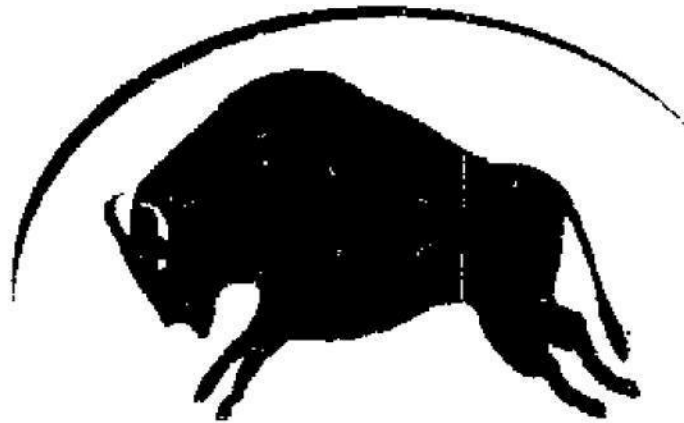




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SCOTT DOYLE, RECORDER, LARIMER COUNTY CO
RCPT# 2003-0061450 05/20/2003 10:21:19
PAGES - 37 FEE \$186.00 DOC \$0.00



BUFFALO CREEK

A T W E L L I N G T O N

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR BUFFALO CREEK
SUBDIVISION AT WELLINGTON
(A COMMON INTEREST LIMITED EXPENSE PLANNED COMMUNITY)**

Association: The Buffalo Creek Subdivision at Wellington Homeowners Association, Inc.

Declarant: Timberline Development Group, Inc.

When recorded, Return to:

✓ Timberline Development Group, Inc.
4529 South Stover Street
Fort Collins, CO 80525

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

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
BUFFALO CREEK SUBDIVISION AT WELLINGTON
(A COMMON INTEREST LIMITED EXPENSE PLANNED COMMUNITY)**

THIS DECLARATION of Protective Covenants, Conditions and Restrictions (this "Declaration") is made by **TIMBERLINE DEVELOPMENT GROUP, INC.** ("Declarant");

RECITALS:

A. The Declarant is the owner of that certain real property located in the County of Larimer, State of Colorado, legally described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

B. The Property is subject to this Declaration.

C. Declarant desires to create a common interest limited expense planned community, pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time (the "Act"), in which portions of the Property will be designated for separate ownership and the remainder of which will be owned by the Association, as defined herein, provided, however, that such planned community shall constitute a limited expense planned community, as provided in C.R.S. §38-33.3-116, as amended from time to time, and, as provided by the Act, shall be subject only to §38-33.3-105, 38-33.3-106, and 38-33.3-107 of the Act. Other provisions of the Act shall be inapplicable to the Property and this Declaration.

SUBMISSION OF REAL ESTATE

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

ARTICLE I

1. DEFINITIONS.

a. "Allocated Interests" shall mean and refer to the Common Expense liability and votes in the Association.

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

c. "Association" shall mean and refer to the **BUFFALO CREEK SUBDIVISION AT WELLINGTON HOMEOWNERS ASSOCIATION, INC., a Colorado Non-Profit Corporation**, its successors, and assigns. Members of the Association shall be the Owners of Lots in the Buffalo Creek Subdivision at Wellington.

d. "Common Area" shall mean and refer to all real property owned or controlled by the Association for the common use and enjoyment of the Owners, and shall include all parking and median landscaping, and Outlots A, B, L, J and K, as depicted on the Buffalo Creek Subdivision at Wellington Plat. "Common Area" shall also include the Roads and Easements, as defined herein, except to the extent such Roads and Easements are dedicated to and accepted for maintenance by the Town of Wellington, Colorado, or Larimer County, Colorado.

e. "Common Expenses" shall mean and refer to maintenance, insurance, taxes, repair, operations, management and administration expenses, legal and accounting expenses, and other expenses declared by the provisions of this Declaration and by the Bylaws and Articles of Incorporation of the Association to be Common Expenses, and all sums lawfully assessed against the Common Area by the Association. Common Expenses shall include, without limitation, the cost to irrigate and maintain all landscaping to the Common Area, operating and maintaining the Irrigation System, maintaining all fencing erected by Declarant adjacent to the Common Area, maintenance of all signage and lighting for the entryway to the Buffalo Creek Subdivision at Wellington, trash removal and snow removal.

f. "Declarant" shall mean and refer to **TIMBERLINE DEVELOPMENT GROUP, INC.**, a Colorado Corporation, and/or its successors and assigns, who, by written instrument executed by the then-current Declarant, and recorded in the Larimer County, Colorado real estate records, agrees to an assignment of all or a portion of the duties and/or rights of Declarant, as described herein.

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

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

i. "Property" or "Buffalo Creek Subdivision at Wellington" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within this Declaration and/or the jurisdiction of the Association by annexation, or otherwise.

j. "Roads and Easements" shall mean and refer to all roads, streets and easements shown on the recorded plat of the Buffalo Creek Subdivision at Wellington.

ARTICLE II

1. ASSESSMENT LIMITATIONS.

a. **Limited Expense Planned Community Assessment Limitation.** The annual average Common Expense liability of each Lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may in no event exceed Four Hundred Dollars (\$400.00) (or such greater amounts as may in the future be allowed under the Act with respect to the existence of limited expense planned communities), as adjusted pursuant to Section 1(b) of this Article, and the Property in this Declaration is subject only to C.R.S. §38-33.3-105, 38-33.3-106 and 38-33.3-107, of the Act, as amended from time to time, which provisions are hereby incorporated into this Declaration.

b. **Consumer Price Index Increases to Assessment Limitation.** Regardless of the effective date of this Declaration, the Four Hundred Dollar (\$400.00) limitation set forth in Section 1(a) of this Article shall be deemed to have increased annually on July 1, 2003, and on July 1 of each succeeding year, in accordance with any increase in the United States Department of Labor, Bureau of Labor Statistics, Final Consumer Price Index for the Denver/Boulder Consolidated Metropolitan Statistical Area for the preceding calendar year. The limitation shall not be increased if the final Consumer Price Index for the preceding calendar year did not increase, and shall not be decreased if the final Consumer Price Index for the preceding calendar year decreased.

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ARTICLE III

1. OWNER'S RIGHTS.

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

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

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

(iii) The right of the Association, through its Board of Directors, to suspend an Owner's voting rights and the right to use of the Common Area or portions thereof by an Owner for any period during which the Owner fails to comply with the terms of this Declaration or the Association's Rules and Regulations. Notwithstanding the foregoing, such suspension of voting rights and use of the Common Area allowed herein for a violation of this Declaration or the Association's Rules and Regulations shall not exceed sixty (60) days for any one occurrence.

(iv) The right of the Association, through its Board of Directors, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. The Common Area shall not be mortgaged or conveyed without the consent of at least two-thirds (2/3rds) of the Owners, exclusive of the Declarant.

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

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

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ARTICLE IV

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

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

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

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

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

(ii) Each Lot owned by Declarant shall be allocated three (3) votes in the Association, as provided in the Bylaws of the Association. Notwithstanding the foregoing, the Declarant's weighted vote shall cease and convert to one (1) vote per Lot upon the earlier of: (i) the conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarant, or (ii) on January 1, 2010.

ARTICLE V

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

a. **Covenant for Maintenance of Common Area.** The Association, through its Board of Directors, will provide for the maintenance of the Common Area. Declarant shall have, in its sole discretion, control of when initial installation of landscaping on the Common Area is to be commenced and completed.

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

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

ARTICLE VI

1. ASSESSMENT FOR COMMON EXPENSES.

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

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

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

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

2. DESTRUCTION OF COMMON AREAS. If the Common Area or a portion thereof is destroyed by fire or other casualty, the Board of Directors may replace or repair the Common Area if the Board of Directors determines that such replacement or repair is in the best interest of the Owners of the Property.

ARTICLE VII

1. LIEN FOR NONPAYMENT OF ASSESSMENTS.

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

b. Evidence of Lien. To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed on behalf of the Association

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by an officer of the Association and shall be recorded in the office of the Clerk and Recorder of the County of Larimer. Such lien may be enforced by the foreclosure of the Association of the defaulting Owner's Lot in like manner as mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all of the members of the Association. In any such foreclosure, the Owner shall be required to pay all the costs and expenses of such proceedings; the costs, expenses, and attorney's fees which preceded the filing of such proceeding; and the costs, expenses and attorney's fees for filing the notice of claim of lien; and all reasonable attorney's fees in connection with such foreclosure and all such unpaid amounts, including late charges and interest, shall constitute a lien on the Lot of the Owner, together with the Owner's interest in the Common Area, and shall have the same priority, and shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments herein described. The Owner shall also be required to pay to the Association all assessments during the period of a foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association, on behalf of the members, shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. The Association shall send to each first mortgagee a copy of the notice of lien provided for herein. Any encumbrancer holding a lien on a Lot may, but shall not be required to, pay any unpaid Common Expenses payable with respect thereto; and upon such payment, such encumbrancer shall have a lien on such Lot for the amounts paid of the same rank as the lien of his or its encumbrance.

ARTICLE VIII

1. OWNER'S OBLIGATION FOR PAYMENT OF ASSESSMENTS.

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

b. Liability of Grantee. The grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or its proportionate share of expenses up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid to the grantee therefore; provided, however, that upon payment of a reasonable fee not to exceed fifty dollars (\$50) and upon written request, any such prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, if any, with respect to the subject Lot, the amount of the current assessment and the period that it covers, and the date the assessment comes due, credit for advance payments or for prepaid items which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be sent by the

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Association to the prospective grantee within twenty (20) days of such request, then such grantee shall not be liable for, nor shall the Lot, if conveyed to the grantee, be subject to a lien for any unpaid assessments against the subject Lot.

ARTICLE IX

1. **NON-POTABLE WELL WATER IRRIGATION SYSTEM.** The Declarant has caused or shall cause a non-potable well water irrigation system (the "Irrigation System") to be constructed to provide water to all Common Areas and rights of way to be owned by the Association or the Town of Wellington ("Wellington"). Upon approval of the Irrigation System by Wellington, the Declarant shall transfer and convey the Irrigation System to the Association. The Declarant shall also transfer the wells from which the water is obtained for the Irrigation System to the Association, and the Association shall grant Wellington a security interest therein. The Association shall be responsible for operating and maintaining the Irrigation System, except that portion of the Irrigation System which is used to irrigate public parks and other areas owned by Wellington. The operation and maintenance of the Irrigation System shall be a Common Expense. Wellington shall construct, operate and maintain that portion of the Irrigation System and pumps used to irrigate parks and other public land.

2. **ESCROW ACCOUNT.** Upon the initial sale of each Lot within the Property, the purchaser of said Lot shall deposit in an escrow account titled in the name of the Association the sum of \$100.00. Funds in the escrow account may be withdrawn by the Association to reimburse the Declarant for the cost of upgrading pumps and vaults for the Irrigation System. All other funds in the escrow account shall be retained by the Association to be used for the maintenance (but not the day-to-day operation) of the Irrigation System. If the amount on deposit in the escrow account drops below \$10,000.00, any further withdrawals from the escrow account shall require the approval of Wellington.

3. **MAINTENANCE OF THE IRRIGATION SYSTEM.** The Association shall contract with an independent, licensed irrigation company reasonably approved by Wellington to maintain the Irrigation System. Wellington shall have the right, but not the obligation, to assume responsibility for the operation and maintenance of the Irrigation System, and to assess the cost of such operation and maintenance as an assessment against all of the Lots within the Property.

4. **RESTRICTION ON USE OF DOMESTIC WATER.** The use of domestic water outside of the residential dwelling units located on Lots 4 through and including 16, Block 14 of the Buffalo Creek Subdivision at Wellington, and when later added to the Property, Lots 4 through and including 14, Block 1 of the Buffalo Creek Subdivision at Wellington, shall be prohibited.

5. **SIGNAGE.** The Association has caused or shall cause signage as reasonably required by Wellington to be installed within the Property indicating that all lawns and other

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landscaped areas are being watered by non-potable water. The Association shall maintain such signs, which shall constitute a Common Expense.

ARTICLE X

1. **LAND USE AND BUILDING TYPE.** Unless permitted by the Architectural Review Committee, in its sole discretion, no Lot shall be used except for residential purposes. Notwithstanding the foregoing, Owners may use their residences for in-home businesses if (i) consistent with applicable governmental zoning ordinances, (ii) traffic is not unreasonably increased in the Buffalo Creek Subdivision at Wellington, and (iii) such use is approved in advance by the Architectural Review Committee, in its sole discretion; provided, further, that the Architectural Review Committee can revoke such use in its discretion at any time. Except as provided herein, or except as may otherwise be allowed by the Architectural Review Committee, in its sole discretion, no building shall be erected, altered, placed, or permitted to remain on any Lot other than single-family dwellings of a height, size and location as approved in the sole discretion of the Architectural Review Committee. Except as provided herein, no building, structure, fence, trellis, or other improvement shall be erected, altered, placed or permitted to remain on any Lot except as approved in the sole discretion of the Architectural Review Committee.

2. **MINIMUM SQUARE FOOTAGE.** Except as otherwise permitted by the Architectural Review Committee in its sole discretion, no dwelling shall be erected, altered, or permitted to remain on any Lot unless the finished floor space area thereof, exclusive of basement, open porches, garages, and attached out-buildings, and based on exterior measurements, is a minimum of the following:

- A. One Story – 1100 Square Feet
- B. Two Story – 1300 Square Feet
- C. Tri-Level – 1200 Square Feet

3. **BUILDING LOCATION AND SET-BACK REQUIREMENTS.** The location and set-back of each building on any Lot shall be determined in the sole discretion of the Architectural Review Committee, which setback and location restrictions and limitations shall be at least consistent with all applicable governmental zoning ordinances, subdivision regulations and building codes. At a minimum, the following setbacks shall apply: (i) the side setback shall be a minimum of seven feet (7') from the side Lot lines, (ii) the front setback shall be a minimum of twenty-five feet (25') from the front Lot lines, (iii) the rear setback shall be a minimum of twenty feet (20') from the rear Lot lines, and any accessory building shall have a minimum setback of five feet (5') from the rear Lot lines. The Architectural Review Committee may, in its sole discretion, require and enforce varied, less or more restrictive set-back and location requirements with respect to the various Lots located in the Buffalo Creek Subdivision at Wellington. No portion of any improvement or building on a Lot may encroach upon another Lot.

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4. OTHER PROVISIONS RELATING TO THE CONSTRUCTION OF IMPROVEMENTS.

a. Garages and Storage Sheds. Unless otherwise consented to in writing by the Architectural Review Committee in its sole discretion, no detached garages, patios, storage sheds, garden houses, play houses, play equipment, balconies, or other improvements or buildings shall be constructed on any Lot. Each residence shall have an attached two car garage. Visual impact of garage doors shall be minimized when reasonably possible, by such measures as positioning of the garage (i.e. garage setback, side-load garage, etc.), protective overhangs or projections, special door facing materials, landscaping, or door design which blends with or enhances the overall architectural statement of the Residence. It is recommended that all garage windows facing the street be covered with a suitable window covering so that the interior of the garage is not visible from the street.

b. Exterior Dwelling Roofs. All roofs must be approved by the Architectural Review Committee and, unless otherwise approved by the Architectural Review Committee, in its sole discretion, all exterior dwelling roofs shall be, at a minimum, at least a 30-year dimensional asphalt composition shingled roof, with earth tone colors. The roof of each residence shall have a minimum 5/12 pitch and a minimum overhang of twelve (12) inches.

c. Exterior Colors. All exterior colors and color combinations of each residence shall be generally earth tone, and must be approved in advance by the Architectural Review Committee in writing. All projections including, but not limited to chimney flues, vents, gutters, down spouts, utility boxes, porches, railings and exterior stairways shall closely match or compliment the permanent color of the surface from which they project. Duplicate color schemes shall not be allowed on adjacent lots or lots across the street from each other.

d. Exterior Siding. Architectural Review Committee approval is required for all exterior finish materials. Wood or masonite siding shall have a maximum width of eight (8) inches with no more than a seven (7) inch exposure. Vinyl siding shall not be permitted, however, vinyl soffits, shutters, vents and other accents shall be permitted.

e. Architectural Accents. All front facing facades shall have a combination of architectural accents such as: shutters, vents, brackets, braces, architectural shingles, board and batten siding, planter boxes or other accents that provide character and interest to the front of the residence. Architectural Review Committee approval is required for all Architectural Accents.

f. Elevation Variations. No homes with the same elevation shall be constructed immediately next to each other; there must be a minimum separation of one lot containing a home with a distinctly different elevation than the adjacent home.

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g. **Exterior Brick and Stone.** A minimum of twenty (20) percent of the front of the Residence facing the street, excluding doors, garage doors and windows shall be brick or stone, as approved by the Architectural Review Committee.

h. **Pools.** Architectural Review Committee approval is required for pools. Only in ground pools will be allowed after plans are approved by the Architectural Review Committee.

i. **Paving.** Architectural Review Committee approval is required for all paving, regardless of whether for walk, driveways, porches, patio areas or other purposes regardless of whether concrete, asphalt, brick, flagstones, stepping stone, pre-cast patterned or exposed aggregate concrete pavers are used as the paving material. Paving must be located so as not to block any existing draining pattern on the lot.

j. **Air Conditioning Equipment.** Only central air conditioning is permitted. Air conditioning equipment shall be installed in the side yard or rear yard and shall be screened from view of adjacent property owners and shall be installed in such a way that any noise to adjacent properties is minimized. Installation of air conditioning equipment on the roof of a house, in a window of the house or through a wall of a house is not permitted. Swamp coolers and evaporative coolers are not permitted.

k. **Basketball Backboards.** Architectural Review Committee approval is required for placement and design of basketball backboards.

l. **Foundations.** No more than 16 inches of exposed concrete of a foundation may be visible on any elevation.

m. **Flagpoles.** Free standing poles are not allowed. One wall-mounted bracket per home shall be allowed.

n. **Sanitation and Appearance of Lots During Construction.** During the construction of a dwelling on a Lot, the Owner of such Lot is responsible for ensuring that the Owner or Owner's builders (i) provide a portable toilet at the construction site; (ii) provide suitable receptacles for construction waste; (iii) do not deposit excess concrete, building materials and waste on the Common Area, adjacent Lots, ditches, or on the Roads and Easements, and that all such materials are appropriately removed from the Property by at least the time the construction of the dwelling is complete; (iv) pay for and repair any damage to Common Area, Roads and Easements, drainage ways, or any other portion of the Property occurring during the construction of the dwelling; and (v) provide perimeter fencing (other than frontage fencing) on the Lot prior to and during the course of construction on the Lot

o. **Architectural Design.** The overall building design and the overall design of any improvements constructed on a Lot, including, but not limited to, size, exterior materials,

colors, solar energy systems, trim, fascia, exterior vents, vertical support posts, furnace and plumbing vents, windows, landscaping, etc. shall be subject to the approval of the Architectural Review Committee, in its sole discretion, to assure harmony of the Buffalo Creek Subdivision at Wellington and its property values. The Architectural Review Committee may adopt from time to time an Architectural Control Handbook (the "Architectural Control Handbook"), setting forth such matters which may include the size, exterior materials, colors, systems, etc. which may be permitted on the Property. The Architectural Control Handbook may be changed at any time without notice, in the sole discretion of the Architectural Review Committee. The Architectural Review Committee may also adopt detailed rules and regulations governing different areas and phases of the Buffalo Creek Subdivision at Wellington to recognize the development objectives of each area and phase, which rules and regulations need not be the same for all such areas.

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

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

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

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6. **MINERAL EXTRACTION.** No mining or extraction of minerals shall be permitted on any Lot, including seismic or other mineral or extraction testing.

7. **WATER AND SANITATION.** Any residence constructed on any Lot shall be connected with any public or community water or sewage disposal system which may be formed or created to serve the Buffalo Creek Subdivision at Wellington. Privies, outhouses, chemical toilets, etc., are expressly prohibited except for a reasonable period of time during the construction of a residence on a particular Lot.

8. **DRAINAGE.** Each Owner is responsible for providing adequate water drainage from the Owner's Lot into existing storm drains or street gutters so that such water does not drain onto adjacent Lots. No chemicals or petroleum products shall be allowed to drain into storm drains or street gutters but this Paragraph will not prevent the application in normal quantities of customary insect, animal, or plant control substances, fertilizers, and plant foods on Lots even if run-off from the Lots could carry these substances into the storm drain system.

9. **REFUSE AND RUBBISH.** All property and premises shall be kept in a clean and sanitary condition at all times. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage, or any other form of solid, semisolid, or liquid waste. Rubbish, garbage, or other waste shall be kept and disposed of in a sanitary container. All containers or other equipment for the storage or disposal of garbage, trash, rubbish, or other refuse shall be kept in a clean, sanitary condition and shall be kept inside the residence or individually housed or screened from view. No trash, litter, or junk shall be permitted to remain exposed upon the premises and visible from public roads or adjoining or nearby premises. Burning of trash will not be permitted at any time in the Buffalo Creek Subdivision at Wellington, during construction or otherwise.

10. **YARD MAINTENANCE AND LAWN SOD.** Each Lot owned by an Owner other than Declarant will be completely landscaped with grass sod (and not seeding) or other landscaping accepted in writing by the Architectural Review Committee in its sole discretion. Each Owner, other than Declarant, will prepare a landscape plan, complete with a timetable for starting and completion, which plan will be submitted for written approval to the Architectural Review Committee contemporaneously with the submission of the dwelling plans and specifications described below or within thirty (30) days after the dwelling is complete. Unless otherwise approved by the Architectural Review Committee, in its sole discretion, any Lot on which a dwelling is completed between May 1 and September 1 of any year shall complete grass, seeding or sodding erosion and weed control landscaping within thirty (30) days after the completion of the dwelling and the remainder of all landscaping will be completed in accordance with the timetable described in the landscape plan, but not later than six (6) months after the dwelling is inhabited, unless otherwise extended in the sole discretion by the Architectural Review Committee. All dwellings completed in other months shall complete grass, sodding erosion and weed control landscaping by the next July 1st and

the remainder of all landscaping will be completed in accordance with the timetable described in the landscape plan but not later than six (6) months after the dwelling is inhabited. All Owners of Lots other than Declarant shall cut and control all weeds and vegetation growing on all Lots, whether vacant, occupied or those with improvements under construction. A minimum of twelve hundred (1,200) square feet of the total yard on each applicable Lot shall consist of non-irrigated material such as rock, mulch, bark or other non-irrigable materials approved by the Architectural Review Committee in its sole discretion. A minimum of two thousand (2,000) square feet of the total yard on each applicable Lot shall be irrigated sod. Each owner, at the owner's expense shall install a minimum of at least one (1), two inch (2") caliper deciduous tree in the front yard of each applicable Lot.

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

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

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

13. **ANIMALS.** No animals, livestock, cattle, swine, fowl, poultry, or insects of any kind shall be housed, raised, or left on any Lot either temporarily or permanently except commonly accepted domestic household pets may be kept, provided they are not kept or maintained for any commercial purpose. Animal pens shall be maintained on a regular basis to assure a neat and orderly appearance and a clean and healthy atmosphere. Notwithstanding the foregoing, horses shall be permitted on Lots 4 through and including 16, Block 14 of the Buffalo Creek Subdivision at Wellington, and when later added to the Property, Lots 4 through and including 14, Block 1 of the Buffalo Creek Subdivision at Wellington in accordance with the Wellington Town Code.

14. **CLOTHES LINES.** No clothes lines are to be installed on any Lot.

15. **EXTERIOR ANTENNAE.** No outside radio or television antennae or satellite dishes (except for satellite dishes which do not exceed twenty four inches (24") in diameter) shall be permitted on any Lot or any part of the Common Area unless approved by the

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Architectural Review Committee in its sole discretion, or except as otherwise allowed by State or Federal law.

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

17. **FENCES.** Plans and specifications for all fences, screens, awnings, trellises and the like must be approved in writing by the Architectural Review Committee prior to the commencement of construction thereof. The construction of all fencing, screening, awnings, trellises and the like, shall be constructed by a professional company, subject to the approval of the Architectural Review Committee in its sole discretion. All fencing, screening, awnings, trellises and the like shall be maintained in good repair and shall be of the size, color, stain specifications, and material as approved by the Architectural Review Committee, in its sole discretion, and as may be further described in the Architectural Control Handbook adopted by the Architectural Review Committee. Any and all fences constructed on Lots 4 through and including 16, Block 14 of the Buffalo Creek Subdivision at Wellington, and when later added to the Property, Lots 4 through and including 14, Block 1 of the Buffalo Creek Subdivision at Wellington shall be three-rail fences of the same design, style and material as approved by the Architectural Review Committee in its sole discretion. Any and all other fences constructed within the Buffalo Creek Subdivision at Wellington shall be six (6) foot tall solid cedar fences of the same design, style, stain color and material as approved by the Architectural Review Committee in its sole discretion. Approved fencing plans and specifications are available through the Architectural Review Committee.

ARTICLE XI

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

Two (2) complete sets of plans and specifications (including landscaping plans) with complete detail shall be furnished to the Architectural Review Committee. All plans and specifications must be complete, legible, and understandable but need not be professionally drawn or prepared. The Architectural Review Committee reserves the right to reject plans

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and specifications if they, in their sole discretion, deem them to be incomplete or insufficient. Additionally, the Architectural Review Committee reserves the right to waive or vary from any of the requirements described in this Declaration. The Architectural Review Committee may retain one (1) set as part of its permanent files. The following items must be included in such plans and specifications in addition to other items which the Architectural Review Committee may require, in its sole discretion from time to time, and shall, without limitation, be subject to approval of the Architectural Review Committee in its sole discretion:

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

2. **MEMBERSHIP TO THE COMMITTEE.** The Architectural Review Committee shall consist of not less than one (1) nor more than three (3) persons. The initial number of members to the Architectural Review Committee shall be determined by the Declarant. As of the date of this Declaration, the Architectural Review Committee shall consist of John Donaldson, whose address is 4529 South Stover Street, Fort Collins, Colorado 80525. If the Architectural Review Committee consists of more than one member, a majority of the Architectural Review Committee may designate a representative to act for it. The Architectural Review Committee shall have the authority to charge a sum not exceeding **One Hundred Fifty Dollars (\$150.00)** as a review fee for each set of plans and specifications submitted to it for approval. Declarant shall have the right to appoint the members (or their successors) of the Architectural Review Committee, which right of appointment shall terminate upon the earlier of: (i) the conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarant, or (ii) on January 1, 2010. Upon expiration of Declarant's right to appoint the members of the Architectural Review Committee, the Architectural Review Committee shall be appointed on an annual basis by the Board of Directors of the Association from among the Lot Owners. In the event of the death or resignation of any member of the Architectural Review Committee, the remaining members shall have the authority to designate a successor.

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

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

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

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

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

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the non-complying improvements and work and (ii) set forth with particularity the cause or causes for such non-compliance.

ARTICLE XII

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

a. **Completion of Improvements.** The right to complete improvements indicated on the Subdivision Plat of the Buffalo Creek Subdivision at Wellington.

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

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

d. **Merger.** The right to merge, consolidate or annex the Property with another common interest community. Notwithstanding the foregoing, such merger, consolidation or annexation shall require the prior consent of at least two-thirds (2/3rds) of the Owners, excluding the Declarant.

e. **Control of Association and Board of Directors.** The right to appoint or remove any officer or director of the Association or any member of the Architectural Review Committee, which right shall terminate upon the earlier of: (i) the conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarant, or (ii) on January 1, 2010.

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

- (i) Add real estate to the Property;
- (ii) Create Lots and additional Common Area;

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(iii) Subdivide Lots or convert Lots into Common Area;

(iv) Withdraw all or any portion of the Property from the provisions of this Declaration.

(v) Exercise Declarant's Development Rights on all or any portion of the Property, or the expansion property, as later defined, in whatever order of development the Declarant, in its sole discretion, determines.

(vi) Use and to permit others to use easements through the Common Area as may be reasonably necessary for construction within the Buffalo Creek Subdivision at Wellington and for the purpose of discharging Declarant's obligations under this Declaration.

(vii) Exercise any other of Declarant's rights created by any other provisions of this Declaration.

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

(ix) Notwithstanding any provision to the contrary in this Declaration, Declarant shall have the absolute unilateral right, power and authority to modify, amend, revise or change any of the terms and/or provisions of this Declaration, all as amended or supplemented, to reflect the different residential character of the tracts of land or lots within the overall Buffalo Creek Subdivision at Wellington.

(x) Notwithstanding any provision to the contrary in this Declaration, if HUD/VA has insured or guaranteed any mortgages within the Property, amendment of this Declaration shall require HUD/VA approval as long as Declarant has a weighted vote in the Association.

g. **Reservation of Right to Expand.** The right, without in any way being bound, to enlarge the Buffalo Creek Subdivision at Wellington in phases from time to time by adding to the Buffalo Creek Subdivision at Wellington any of the real property described in Exhibit

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B attached hereto ("Expansion Property"). By way of example, and not in limitation of the foregoing, Declarant intends to construct the Buffalo Creek Subdivision at Wellington in four phases. This Declaration covers the 111 Lots within the Property to be constructed in the first phase (Phase A) legally described on Exhibit A attached hereto. Declarant intends, but shall not be obligated, to add approximately 323 Lots to the Buffalo Creek Subdivision at Wellington in three subsequent phases (PHASES: B, C & D), by adding the respective portions of the Expansion Property legally described on Exhibit B attached hereto.

h. Amendment of Plat. The right to amend the Buffalo Creek Subdivision at Wellington Plat in connection with the exercise of any Development Rights.

i. Amendment of Declaration. As the Declarant creates additional Lots and converts Common Area into Lots on all or any portion of the Property or any Expansion Property, the Declarant shall record an amendment to the Declaration reallocating the Allocated Interests so that the Allocated Interest appurtenant to each Lot will be apportioned according to the total number of Lots submitted to the Declaration. The Allocated Interest appurtenant to each Lot thereafter in the Buffalo Creek Subdivision at Wellington shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Buffalo Creek Subdivision at Wellington.

j. Declaration Extended to New Properties. Any additional real property added in subsequent phases to the Buffalo Creek Subdivision at Wellington, including the Expansion Property, shall be subject to all the terms and conditions of this Declaration, as amended or supplemented, upon placing a Supplemental Declaration of public record in the real estate records of the Clerk and Recorder of Larimer County, Colorado.

k. Interpretation. Recording of amendments to the Declaration in the office of the Clerk and Recorder of Larimer County, Colorado, shall automatically (i) vest in each existing Owner the reallocated Allocated Interest appurtenant to his Lot and (ii) vest in each existing mortgagee a perfected security interest in the reallocated Allocated Interest appurtenant to the encumbered Lot. Upon the recording of an amendment to the Declaration, the definitions in this Declaration shall automatically be extended to encompass and to refer to the additional Lots included within the Buffalo Creek Subdivision at Wellington. The additional Lots shall be added to and become a part of the Buffalo Creek Subdivision at Wellington for all purposes. All conveyances of Lots after such action shall be effective to transfer rights in all Common Areas as modified, whether or not reference is made to any amendment to the Declaration. Reference to this Declaration in any instrument shall be deemed to include all amendments to the Declaration without specific reference thereto.

l. Construction Easement. The Declarant expressly reserves the right to perform construction work, store materials on the Property, and the future right to control

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such work and the right of access thereto until its completion. All work may be performed by the Declarant without the consent or approval of any Owner or mortgagee. The Declarant shall have such easements through the Common Area as may be reasonably necessary for the purpose of discharging the Declarant's obligations and exercising the Reserved Declarant Rights and Development Rights in this Declaration. Such easements shall include the right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the Common Areas for the purpose of furnishing utility and other services to newly created Lots. The Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements. If the Declarant grants any such easements, the Subdivision Plat will be amended, if necessary, to include reference to the recorded easement.

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

n. **Termination of Development Rights.** The Development Rights reserved to the Declarant pursuant to this Article XII shall expire twenty (20) years from the date of recording this Declaration, unless the Development Rights are reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board of Directors may impose on the subsequent exercise of the Development Rights of Declarant.

ARTICLE XIII

1. **COVENANTS TO RUN WITH THE LAND.** This Declaration and these provisions are to run with the land and shall be binding upon all parties and all persons claiming under them until January 1, 2022, at which time this Declaration and said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of two-thirds (2/3rds) of the then record Owners of the Lots it is agreed to amend this Declaration and said covenants in whole or in part. Provisions for maintenance of Common Area and open space located in the Property shall not be permitted to lapse with the other covenants unless other provisions are made for the continuation of maintenance. Except as provided in this Declaration regarding Reserved Declarant Rights and Development Rights, this Declaration may be amended in whole or in part at any time by a duly written and recorded instrument executed by at least two-thirds (2/3rds) of the then record Owners of the Lots. If HUD/VA has insured or guaranteed any mortgages within the Property, amendment of this Declaration shall require HUD/VA approval as long as Declarant has a weighted vote in the Association.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS DECLARATION, THE ASSOCIATION CANNOT BE DISSOLVED WITHOUT THE

WRITTEN CONSENT OF THE TOWN OF WELLINGTON, OR SUCH OTHER GOVERNMENTAL ENTITY HAVING JURISDICTION OVER THE PROPERTY.

2. **DELINQUENCY.** Any assessment or other amount due from an Owner as provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each amount not paid within thirty (30) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed Fifty Dollars (\$50) or Ten Percent (10%) of the amount due, whichever is greater, regardless of the number of individual amounts due. If any such amount or assessment is not paid within thirty (30) days after the delinquency date, the assessment or amount shall bear interest from the date of delinquency at the rate of Eighteen Percent (18%).

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

4. **TOWN OF WELLINGTON'S PERFORMANCE OF THE ASSOCIATION'S DUTIES.** If the Association fails to reasonably maintain the Common Area, The Town of Wellington, or such other governmental entity having jurisdiction over the Property, shall have the right to maintain said Common Area.

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

If any Owner, or an Owner's family, invitees, licensees, tenants, or subtenants, violates the terms of this Declaration, such Owner shall be liable to the Association for all costs, expenses and reasonable attorneys' fees incurred by the Association in enforcing the terms of

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this Declaration, regardless of whether suit is filed by the Association. If the Owner fails or refuses to pay the Association for such amounts within 30 days from the date invoiced by the Association, the amounts, including late charges and interest, shall constitute a lien against the Owner's Lot together with the Owner's interest in the Common Area, and shall have the same priority, and shall be documented, evidenced, attached, enforced and accompanied by the same benefits as the lien for non-payment of assessments described in this Declaration.

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

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

8. **CONDEMNATION OF COMMON AREA.** If at any time, or from time to time, all or any portion of Common Area, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, any award in condemnation shall be paid to the Association and deposited into its operating fund. No Owner shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interests of all Owners.

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

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

RATIFICATION

The undersigned, having a security interest in all or any part of the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference, hereby approves, ratifies, confirms and consents to the foregoing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR, BUFFALO CREEK SUBDIVISION AT WELLINGTON (A Common Interest Limited Expense Planned Community)

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed on the 19th day of May, 2003.

LENDER: Horizon Banks N.A.
By: Rocco A. Valtari
Title: Branch President

STATE OF COLORADO)
) ss.
COUNTY OF Parmer)

The foregoing instrument was acknowledged before me this 19th day of May, 2003, by Rocco A. Valtari, as Branch President of Horizon Banks.

Witness my hand and official seal.

My commission expires: 11/10/08

Beryl Warner
Notary Public



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EXHIBIT "A"

EXHIBIT "A" ATTACHED TO AND MADE A PART OF DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR BUFFALO CREEK SUBDIVISION AT WELLINGTON (A COMMON INTEREST LIMITED EXPENSE PLANNED COMMUNITY)

Legal Description of Property
[PHASE A]

PHASE A

A parcel of land being a part of the Southwest Quarter (SW1/4) of Section Twenty-eight (28), Township Nine North (T.9N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6thP.M.), Town of Wellington, County of Larimer, State of Colorado, being more particularly described as follows:

COMMENCING at the West Quarter Corner of said Section 28, and assuming the West line of said Southwest Quarter as bearing South 00°23'27" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2601.81 feet, with all other bearings contained herein relative thereto:

THENCE North 88°20'13" East along the North line of said SW1/4, a distance of 50.03 feet to the POINT OF BEGINNING;

THENCE continuing North 88°20'13" East along said line a distance of 2142.62 feet to a Point of Curvature (PC);

THENCE along the arc of a curve concave to the Southwest, a distance of 47.12 feet, whose radius is 30.00 feet, whose delta is 90°00'00", and whose long chord bears South 46°39'47" East, a distance of 42.43 feet to a Point of Tangency (PT);

THENCE South 01°39'47" East a distance of 10.00 feet;

THENCE South 88°20'13" West a distance of 2090.02 feet;

THENCE South 45°30'57" West a distance of 118.52 feet to a point, said point to be known as POINT A;

THENCE North 00°23'27" East a distance of 120.63 feet to the POINT OF BEGINNING.

Said parcel contains 2.069 Acres more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

TOGETHER with that portion of the Southwest Quarter of said Section 28, described as follows:

Commencing from aforesaid POINT A; Thence South 00°23'27" West a distance of 2347.57 feet to the POINT OF BEGINNING;

THENCE South 49°43'09" East a distance of 108.66 feet;

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THENCE South 89°36'33" East a distance of 265.69 feet;
 THENCE North 00°23'27" East a distance of 160.00 feet;
 THENCE South 89°36'33" East a distance of 10.94 feet;
 THENCE North 00°23'27" East a distance of 600.00 feet;
 THENCE South 89°36'33" East a distance of 100.00 feet;
 THENCE North 00°23'27" East a distance of 20.00 feet;
 THENCE South 89°36'33" East a distance of 60.00 feet;
 THENCE South 89°36'33" East a distance of 588.84 feet;
 THENCE South 67°55'40" East a distance of 64.30 feet;
 THENCE North 22°04'20" East a distance of 22.18 feet;
 THENCE South 67°55'40" East a distance of 102.00 feet;
 THENCE North 22°04'20" East a distance of 118.28 feet to a PC;

THENCE along the arc of a curve concave to the Southeast, a distance of 54.26 feet, whose radius is 330.00 feet, whose delta is 09°25'17", and whose long chord bears North 26°46'59" East, a distance of 54.20 feet to the PT;

THENCE North 31°29'37" East a distance of 314.61 feet;
 THENCE South 58°30'23" East a distance of 354.94 feet;
 THENCE South 13°13'30" East a distance of 98.42 feet;
 THENCE South 31°29'37" West a distance of 147.19 feet;
 THENCE South 31°13'15" West a distance of 63.15 feet;
 THENCE South 28°03'24" West a distance of 63.14 feet;
 THENCE South 24°06'55" West a distance of 63.14 feet;
 THENCE South 20°10'26" West a distance of 63.14 feet;
 THENCE South 16°13'57" West a distance of 63.14 feet;
 THENCE South 12°17'28" West a distance of 62.46 feet;
 THENCE South 82°29'22" East a distance of 30.02 feet to a point on a curve;

Thence along the arc of a non-tangent curve concave to the Southeast, a distance of 175.18 feet, whose radius is 888.00 feet, whose Delta is 11°18'12", and whose long chord bears South 04°48'26" West a distance of 174.90 feet to a PT;

THENCE South 00°50'40" East a distance of 214.73 feet to a PC;

THENCE along the arc of a curve concave to the Northwest, a distance of 47.12 feet, said curve having a radius of 30.00 feet, a delta of 90°00'00", and a long chord bearing South 44°09'20" West, a distance of 42.43 feet to a PT;

THENCE South 89°09'20" West a distance of 1575.68 feet to a PC;

THENCE along the arc of a curve concave to the Northeast, a distance of 47.77 feet, said curve having a radius of 30.00 feet, a delta of 91°14'06", and long chord bearing North 45°13'37" West a distance of 42.88 feet to a PT;

THENCE North 00°23'27" East a distance of 84.30 feet to the POINT OF BEGINNING;

Said parcel contains 27.248 Acres more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

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EXHIBIT "B"

EXHIBIT "B" ATTACHED TO AND MADE A PART OF DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR BUFFALO CREEK SUBDIVISION AT WELLINGTON (A COMMON INTEREST LIMITED EXPENSE PLANNED COMMUNITY)

**Legal Description of Expansion Property
(PHASES B, C & D)]**

PHASE B

A parcel of land being a part of the Southwest Quarter (SW1/4) of Section Twenty-eight (28), Township Nine North (T.9N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6thP.M.), Town of Wellington, County of Larimer, State of Colorado, being more particularly described as follows:

COMMENCING at the West Quarter Corner of said Section 28, and assuming the West line of said Southwest Quarter as bearing South 00°23'27" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2601.81 feet,

with all other bearings contained herein relative thereto:

- THENCE North 88°20'13" East along the North line of said SW1/4, a distance of 50.03;
- THENCE S00°23'27"W, a distance of 1022.85 feet to the POINT OF BEGINNING;
- THENCE South 48°27'47" East a distance of 129.26 feet;
- THENCE South 89°36'33" East a distance of 437.66 feet;
- THENCE South 00°23'27" West a distance of 129.99 feet;
- THENCE South 89°36'33" East a distance of 602.32 feet;
- THENCE South 84°43'46" East a distance of 79.17 feet;
- THENCE South 76°12'18" East a distance of 81.84 feet;
- THENCE South 67°30'47" East a distance of 81.84 feet;
- THENCE South 59°52'23" East a distance of 74.86 feet;
- THENCE South 58°30'23" East a distance of 76.19 feet;
- THENCE South 31°29'37" West a distance of 314.61 feet to a Point of Curvature (PC);
- THENCE along the arc of a curve concave to the Southeast, a distance of 54.26 feet, said curve having a radius of 330.00 feet, a delta of 9°25'17", and a long chord bearing South 26°46'59" West a distance of 54.20 feet to the Point of Tangency (PT);
- THENCE South 22°04'20" East a distance of 118.28 feet;
- THENCE North 67°55'40" West a distance of 102.00 feet;
- THENCE North 22°04'20" West a distance of 22.18 feet;
- THENCE North 67°55'40" West a distance of 64.30 feet;
- THENCE North 89°36'33" West a distance of 588.84 feet;
- THENCE North 89°36'33" West a distance of 60.00 feet;

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THENCE South 00°23'27" West a distance of 20.00 feet;
 THENCE North 89°36'33" West a distance of 100.00 feet;
 THENCE South 00°23'27" West a distance of 600.00 feet;
 THENCE North 89°36'33" West a distance of 10.94 feet;
 THENCE South 00°23'27" West a distance of 160.00 feet;
 THENCE North 89°36'33" West a distance of 265.69 feet;
 THENCE North 49°43'09" West a distance of 108.66 feet;
 THENCE North 00°23'27" East a distance of 1445.35 feet to the POINT OF BEGINNING.

Said parcel contains 24.675 Acres more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

PHASE C

A parcel of land being a part of the Southwest Quarter (SW1/4) of Section Twenty-eight (28), Township Nine North (T.9N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6thP.M.), Town of Wellington, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the West Quarter Corner of said Section 28, and assuming the West line of said Southwest Quarter as bearing South 00°23'27" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2601.81 feet,

with all other bearings contained herein relative thereto:

THENCE North 88°20'13" East along the North line of said SW1/4, a distance of 50.03;
 THENCE South 00°23'27" West, a distance of 120.63 feet to the POINT OF BEGINNING;
 THENCE North 45°30'57 East a distance of 118.52 feet;
 THENCE North 88°20'13 East a distance of 456.33 feet;
 THENCE South 01°39'47 East a distance of 60.00 feet;
 THENCE South 88°20'13 West a distance of 13.69 feet to a Point of Curvature (PC);
 THENCE along the arc of a curve concave to the Southeast, a distance of 23.56 feet, said curve having a radius of 15.00 feet, a delta of 90°00'00", and a long chord bearing South 43°20'13" West a distance of 21.21 feet to the Point of Tangency (PT);
 THENCE South 01°39'47" East a distance of 58.60 feet to a PC;
 THENCE along the arc of a curve concave to the West, a distance of 15.41 feet, said curve having a radius of 430.00 feet, a delta of 2°03'13", and a long chord bearing South 00°38'10" East, a distance of 15.41 feet to the PT;
 THENCE South 00°23'27" West a distance of 402.35 feet to a PC;
 THENCE along the arc of a curve concave to the Northeast, a distance of 23.56 feet, said curve having a radius of 15.00 feet, a delta of 90°00'00", and a long chord bearing South 44°36'33" East, a distance of 21.21 feet to the PT;
 THENCE South 89°36'33" East a distance of 1632.79 feet to a PC;

THENCE along the arc of a curve concave to the Northwest, a distance of 23.56 feet, said curve having a radius of 15.00 feet, a delta of $90^{\circ}00'00''$, and a long chord bearing North $45^{\circ}23'27''$ East, a distance of 21.21 feet;

THENCE South $00^{\circ}23'27''$ West, said course being non-tangent to the aforesaid curve, a distance of 181.41 feet to a PC;

THENCE along the arc of a curve concave to the West, a distance of 521.13 feet, said curve having a radius of 960.00 feet, a delta of $31^{\circ}06'11''$, and a long chord bearing South $15^{\circ}56'32''$ West, a distance of 514.76 feet to a PT;

THENCE South $31^{\circ}29'37''$ West a distance of 544.90 feet to a PC;

THENCE along the arc of a curve concave to the East, a distance of 326.01 feet, said curve having a radius of 888.00 feet, a delta of $21^{\circ}02'06''$, and a long chord bearing South $20^{\circ}58'34''$ West, a distance of 324.18 feet;

THENCE North $82^{\circ}29'22''$ West, said course being non-tangent to the aforesaid curve, a distance of 30.02 feet;

THENCE North $12^{\circ}17'28''$ East a distance of 62.46 feet;

THENCE North $16^{\circ}13'57''$ East a distance of 63.14 feet;

THENCE North $20^{\circ}10'26''$ East a distance of 63.14 feet;

THENCE North $24^{\circ}06'55''$ East a distance of 63.14 feet;

THENCE North $28^{\circ}03'24''$ East a distance of 63.14 feet;

THENCE North $31^{\circ}13'15''$ East a distance of 63.15 feet;

THENCE North $31^{\circ}29'37''$ East a distance of 147.19 feet;

THENCE North $13^{\circ}13'30''$ West a distance of 98.42 feet;

THENCE North $58^{\circ}30'23''$ West a distance of 431.13 feet;

THENCE North $59^{\circ}52'23''$ West a distance of 74.86 feet;

THENCE North $67^{\circ}30'47''$ West a distance of 81.84 feet;

THENCE North $76^{\circ}12'18''$ West a distance of 81.84 feet;

THENCE North $84^{\circ}43'46''$ West a distance of 79.17 feet;

THENCE North $89^{\circ}36'33''$ West a distance of 602.32 feet;

THENCE North $00^{\circ}23'27''$ East a distance of 129.99 feet;

THENCE North $89^{\circ}36'33''$ West a distance of 437.66 feet;

THENCE North $48^{\circ}27'47''$ West a distance of 129.26 feet;

THENCE North $00^{\circ}23'27''$ East a distance of 1022.85 feet to the POINT OF BEGINNING.

Said parcel contains 27.499 Acres more or less (\pm), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

PHASE D

A parcel of land being a part of the Southwest Quarter (SW1/4) of Section Twenty-eight (28), Township Nine North (T.9N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6thP.M.), Town of Wellington, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the West Quarter Corner of said Section 28, and assuming the West line of said Southwest Quarter as bearing South $00^{\circ}23'27''$ West, being a Grid Bearing of the Colorado

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State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2601.81 feet, with all other bearings contained herein relative thereto:

THENCE North 88°20'13" East along the North line of said SW1/4, a distance of 50.03;
THENCE South 00°23'27" West, a distance of 120.63 feet;
THENCE North 45°30'57" East a distance of 118.52 feet;
THENCE North 88°20'13" East a distance of 456.33 feet to the POINT OF BEGINNING;
THENCE North 88°20'13" East, a distance of 1633.68 feet;
THENCE South 01°39'41" East, a distance of 211.61 feet to a Point of Curvature (PC);
THENCE along the arc of a curve concave to the West, a distance of 141.94 feet, said curve having a radius of 3960.00 feet, a delta of 02°03'13", and a long chord bearing South 00°38'10" West a distance of 141.93 feet to a Point of Tangency (PT);
THENCE South 00°23'27" West a distance of 357.41 feet to a PC;
THENCE along the arc of a curve concave to the Northwest, a distance of 23.56 feet, said curve having a radius of 15.00 feet, a delta of 90°00'00", and a long chord bearing South 45°23'27" West, a distance of 21.21 feet to a PT;
THENCE North 89°36'33" West a distance of 1632.79 feet to a PC;
THENCE along the arc of a curve concave to the Northeast, a distance of 23.56 feet, said curve having a radius of 15.00 feet, a delta of 90°00'00", and a long chord bearing North 44°36'33" West, a distance of 21.21 feet to a PT;
THENCE South 00°23'27" West a distance of 402.35 feet to a PC;
THENCE along the arc of a curve concave to the West, a distance of 15.41 feet, said curve having a radius of 430.00 feet, a delta of 2°03'13", and a long chord bearing North 00°38'10" West a distance of 15.41 feet to a PT;
THENCE North 01°39'47" West, said course being non-tangent to the afore said curve, a distance of 58.60 feet to a PC;
THENCE along the arc of a curve concave to the Southeast, a distance of 23.56 feet, said curve having a radius of 15.00 feet, a delta of 90°00'00", and a long chord bearing North 43°20'13" East a distance of 21.21 feet to the Point of Tangency (PT);
THENCE North 88°20'13" East a distance of 13.69 feet;
THENCE North 01°39'47" West a distance of 160.00 feet to the POINT OF BEGINNING.

Said parcel contains 26.463 Acres more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.