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After Recording, Return To:  
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***AMENDED AND RESTATED  
DECLARATION OF COVENANTS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
FOR  
FOXTAIL PINES***

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SECOND  
DRAFT

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS  
FOR  
FOXTAIL PINES**

THIS AMENDED AND RESTATED DECLARATION is effective upon recording.

*RECITALS:*

A. On June 9, 1980, Harold J. Nerlin submitted the real property described on Exhibit A to that certain Declaration of Covenants, Restrictions, Easements, Charges and Liens for Foxtail Pines recorded in the real property records of Park County, Colorado at Reception No. 286815 in Book 311 at Page 669, as amended and supplemented by the following documents:

(1) Annexation Statement recorded June 23, 1981 in the real property records of Park County, Colorado at Reception No. 300090 in Book 327 at Page 83; and

(2) Amendment to Declaration of Covenants, Restrictions, Easements, Charges and Liens for Foxtail Pines recorded August 4, 1981 in the real property records of Park County, Colorado at Reception No. 301531 in Book 328 at Page 785;

(collectively, the “Original Declaration”) to its covenants, conditions and restrictions;

B. The Owners within the Foxtail Pines Community desire to amend and restate the Original Declaration by virtue of this Amended and Restated Declaration of Covenants, Restrictions, Easements, Charges and Liens for Foxtail Pines (“Declaration”), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. The Original Declaration provides for and allows for this Declaration in Article 23, which provides as follows:

....the owners of sixty-five percent (65%) of the tracts which are subject to these covenants may change or modify any one or more of said restrictions...;

D. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

G. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and to further the interests of the residents of the Community and Members of the Association; and

H. Pursuant to the requirements set forth in Article 23 of the Original Declaration, Owners of at least 65% of the tracts which are subject to these covenants have approved this Declaration, or alternatively, a court order entered by the District Court for Park County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW THEREFORE, the Original Declaration is replaced and superceded by the covenants, servitudes, easements and restrictions set forth below:

## ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) Act shall mean the Colorado Common Interest Ownership Act, *C.R.S. §38-33.3-101 et. seq.*, as it may be amended.

(b) Architectural Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

**[Note: This definition is a revised definition of Architectural Control Committee. In our experience, Architectural Review Committee conveys a more positive image than Architectural Control Committee.]**

(c) Assessment shall include all Common Expense Assessments and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association shall mean Foxtail Pines Owners Association, a Colorado nonprofit corporation, and its successors and assigns.

(e) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(f) Common Area or Common Elements shall mean all real property owned by the Association for the common use and enjoyment of the Owners, if any.

(g) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(h) Community or Foxtail Pines Community or Planned Community shall mean the planned community known as “Foxtail Pines,” and the real property subject to this Declaration and as further defined by the recorded Plats and the legal descriptions contained in this Declaration, and the Members of the Association.

(i) Declaration shall mean and refer to this Amended and Restated Declaration of Covenants, Restrictions, Easements, Charges and Liens for Foxtail Pines, as amended, recorded in the office of the Clerk and Recorder of Park County, Colorado.

(j) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any Maps and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(k) Lot shall mean and refer to any plot of land shown upon any recorded Plat of the Property with the exception of Common Areas, if any.

(l) Member shall mean any Owner. The terms “Member” and “Owner” may be used interchangeably.

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

(n) Pet shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.



(o) Plat or Map shall mean and refer to the plat(s) and/or map(s) of the Property and improvements that are subject to this Declaration and which are designated in the Plat or Map recorded in the records of the Office of the Clerk and Recorder of Park County. More than one plat, map or supplement thereto may be recorded, and, if so, then the term “Plat” or “Map” shall collectively mean and refer to all of such plats, maps and supplements thereto.

(p) Property shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(q) Rules and Regulations shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.

(r) Unit shall mean and refer to any plot of land shown upon any recorded Plat of the Property with the exception of Common Areas, if any.

(s) Water Decree shall mean and refer to that certain Decree in Case No. W-8480-77 in the District Court in and for Water Division No. 1., Greeley, Colorado, and of record in the office of the Clerk and Recorder for Park County, Colorado.

**[Note: Please note we will need all pertinent information relating to the new provisions of all agreements relating to water rights in the community before this provision can be completed and finalized.]**

## ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is Foxtail Pines. The name of the Association is the “Foxtail Pines Owners Association”.

**[Note: This provision has been added.]**

Section 2.2 Property. The Planned Community is located in Park County, State of Colorado. The Property of the Planned Community is described in *Exhibit A* of this Declaration, in the Original Declaration, in the Plat, and/or is consistent with the common scheme and plan for the creation and operation of the Community. The number of Lots currently included in the Community is 326. Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon a recorded Plat and on any recorded Map of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

**[Note: This provision has been added to clarify the number of Lots in the Community, which according to the Declaration and Annexation Statement and the notes on the Plats is 326; however, there are only 318 platted Lots shown on the Plats for Filings 1 and 2. Additionally, the existence of easements set forth on the plat for the community has been referenced to place Owners on notice of these easements.]**

Section 2.3 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right of the Association, to suspend the voting rights and the right to use of any Common Area and recreational facilities during any period of violation of any provision of the Governing Documents; provided that suspension of voting and use rights shall be automatic during any period that an Owner is in default in payment of any Common Expense Assessment;
- (c) the right of the Association, upon approval of at least 67% of the total Association vote, to mortgage the Common Area as security for that purpose, provided, that the rights of such mortgagee shall be subordinate to the rights of the homeowners;
- (d) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area;
- (e) the right of the Association to transfer or convey ownership of any Common Area;
- (f) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area; and
- (g) the right of the Association to change use of, add or remove improvements to the Common Area.

**[Note: This provision substantially expands Article 17 of your current Declaration.]**

Section 2.4 Delegation of Use. Owners may delegate their right of enjoyment to any Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot. If the Owner delegates rights to use the Common Area and facilities to tenants or contract purchasers who reside at their Lot, the Owner shall not be entitled to use the Common Area and facilities. The Board of Directors shall have the express right to limit

Owners' ability to delegate their right to use the recreational amenities of the Community through Rules and Regulations and/or to charge reasonable fees charged for such use.

**[Note: This provision has been added.]**

Section 2.5 Disclaimer of Liability. The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**[Note: This provision has been added and is recommended to help defend the Association from lawsuits filed by Owners in relation to use of Common Area.]**

Section 2.6 Easements for the Association. Each Lot shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration and the Water Decree, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot (excluding violations of the Water Decree).

**[Note: This provision has been added.]**

Section 2.7 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the Plat or Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

**[Note: This provision is similar to Article 5 of your current Declaration.]**

### **ARTICLE 3 THE ASSOCIATION**

**[Note: This Article substantially expands Article 18 of your current Declaration.]**

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be

the sole qualification for such membership. Each Lot shall be allocated one vote which shall be cast as a single vote and shall not be subject to fractional voting.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Foxtail Pines Community as provided in this Declaration and the Water Decree so as to protect the value and desirability of the Foxtail Pines Community and the Lots. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Plat or Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.4 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.5 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.6 Education and Training. As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

#### **ARTICLE 4 COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES**

**[Note: This Article has been added to clearly set forth Assessment obligations.]**

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses, insurance Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Assessments for Common Expenses and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lots equally.

Section 4.2 Basis of Assessments. Common Expense Assessments may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 4.3 Annual Assessment. The budget for annual Assessments shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by a majority of the total Association vote. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 4.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 4.5 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) Those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: improvement, repair, replacement or maintenance specific to a Lot;
- (b) Improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (c) All fines and costs assessed against an Owner pursuant to the Governing Documents; and
- (d) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 4.6 Working Capital. The Association may, but shall not be required to, collect from a purchasing Owners a non-refundable contribution to the Association in an amount no more than 25% of the then current annual Assessments upon sale of a Lot. This contribution may be collected and transferred to the Association at the time of closing of the sale and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase

equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the transfer of his or her Lot, an Owner shall be entitled to a credit from his or her transferee (but not from the Association) for the aforesaid contribution to the working capital fund.

Section 4.7 Application of Payments. All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 4.8 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 30 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor.

(c) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 4.9 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.10 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Assessments for Common Expenses.

**[Note: This provision has been added and allows the Association to borrow money without Owner approval, pursuant to your request.]**

**ARTICLE 5  
COVENANTS AND RESTRICTIONS ON USE,  
ALIENATION AND OCCUPANCY**

Section 5.1 Flexible Application of the Subsequent Covenants and Restrictions. All Lots within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

**[Note: This provision has been added to give the Board discretion and flexibility in the application of the use restrictions. Such discretion and flexibility allows the Board to exercise its business judgment in deciding whether to enforce or waive the following provisions under certain circumstances.]**

Section 5.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:



- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The availability of water to the Lot is subject to provisions of the Water Decree.
- (c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (d) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (e) All fines imposed are collectable as Assessments.

**[Note: This provision has been added to expressly state the Board's authority to adopt Rules and Regulations and to impose penalties for violations. This provision is consistent with the powers given to the Board under Section 38-33.3-302 of the Colorado Common Interest Ownership Act.]**

Section 5.3 Use/Occupancy. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Lot and do not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking (as defined by the Board) of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

**[Note: This provision expands Article 1 of your current Declaration. This provision allows commercial uses which are undetectable and non-disruptive to the Community.]**

Section 5.4 Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, and subject to the Association's Rules and Regulations.

**[Note: This provision has been added to allow the Association to adopt Rules and Regulations regarding leasing in the Community without placing any specific leasing restrictions in the Declaration.]**

Section 5.5 Maintenance of Lots and Improvements. Owners are responsible for the maintenance, repair and replacement of the property and improvements located within their Lot boundaries. The Association, and its agents, shall have the authority, after giving the Owner 30 days written notice, to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Owner thereof all reasonable costs related thereto as an Assessment hereunder.

**[Note: This provision is similar to Article 4 of your current Declaration and has been expanded to permit the Association to enter Lots that do not comply with the Governing Documents.]**

Section 5.6 Residence and Building Size and Location. The ground floor area of the main Residence constructed on a Lot, exclusive of open porches, garages, and basements, shall be a minimum of 600 square feet and shall not be more than two stories above ground. All Residences and buildings must be placed on, or constructed on, fully enclosed block or concrete foundation walls. Open, exposed crawl spaces shall be prohibited. No structure on any Lot may exceed two stories above ground. No building or Residence shall be erected nearer than 50 feet to any boundary, along a road, or so that any part of said building or Residence is closer than 30 feet to any of the other boundary lines of the Lot. In case of single ownership of more than one Lot, this restriction shall apply to the Lot as a whole. For purposes of this provision, eaves, steps, and open porches shall be considered as part of the building.

**[Note: This provision is similar to and combines Articles 2 and 3 of your current Declaration.]**

Section 5.7 Restrictions on Pets. Pets may be kept on a Lot, if the Pet is not a nuisance to other residents and provided Pets are in compliance with all local ordinances. A reasonable number of horses (as determined by the Board) shall be permitted, provided there is evidence of approval of the same from the Lower Sacramento Creek Reservoir Company and the Owner has obtained all other applicable permits. No resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If a Pet is deemed a nuisance by the Association, the resident having control of the Pet shall be given a written notice to correct the problem and if not corrected, that resident will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Pets may not be kept for any commercial purposes. When on other Common Area, Pets must be on a leash and under control. Feces left by Pets upon the Common Area must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees.

**[Note: This provision has been expanded from the pet restriction contained in Article 22 of your current Declaration.]**

Section 5.8 Antennae. “Permitted Antennas” are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

**[Note: This provision has been revised to comply with FCC regulations regarding satellite dishes.]**

Section 5.9 Tanks. Any above ground, portable tanks of any kind in the Community shall be screened from view, as determined by the Board.

**[Note: This provision was added pursuant to your request.]**

Section 5.10 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Community by residents. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

**[Note: This provision is similar to Article 6 of your current Declaration.]**

Section 5.11 Vehicular Parking, Storage, and Repairs.

(a) Parking upon any Common Area shall be regulated by the Association.

(b) The following may not be parked or stored within the Community, unless adequately screened from view, is authorized in writing by the Association, or is otherwise exempted by Colorado law: oversized vehicles, commercial vehicles, vehicles with commercial writing on their exteriors, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for loading, delivery of goods or services, or emergency, as determined by the Board. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any improvement located thereon.

**[Note: Please note that you may wish to add a note clarifying “temporary expedience” in this section (i.e., 24 consecutive hours). Otherwise, we recommend that you clarify temporary expedience in your Rules and Regulations.]**

(c) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An “abandoned or inoperable vehicle” shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(d) No parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, Community streets or guest parking, if any.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages. Washing of cars is expressly prohibited. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(f) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(g) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges..

(h) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(i) If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

**[Note: The provision substantially expands Articles 6 and 20 of your current Declaration.]**

Section 5.12 Solar. All solar devices must be approved by the Committee pursuant to this Declaration and integrated into the dwelling unit.

**[Note: This provision has been added.]**

Section 5.13 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

**[Note: This provision has been added.]**

Section 5.14 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot

lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Association.

**[Note: This provision has been added and is option and can be removed at your request.]**

Section 5.15 No Hazardous Activities. No activity shall be conducted on and no improvement shall be constructed on any Property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Community. No open fires shall be lighted or permitted on any Property within the Community except: (a) controlled burns authorized by the appropriate permits; (b) fires attended and contained barbeque units while in use for cooking purposes; or (c) fires within an interior or exterior fireplace designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition on his Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations.

**[Note: This provision expands Article 9 of your current Declaration.]**

Section 5.16 Restriction on Signs and Advertising Devices. (a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot except such sign or signs as may be approved in writing by the Association. (b) Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations. (c) One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding one square foot may be displayed on a Lot.

**[Note: This provision revises Article 12 of your current Declaration to comply with Colorado law. Authority rests in the Board through Rules and Regulations to permit other types of signs.]**

Section 5.17 Outbuildings and Temporary Structures. An "outbuilding" shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, playhouses, trailers, mobile homes, tents, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Board of Directors or the Architectural Review Committee. Further, no outbuilding or temporary structure shall be used on any Lot at any time for residential purposes, either temporarily or permanently.

**[Note: This provision has been added pursuant to your request.]**

Section 5.18 Restriction on Mining and Drilling. No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

**[Note: This provision has been added.]**

Section 5.19 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable, bear-proof container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner.

**[Note: This provision is similar to Article 10 of your current Declaration. ]**

Section 5.20 Prohibition of Marijuana Distribution and Growing. No Owner or occupant of a Lot may utilize such Lot for the purpose of growing or distributing marijuana or medical marijuana. This prohibition may further be clarified by the Board of Directors through Rules and Regulations. Owners will be responsible for any damage resulting from a violation of this restriction, including but not limited to increased water and utility charges.

**[Note: This provision has been added pursuant to your request to prohibit the growth and distribution of marijuana in the Community.]**

Section 5.21 Sewage. Due to the climatic condition of Park County, and the requirements of the water augmentation plan set forth in the Water Decree, evapotranspiration sewage effluent disposal systems will not be allowed in the Community. Only disposal systems which preclude evaporation at the surface shall be permitted in the Community. Each Lot Owner must obtain State and, if applicable, County Health Department approval for the installation and use of an on-site sewage disposal system. Sewage disposal systems which are found by the court to support luxuriant surface growth shall be in violation of the Water Decree.

Section 5.22 Fences. Fencing along BLM land or National Forest land must be in accordance with lawful regulations. Existing boundary fences will not be removed, but may be reset to conform to staked property lines and/or be rebuilt as necessary. Owners purchasing tracts on the outside periphery of the Community agree to jointly maintain fences with adjacent Owners of private property as and if necessary.

**[Note: This provision carries over Article 11 of your current Declaration.]**

Section 5.23 Culverts. Buyers shall furnish where necessary, at their own expense, one county approved culvert of a minimum size of 15 inches, required for private access road to their Property.

**[Note: This provision carries over Article 13 of your current Declaration.]**

Section 5.24 Clearing of Trees. There shall be no removal of living trees from any Lot except that which must be removed in connection with construction on the Property, landscaping, or that which is consistent with generally recognized conservation practices.

**[Note: This provision carries over Article 14 of your current Declaration.]**

Section 5.25 Dams and Reservoirs. Owners of Lots along flood plain easements may not construct ponds and dams or in any way obstruct the natural flow of water into common area ponds. All dams and reservoirs shall be under the control and direction of the Association.

**[Note: This provision carries over Article 15 of your current Declaration.]**

Section 5.26 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

**Note: This provision has been added.]**

Section 5.27 Compliance with Governing Documents. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

**[Note: This provision has been added.]**

Section 5.28 Compliance With Other Laws. No improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

**[Note: This provision has been added.]**

Section 5.29 Use of the Words Foxtail Pines and Foxtail Pines Owners Association. No Owner or resident shall use the words Foxtail Pines or Foxtail Pines Owners Association or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

**[Note: This provision has been added and is intended to prevent residents from using the Association or Community name in connection with personal business uses not associated with the operation of the Association or the Community.]**



## ARTICLE 6 WATER RIGHTS AND CONSERVATION

**[Note: This Article carries over Article X of your current Bylaws and Article 7 of your current Declaration.]**

Section 6.1 Water Decree Approving Plan of Augmentation. Pursuant to the Water Decree, the Association has certain rights and obligations with respect to the usage of water by Owners. The purpose of this Article is to set forth such rights and obligations, provided, however, in the event of any conflict between the provisions of this Article and the Water Decree, the provisions of the Water Decree, or any authorized modification thereto approved by the Court, shall control. All Owners and the Association are bound by and subject to the provisions of the Water Decree, and any authorized modifications thereto approved by the Court.

Section 6.2 Well Water. Water shall be withdrawn from the single unit wells within the Property drilled under authorized permits. All such water must be used solely for in-house purposes. The phrase "in-house use" precludes any use of water for any purpose outside the house, such as car washing, filling swimming or wading pools, watering livestock, or for irrigation of trees, shrubs, or lawns.

Section 6.3 Consumptive Use of Water. The consumptive use of water by Owners in the Community is subject to the plan of augmentation decreed by the Water Court, the basis of which is the replacement to the stream system during times of need from storage water rights, of an amount equal to the depletion of the stream system caused by the Community's use of water. The total Annual future depletion of the South Platte River and its tributaries which will result from the development of the properties is 13.97 acre feet per year. It is estimated that 0.64 c.f.s. from the Guiraud 3T Ditch will be adequate. The plan of the Court is based on this estimate. Such plan requires the Declarant to cease the diversion of 0.64 c. f. s. of the Guiraud 3T Ditch; cease the irrigation of all the acres of the hay meadow historically irrigated; abandon 0.24 c, f s. of water right to the Middle Fork of the South Platte River: store 8.73 acre feet per year, an amount equal to the historic consumptive use of 0.40 c.f.s, of the said Guiraud 3T water right, in the Lower Sacramento Creek Reservoir; release from said storage to the South Platte River and its tributaries, at such times and in such amounts as the Division Engineer of Water District No. 1 may direct, such amounts of water as are required in addition to the said 0.24 c.f.s. of the said Guiraud 3T water right left in the stream to compensate for Annual depletions caused by the development, and to prevent material injury to owners or users of vested water rights, but in no case shall such compensation total more than 13.97 acre feet per year including reservoir evaporation. The Colorado State Engineer, the Lower Sacramento Reservoir Company, or the Association may curtail diversion of water through the wells located on the properties if they, or the other features of the plan for augmentation, are being operated or used in violation of the terms of the Water Decree.

Section 6.4 Reports. The Association shall report to the Division Engineer of Water District No. I ("Division Engineer") any known violations of the conditions of the Water Decree. Additionally, each year, as provided by the Water Decree, the Association shall report to the Division Engineer the name and address of its President and the number of residences then constructed and available for occupancy.

Section 6.5 Insufficient Water for Depletion Replacements. In the event that an extreme period of dry weather results in insufficient water being available for depletion replacements pursuant to the Water Decree, the water users in the Applicant's development, through the Association, shall terminate well diversions, shall acquire additional water by emergency lease, or shall reduce their consumptive use in order that the Community's consumptive use will not exceed the limits of water made available for replacement pursuant to the Water Decree's plan of augmentation.

Section 6.6 Water Usage Restrictions. In the event water consumption within the Community shall actually exceed, or is projected to exceed, the estimated consumptive use of 0.64 c. f. s., the Board shall impose mandatory water usage restrictions, including, without limiting the generality of the foregoing, limiting the rate, volume, and hours during which water may be appropriated from wells in the Community. The Board shall establish and levy fines upon every Lot and its Owner which violate such restrictions, which fine shall be due and payable in full by the Owner of such Lot upon demand by the Association.

Section 6.7 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

Section 6.8 Water. Water in the Community shall be supplied by each Owner drilling an individual well. The Owner's water supply is subject to the terms and conditions of the Water Decree in Case No. W-8480-77 in the District Court in and for Water Division No. 1., Greeley, Colorado, and of record in the office of the Clerk and Recorder for Park County, Colorado ("Water Decree"). This Water Decree provides in part that no curtailment of diversions through facilities required to serve the single-family residential units shall be made unless there is insufficient water available for replacement of the consumptive use depletions of the development pursuant to the plan for augmentation contained within said Water Decree. However, if there is insufficient water available to satisfy the requirements of the plan for augmentation, individual wells are subject to curtailment by the Division Engineer, Water Division No. 1, State of Colorado, or by the Association. Before an Owner can construct a well, a well permit must be obtained from the

Colorado State Engineer's Office in Denver, Colorado. No well permit may be obtained until the Foxtail Pines Reservoirs No. 1 and 2, or another suitable facility, has been constructed and sufficient water either has been stored or is available for storage therein to meet the requirements of the plan for augmentation as described in the Water Decree described above. The foregoing Water Decree provides for household-use-only well permits. These will be the only types of permits granted for construction of wells on the Property. Those Lot Owners obtaining household-use-only well permits are not allowed any external use of water, such as irrigation of lawns or gardens, nor are they allowed outside hydrants for watering of domestic animals.

**[Note: This provision carries over Article 7 of your current Declaration.]**

## **ARTICLE 7 ARCHITECTURAL REVIEW**

**[Note: This Article substantially expands Article 19 of your current Declaration.]**

Section 7.1 Required Approval. No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles (except as otherwise permitted by the Act), fences, walls, exterior lighting, landscaping, or any other improvements shall be constructed, erected, relocated, removed or installed on a Lot, nor shall any painting, alteration or change to the exterior of the improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee ("Committee") as may be outlined in the Rules and Regulations. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

Section 7.2 Acknowledgment of Owners. Owners acknowledge, accept and agree to the following:

- (a) Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Committee;
- (b) Owners shall immediately comply with any request by the Association for additional information relating to an improvement prior to the Committee's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of Committee approval, if previously granted;

(c) Committee approval does not constitute approval of the local building or zoning department, drainage design or structural soundness. Owners are responsible for obtaining all building permits required by Park County regulations;

(d) Owners shall notify the Committee of completion of the improvement's installation or construction within five days of such completion;

(e) Upon completion of an improvement, Owners authorize the Committee or its representative(s) to enter onto the Lot for exterior inspection;

(f) Failure of an Owner to notify the Committee of completion of an approved improvement, or refusal to allow inspection, shall result in the withdrawal of the Committee's approval;

(g) If the improvement as built does not conform to the improvement as approved by the Committee, the Committee's approval will be deemed withdrawn, and upon written request of the Committee, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;

(h) In the event of withdrawal of Committee approval for any reason(s) cited in this Section, and upon written request from the Committee, the Owner, at his or her expense and cost, shall promptly restore the Lot to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

**[Note: Colorado appellate courts have not yet ruled on the issue of tolling the statute of limitations in such a case. Therefore, the last sentence of this provision, which tolls the statute of limitations, may or may not be enforceable in a court of law. Nevertheless, having this provision in your Declaration gives the Association a higher probability of being able to toll the statute of limitations.]**

Section 7.3 Architectural Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of the exterior appearance of structures with neighboring structures, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 7.4 Establishment of the Committee. The Committee shall consist of a minimum of three members appointed by the Board of Directors. The Board shall have the authority to remove any members of the Committee at their sole discretion.

Section 7.5 Architectural Guidelines. The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

**[Note: This provision has been added to allow the Committee to propose architectural guidelines to the Board. Architectural Guidelines are part of the Rules and Regulations of the Association and should be approved by the Board of Directors.]**

Section 7.6 Reply and Communication. The Committee shall reply to all submittals of plans made in accordance herewith in writing within 45 days after receipt. In the event the Committee fails to take any action on submitted plans and specifications within 45 days after the Committee has received the plans and specifications, approval shall be deemed to be denied; provided, however, nothing in this Section shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration, the Rules and Regulations or any architectural guidelines adopted by the Board. All communications and submittals shall be addressed to the Committee in care of the Association.

**[Note: This provision revises Article 19 of your current Declaration to increase the review deadline from 30 to 45 days. Additionally, pursuant to your request, this provision revises your current Declaration to set forth that approval is deemed denied at the expiration of 45 days, instead of deemed granted.]**

Section 7.7 Conditions of Approval. In the discretion of the Board or the Committee, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

**[Note: This provision has been added.]**

Section 7.8 Commencement and Completion of Construction. All improvements approved by the Committee must be commenced within one year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work. Additionally, except with written Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner,

all work approved by the Committee shall be completed within 2½ months of commencement, or such other time as may be set forth in the approval from the Committee.

**[Note: This provision has been added and requires Owners to commence approved improvements within one year of approval, and to complete approved improvements within 2½ months of commencement pursuant to your request.]**

Section 7.9 Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines.

Section 7.10 Right to Appeal. If the Board of Directors is not acting as the Committee, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the Committee to the Board of Directors. The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in this Article and/or the architectural guidelines. Any decision of the Committee may be overruled and reversed on appeal by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

**[Note: This provision has been added to allow Owners to appeal decisions of the Committee to the Board of Directors.]**

Section 7.11 Waivers. The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

**[Note: This provision has been added to prevent against arguments of the precedent set by a decision in a particular case.]**

Section 7.12 Liability. The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

**[Note: This provision has been added.]**

Section 7.13 Records. The Association shall maintain written records of all architectural approval applications submitted and all actions taken and decisions made with respect thereto. Such records shall be open and available for inspection and copying by any Owner and such Owner's designated agent(s) during reasonable hours of the business day according to any policy adopted by the Board.

**[Note: This provision has been added.]**

Section 7.14 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

**[Note: This provision has been added to further clarify the enforcement rights held by the Committee and the Association.]**

## ARTICLE 8 INSURANCE/CONDEMNATION

**[Note: The Article has been added to address insurance obligations of the Association and the Owners.]**

Section 8.1 Insurance on the Lots. Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, or other property of that Owner located on such Lot, and liability insurance covering any injuries occurring to persons or property damages on a Lot.

Section 8.2 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 8.3 Hazard Insurance on Common Area. The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Area and the other property of the Association.

Section 8.4 Association Liability Insurance. The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 8.5 Association Fidelity Insurance. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

Section 8.6 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 8.7 Directors' and Officers' Personal Liability Insurance. The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 8.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

- (a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.
- (b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.
- (c) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without prior written notice to all of the Owners as provided by Colorado law and to the Association.
- (d) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least 10 days prior to the expiration of the then-current policies.



(e) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(f) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

Section 8.9 Other Association Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 8.10 Insurance Premium. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 8.11 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 8.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 8.13 Duty to Repair. Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 8.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 8.15 Responsibility for Payment of Deductible Amount.

(a) Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

(b) Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 10 days of notification and shall be considered a Common Expense Assessment allocated directly to the Lot and shall be collected as provided in this Declaration.

Section 8.16 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Insurance Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

Section 8.17 Damage to or Destruction on Lots. In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

**ARTICLE 9**  
**GENERAL PROVISIONS**

Section 9.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents and the Water Decree, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration and the Water Decree, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

- (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot;
- (ii) suspending the right to vote and the right to use Common Area;
- (iii) disconnecting the Owner's well tap preventing delivery of water to the Lot;
- (iv) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;
- (v) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;
- (vi) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;
- (vii) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(viii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

**[Note: This provision substantially expands Article 25 of your current Declaration.]**

Section 9.2 Attorney Fees. If an Owner fails to pay any Assessment as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner shall be charged as an Assessment and shall constitute a lien against the Lot.

**[Note: This provision has been added.]**

Section 9.3 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

**[Note: This provision is similar to Article 26 of your current Declaration.]**

Section 9.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

**[Note: Article 23 of your current Declaration has been revised to state that the covenants shall be perpetual. Colorado law authorizes this so that the covenants do not need to be automatically extended for ten year periods.]**

Section 9.5 Amendment of Declaration by Owners. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least 65% of the Owners in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Park County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

**[Note: This provision is similar to Article 23 of your current Declaration.]**

Section 9.6 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

**[Note: This provision has been added.]**

Section 9.7 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

**[Note: This provision has been added.]**

Section 9.8 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

**[Note: This provision has been added.]**

Section 9.9 Challenge to this Amendment. All challenges to the validity of this amendment or any future amendments must be made within one year after the date or recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

**[Note: This provision has been added.]**

Section 9.10 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

**[Note: This provision has been added.]**

Section 9.11 Conflict of Provisions. In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

**[Note: This provision has been added.]**

The undersigned, being the president and the Secretary of Foxtail Pines Owners Association., hereby certify that the Association has obtained written approval of this Declaration from Owners of at least 65% of the tracts which are subject to these covenants, or alternatively, a court order entered by the District Court for Park County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration. Approvals obtained shall remain in effect until this Declaration is approved unless approval is expressly revoked in writing.

**FOXTAIL PINES OWNERS ASSOCIATION,**  
a Colorado nonprofit corporation,

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

**ATTEST:**

\_\_\_\_\_  
Secretary

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_                )

The foregoing Declaration was acknowledged before me by \_\_\_\_\_, as President and by \_\_\_\_\_, as Secretary, of Foxtail Pines Owners Association, a Colorado nonprofit corporation, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

SECOND  
DRAFT

**EXHIBIT A**

**PROPERTY**

Lots 1 through 119, inclusive,  
Outlots No. A, B, C and D,  
Foxtail Pines Subdivision  
Park County, Colorado.

and

Lots 120 through 326, inclusive,  
Outlots E, F, G, H, and I,  
all in Filing No. 2, Foxtail Pines  
Park County, Colorado.

SECOND  
DRAFT