Owner and each related User, by any of the following means:
 - A. By entry upon any Unit after notice and opportunity to be heard (unless a bona fide emergency exists), without liability to the

- Owner thereof, for the purpose of enforcement or causing compliance including by curing said violation;
- B. By commencing and maintaining actions and suits; (i) to recover damages; or (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, provisions of the Governing Documents by mandatory injunction or otherwise;
 - C. By exclusion of any Owner or Related User from use of the Common Elements for a period of sixty (60) days following any violation, or so long as the violation continues, whichever is shorter;
 - D. By suspension of the voting rights of an Owner for up to thirty (30) days following any violation, or so long as the violation continues, whichever is longer;
 - E. By levying and collecting, after notice and an opportunity to be heard, fines against any Owner for violation by such Owner or a Related User, as a Common Expense Assessment to be secured by a continuing lien, from the date it is levied, and by foreclosure of such lien, as allowed by law.
 - F. The Association, including its authorized agents or representatives, shall not have the authority to physically enter any structure located on a Unit.
4. **Association Agreements.** Any agreement for professional management of the Common Interest Community may not exceed one (1) year. Any such agreement must provide for the termination by either party without cause and without payment of a termination fee or a penalty upon thirty (30) days written notice.
 5. **Indemnification.** To the full extent permitted by law, each officer, committee member and member of the Executive Board of the Association shall be and are hereby indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, committee member, or member of the Executive Board of the Association, or any settlements thereof, whether or not they an officer, committee member, or member of the Executive Board of the Association at the time such expenses are incurred; except in such cases wherein such officer of Executive Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.
 6. **Right to Notice and Comment.** Pursuant to 38-33.3-205(1)(o), C.R.S., before the Executive Board amends the Bylaws or adopts or amends Rules and Regulations, or whenever the Governing Documents require that an action be taken after "Notice and Comment" to the Owners of any

matter affecting the Common Interest Community, and Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Owner in writing, delivered personally or by mail to all Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The Notice shall be given not less than three days before the proposed action is to be taken. The Notice shall invite comment to the Executive Board or an Owner, orally or in writing before the scheduled time of any meeting.

COMMON EXPENSE ASSESSMENT

1. **Formula for Determining Assessments.** Commencing for calendar year 2006 and subsequent years, assessments shall be made no less frequently than annually and shall be based upon a budget adopted no less frequently than annually by the Association. The assessments shall be apportioned equally among all Units within the Subdivision. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment.
2. **Based Upon Budget.** Assessments shall be based upon the budget which shall be established by the Board of Directors at least annually, which budget shall be based upon the cash requirements deemed to be such aggregate sum as the Board of Directors of the Association shall determine is to be paid by all of the Unit Owners to provide for the payment of all expenses growing out of or connected with the maintenance, repair, operation of the Common Facilities, which sum may include, but not be limited to, expenses of management; taxes and special assessments unless separately assessed; premiums for insurance, landscaping and care of grounds; common utilities; repairs and renovations; wages; legal and accounting fees; management fees; expenses and liabilities incurred by the Association of any of its agents or employees on behalf of the Unit Owners under or by reason of the governing Documents; for any deficit remaining from a previous period; for the creation of reasonable contingency reserve, as well as other costs and expenses relating to the Common Facilities, which shall be funded by regular monthly payments rather than special assessments. The Association shall comply with the requirements of Section 38-33.3-303(4) of the Common Interest Ownership Act, relative to the proposal and adoption of such budget.
3. **Assessments for Other Charges.** The Association shall have the right to charge Unit Owners for special services provided by the Association to such Owner including, for services deemed to have been provided for the exclusive benefit of such Unit Owners under Section 38-33.3-315 (3)(b) of the Act. The Association shall also have the right to charge a Unit Owner for any common expenses caused by the misconduct of such Unit Owner, in which event such expense may be assessed exclusively against

such Owner. The Association shall have the right to impose a lien for any such special service charges or charges due to misconduct that are not paid when due; said lien shall include court costs and reasonable attorneys' fees incurred by the Association in collecting said charges.

4. **No Other Common Facility Liens.** No additional liens, other than mechanics liens, assessment liens or tax liens, may be obtained against the Common Facilities, and no other assessments, debts or other obligations are assumed by Unit Owners, other than as set forth herein.
5. **Assessments.** The amount of the common expenses and special service and misconduct charges assessed against each Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself from liability for contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Facilities or by abandonment of the Unit. An Owner's loss of a Unit by foreclosure or by proceedings in lieu of foreclosure shall not cancel or terminate such Owner's liability for assessments and charges accrued prior to the date hereof. The Association shall have the authority to take prompt action to collect any unpaid assessment or special service charge which remains unpaid for more than thirty (30) days from the due date for payment thereof. In the event of default in the payment of a special service charge or assessment, the Unit Owner shall be obligated to pay interest at the rate of eighteen percent (18%) per annum on the amount of the assessment from due date thereof, together with all expenses, including attorneys' fees, incurred together with such late charges as are provided by the Bylaws of the Association and subject to the provisions of the Act. Suit to recover a money judgment for unpaid special service charges or assessments shall be maintainable without foreclosing the lien described below, and such suit shall not be or construed to be a waiver of lien.
6. **Notice of Lien.** All sums assessed and unpaid for the share of common expenses chargeable to any Unit and all sums for special services provided by the Association and charges due to misconduct that are not paid when due shall constitute the basis for a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Unit in favor of any governmental assessing entity, and all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrances. To evidence such lien, the Association shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the Owner of the Unit and a description of the Unit. Such notice of lien shall be signed by one of the officers of the Association on behalf of the Clerk and Recorder of Teller County, Colorado. Such lien shall attach and be effective from the due date of the assessment until all sums, with interest and other charges thereon, shall have been paid in full.
7. **Enforcement of Lien.** Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association in like manner as a

mortgage on real property upon the recording of the above notice of lien. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorneys' fees incurred for filing the lien, and in the event of foreclosure proceedings, all additional costs, all expenses and reasonable attorneys' fees incurred. The Owner of the Unit being foreclosed shall be required to pay to the Association any assessment or special service charge whose payment becomes due for the Unit during the period of foreclosure, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same upon acquiring title to such Unit.

8. **Report of Default.** The Association, upon request, shall report in writing to a first mortgage of a Unit any default in the performance by any Unit mortgagor of any obligation under the Declaration which is not cured within sixty (60) days.
9. **Release of Lien.** The recorded lien may be released by recording a Release of Lien signed by an officer of the Association on behalf of the Association.
10. **Lien Subordinate to First Mortgage- Limitations.** The lien for special service charges and assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust now hereafter placed upon the Unit subject to assessment; PROVIDED, HOWEVER, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall cause such Unit and grantee there under to be relieved of liability for such prior assessments but shall not relieve such Unit or grantee from liability from any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.
11. **First Mortgage Foreclosure.** Notwithstanding any of the terms or provisions of this Declaration, in the event of any default on the part of an Owner under any first mortgage or first deed of trust which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including the delivery of a deed in lieu to such first mortgagee, shall be made free and clear of all then due and owing assessments. No first mortgagee shall be liable for any unpaid common expense assessments accruing prior to the time such mortgagee receives a deed to a Unit.
12. **Joint Liability Upon Transfer.** Upon the written request of any Owner, lien holder, title insurance company, escrow agent, or person designated by a Unit Owner, the Association shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date that such assessments become due, credit for any advanced payments of common assessments, for prepaid items, such as insurance premiums, but not including accumulated amounts for reserves, if any, which

statements shall be binding on the Association, the Executive Board, and every Unit Owner if the statement is requested by a title insurance company or escrow agent. The Association shall furnish the statement within fifteen (15) days after receipt of the request. Failure to provide the statement to the title insurance company or escrow agent with the time required by this section shall extinguish any lien for unpaid assessments then due, pursuant to the Act.

13. **Declaration is Notice.** Recording of the Declaration constitutes record notice and perfection of the lien for assessments. No further recordation is required. However, the Executive Board may prepare and record in the real property records of Teller County, Colorado, a written notice setting forth the amount of any unpaid indebtedness, the name of the Owner and a description of the Unit.

ARCHITECTURAL CONTROL

1. **General.** No Improvement shall be placed, erected or installed upon any Unit, and no Improvements, (including staking, clearing, excavation, grading and other site work), exterior alteration of existing Improvements, or placing or removal of landscaping materials, shall take place except in compliance with the architectural review procedures and restrictions set forth in this Declaration and the Architectural Control Guidelines. No provision in this Article and the Architectural Control Guidelines shall apply to Improvements to the Common Elements made by or on behalf of the Association, unless the Executive Board determines otherwise.
2. **Survey.** A survey of the Lot showing all locations of lot or property lines must be completed on vacant Lots prior to construction of new residences if the Lot has not been surveyed within the preceding five (5) years. No trees may be cut or driveways installed until the construction plans, current survey, specifications and site plan showing the location of the structure and trees to be removed has been approved in writing by the Architectural Control Committee. This will ensure the quality of workmanship and materials, harmony of external architectural control with existing structures and the topography and finished grade elevations. There will be a thousand dollar (\$1000.00) fine for any trees cut or driveway installed prior to approval. The Architectural Control Committee shall make all decisions in a timely fashion, and if no written decision has been issued within fifteen (15) days after plans have been submitted, approval shall be deemed to have been given.
3. **Architectural Control Committee.** The Architectural Control Committee shall consist of three (3) persons comprised completely of Owners without regard to special qualifications, and the persons shall then be appointed by the Executive Board. Appointments shall be for staggered terms of three years so as to provide reasonable continuity to the Architectural Control process.
4. **Guidelines and Procedures- General.** The Architectural Control Guidelines may be amended in whole or in part by the Executive Board. Any amendments to the Architectural Control Guidelines shall apply to construction and modifications

commenced after the date of such amendment only and shall not apply to require modifications to or removal of Improvements previously approved once the approved construction or modification has commenced. Existing single family homes of under 1600 square feet constructed prior to the effective date of this amended and restated Declaration of Protective Covenants and any replacement of such dwelling due to a natural disaster are exempt from the 1600 square foot requirement, provided the owner meets all other requirements existing at the time of construction and such construction is approved by the Architectural Control Committee. This also applies to improvements or additions to existing single family homes prior to the effective date of this amended and restated Declaration. Architectural Control Guidelines shall include the procedures, materials, and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement. Architectural Control Guidelines may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part, and may waive the requirement or exempt certain Improvements from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration. The Architectural Control Guidelines as amended from time to time shall not be recorded, but shall be considered incorporated herein by references throughout this Declaration and shall be enforceable as though set forth in full.

5. **No Waiver of Future Approvals.** Approvals of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.
6. **Enforcement.** Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Executive Board or the Architectural Control Committee, Owners shall, within thirty days and at their own cost and expense, remove such Improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the Unit within thirty days as requested, the Executive Board or its designees shall have the right to enter the Unit, remove the violation and restore the Unit to substantially the same condition as previously existed. Prior to entering the Unit, the Executive Board shall provide the Owner with three days written notice of its intent to remove the nonconforming improvement. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against such Unit and collected as an Assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Control Guidelines may be excluded by the Executive Board from the Real Estate upon notice and an opportunity to be heard. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article.

7. **Notice of Noncompliance.** If, as a result of inspections or otherwise, the Architectural Control Committee finds that any Improvement has been done without obtaining the approval of the Architectural Control Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Architectural Control Committee, the Architectural Control Committee shall provide notice of the particulars of the noncompliance and shall require the Owner of the Unit upon which such Improvements have been made to take such action as may be necessary to remedy the noncompliance. At the sole election of the Executive Board, if such noncompliance is not remedied within thirty (30) days of the date set forth on the notice, the notice may be recorded in the records of the Teller County Clerk and Recorder.
8. **Non-liability of the Architectural Control Committee and Executive Board Members.** Neither the Architectural Control Committee nor the Executive Board nor any member thereof shall be liable to the Association or to any Owner or person for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Control Committee's or Executive Board's respective duties under this Declaration or the Governing Documents unless due to an act of omission not in good faith or which involves intentional misconduct or a knowing violation of a law (as defined by applicable Colorado law) by the Architectural Control Committee or Executive Board or individual members thereof. The Architectural Control Committee or Executive Board shall not be responsible for reviewing, nor shall its approval of any Plans and Specifications be deemed approval of, structural safety, engineering soundness or conformance with building codes or any other laws or standards.
9. **Variances.** The Architectural Control Committee may authorize variances from compliance with any of the Architectural Control Guidelines when circumstances so warrant. Such variances must be evidenced in writing and must be signed by at least a majority of all the members of the Architectural Control Committee and approved by a majority of the Executive Board. Requests for variances must also be submitted to the Planning Department, Board of Adjustment, pursuant to the variance request process specified in Section 26 of the Teller County Zoning Resolution. The Architectural Control Committee may be designated as a referral agency during the application process. If such a variance is granted, no violation of the Covenants, Conditions or Restrictions contained in this Declaration or in other Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision in the particular instance covered by the variance.
10. **Scope of Judicial Review.** The scope of judicial review of any action taken by the Association or the Architectural Control Committee pursuant to this Declaration, including, but not limited to the promulgation and enforcement of Architectural Control Guidelines and review, shall be limited to cases of fraud, bad faith or lack of due process.

AMENDMENT AND TERMINATION

1. **Technical, Clerical, Typographical or Clarification Amendment.** If the Executive Board determines that any amendments to this Declaration or plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement, the Executive Board shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Declaration shall be made, if at all, by the Executive Board prior to the expiration of seven (7) years from the date this Declaration is recorded.
2. **Necessary to Exercise Authority of Association Documents.** In addition to the rights granted to the Declarant to execute amendments to this Declaration, the Executive Board shall have the authority to execute amendments to this Declaration or to the Plat which are reasonably necessary in order to perform duties authorized by this Declaration.
3. **Amendment of Declaration by Owners.** Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be change or repealed, and any such provision added to this Declaration at any time and from time to time upon approval of more than fifty percent (50%) of Allocated Interests in the Association. Any amendment shall be effective only upon the recordation of the written amendment or ratification thereof containing the necessary signatures of Unit Owners.. No amendment to this Declaration may be made which conflicts with any of the laws of the State of Colorado, or ordinances or regulations of Teller County.
4. **Amendment Required by Mortgage Agencies.** Prior to seven (7) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which the FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase Mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Teller County, State of Colorado, of a certificate, setting forth the amendment or repeal in full.
5. **Recording of Amendments.** To be effective, all amendments to or termination of this Declaration must be recorded in the office of the Clerk and Recorder of Teller County, Colorado, and must contain evidence of approval thereof. One method of satisfying the requirements of this Section is the recordation of a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Units have given their written consent to the amendment. The Secretary must further certify that originals of which written consent by Owners along with the recorded amendment are in the corporate records of the Association and available for inspection. No action to challenge

the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

6. **Association Certification.** Amendments to the Declaration required by this Article to be recorded by the Association shall be prepared, executed, recorded and certified on behalf of the Association by any officer to the Association designated for that purpose or, in the absence of designation, by the president of the Association. In the event of an amendment to the Declaration by the Owners, the Association shall record the amendment with a certificate from the Association that the requisite number of Owners has consented to the amendment.
7. **Termination.** The Common Interest Community may be terminated upon an affirmative vote of the Owners holding sixty-seven (69%) of the Allocated Interests, and in accordance with Section 38-33.3-218 of the Act.

GENERAL PROVISIONS

1. **Severability.** Any provision of this Declaration invalidated in any manner whatsoever shall not be deemed to impair or affect in any manner the validity, enforcement or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.
2. **Disclaimer.** No claim or cause of action shall accrue in favor of any person in the event of the invalidity of any covenant or provision of this Declaration or for the failure of the Architectural Review Board or Executive Board to enforce any covenant or provision hereof. This section may be pleaded as a full bar to the maintenance of any such action or arbitration brought in violation of the provisions of this Article.
3. **Waiver.** No provision contained in this Declaration shall be deemed to have abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may occur.
4. **Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.
5. **Notices.** Notices required or permitted by this Declaration shall be made in writing. Notice to a member of the Association shall be sufficient if sent by United States mail, sufficient postage prepaid, to the latest address given by such deposit into the United States mail. Notices may also be given by certified or registered mail, or by hand delivery. If hand delivered, notice shall be effective on the date that delivery is accomplished. If sent registered or certified mail, notice shall be deemed effective three (3) days after deposit into the United States mail, sufficient postage prepaid. If electronic means are available, the Association shall provide notice of all regular and special meetings by electronic mail to all unit owners who so request and who furnish the Association with their electronic mail address. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting.

**BOARD OF DIRECTORS ARABIAN ACRES PROPERTY OWNERS
ASSOCIATION**

Susan M. Thomas, President

Linda Strum, Vice President

Tammy Thoe, Secretary/Treasurer

Rick Zuniga, Board Member/Manager

Sandy Zuniga, Board Member

Lanny Hoel, Board Member

STATE OF COLORADO

County of _____

**The foregoing instrument was acknowledged before this _____ day of _____,
2007 by _____, as _____ of
Arabian Acres Property Owners Association.**

Witness my hand and official seal.

My commission expires: _____