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**Declaration of Covenants,
Conditions and Restrictions
of
Powder Horn Subdivision**

PA. ACT

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF POWDER HORN SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF POWDER HORN SUBDIVISION (the "Declaration") is made as of the 16th day of September, 2002, by Powder Horn Development, LLC, by Ray Harvey, Manager (the "Declarant").

RECITALS

A. Declarant is the owner of that certain real property located in the County of Archuleta, Colorado, more particularly described on the attached Exhibit A (the "Property").

B. Declarant desires to create a common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes § 38-33.3-101, *et seq.* (the "Act") on the Property, the name of which is Powder Horn Subdivision.

ARTICLE 1 DECLARATION AND SUBMISSION

1.1 *Declaration.* Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

ARTICLE 2 DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, the Articles of Incorporation or any Amendments thereto, and the Bylaws or any Amendments thereto, shall have the following meanings:

2.1 *"Agency"* means any agency or corporation that purchases or insures residential mortgages.

2.2 *"Articles"* mean the Articles of Incorporation for Powder Horn Home Owners Association, Inc., a Colorado non-profit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.3 *"Allocated Interests"* means the Common Expenses liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

(a) The Common Expenses liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community as of the date of the calculation. Such fraction is then multiplied by the Common Expenses or the Assessment in question to determine that Lot's share thereof. The Common



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Expenses liability of a Lot is determined without reference to the size, location, value or use of the Lot.

(b) One vote in the Association is allocated to each Lot in the Common Interest Community.

(c) The foregoing allocations may not discriminate in favor of Lots owned by Declarant or an affiliate of Declarant.

(d) If Lots are added to or withdrawn from the Common Interest Community, (i) the Common Expenses liability for each Lot shall be reallocated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community following the addition or withdrawal of such Lots, and (ii) one vote in the Association shall continue to be allocated to each Lot in the Common Interest Community following the addition or withdrawal of such Lots.

2.4 *"Annual Assessment"* means the Assessment levied pursuant to an annual budget.

2.5 *"Assessments"* means the Annual, Special and Default Assessments levied pursuant to Article 12 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

2.6 *"Association"* means Powder Horn Subdivision Property Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

2.7 *"Association Documents"* means this Declaration, the Articles of Incorporation, the Bylaws, the Map and any procedures, rules, regulations or policies adopted under such documents by the Association.

2.8 *"Bylaws"* means the Bylaws adopted by the Association, as amended from time to time.

2.9 *"Clerk and Recorder"* means the office of the Clerk and Recorder in the County of Archuleta, Colorado.

2.10 *"Common Element"* means all real and personal property now or hereafter owned by or dedicated to the Association for the common use and enjoyment of the Owners. The Common Elements, if any, consist of General Common Elements, if any, and Limited Common Elements, if any.

2.10.1 *"General Common Elements"* means all tangible physical real and personal properties of this Project except Limited Common Elements and the Lots.

2.10.2 *"Limited Common Elements"* means those parts of the Common Elements which are either limited to or reserved in this Declaration, on a Map or by action of the Association, for the exclusive use of an Owner of a Lot or are limited to and reserved for the common use of more than one but fewer than all Owners.

2.11 *"Common Expenses"* means (i) all expenses expressly declared to be common expenses

by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 11; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

2.12 *"County"* means the County of Archuleta, Colorado.

2.13 *"Declaration"* means this Declaration and the Map, and amendments and supplements to the foregoing.

2.14 *"Executive Board"* means the governing body of the Association.

2.15 *"First Mortgage"* means any Mortgage that is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

2.16 *"First Mortgagee"* means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

2.17 *"Manager"* means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

2.18 *"Map"* means all final Plats of the subdivided Parcels recorded with the Clerk and Recorder of Archuleta County, Colorado and any supplements and amendments thereto.

2.19 *"Member"* means every person or entity that holds membership in the Association.

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

2.21 *"Mortgagee"* means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

2.22 *"Owner"* means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, and "Owner" also includes the purchaser under a contract for deed covering a Lot with a current right of possession and interest in the Lot.

2.23 *"Parcel"* means each platted, numbered and recorded division of vacant land as depicted on the Map.

2.24 *"Project"* means the common interest community created by this Declaration and as shown on the Map, consisting of the Property and the Common Elements.

2.25 *"Property"* means the real property described in Exhibit A attached hereto, together with such additional property as is subjected to this Declaration in accordance with Article 20.

2.26 *"Lot"* means one Parcel, together with the appurtenant interest in the Common Elements.



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2.27 "*Successor Declarant*" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

2.28 "*Supplemental or Amended Declaration*" means an instrument which amends this Declaration.

2.29 "*Supplemental Map*" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

ARTICLE 3 NAME, DIVISION INTO LOTS, RESTRICTIONS ON USE

3.1 *Name.* The name of the subdivision is Powder Horn Subdivision. The subdivision is a common interest community pursuant to the Act.

3.2 *Association.* The name of the Association is The Powder Horn Homeowners Association, Inc. Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado.

3.3 *Number of Lots.* The maximum number of Lots in the Project is 44 (including Tract A, Tract B and Tract C).

3.4 *Identification of Lots.* The identification number of each Lot is shown on the Map.

3.5 *Description of Lots.* Each Lot shall consist of surveyed and platted parcels as shown on the Map and any Supplemental Map.

3.6 *Restrictions on Use.* Use and enjoyment of each Lot shall be subject to the following restrictions and such additional restrictions as the Executive Board may propose and are accepted by the Owners by a vote of two-thirds of the majority of all Owners:

3.6.1 *Resubdivision.* No Parcel in Powder Horn Subdivision shall be re-subdivided.

3.6.2 *Single Family Residential Use/Home Occupations.* The use of all Lots is expressly limited to single family residential uses. No commercial activity shall be allowed on any Lot. However, this limitation shall not be construed to prohibit "professional-type" home occupations so long as all such activity is limited to in-home, with no employees. No business shall be permitted which results in commercial traffic in the neighborhood (for example, day care centers and bed and breakfasts are prohibited). No signage of any type promoting any business shall be permitted.

3.6.3 *Association Power.* The Association shall have the right and power to prohibit



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storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Lot or the Common Elements, if any.

3.6.4 *Trash and Rubbish.* Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner, and all containers shall be animal proof, and shall be kept in a clean, sanitary condition.

3.6.5 *Nuisances.* No owner shall cause or allow the origination of excessive odors or sounds from his property. No owner shall cause or allow any other nuisances of any kind whatsoever to exist on his property.

3.6.6 *Animals.* Except as specifically permitted below or by the Rules and Regulations, no animals, reptiles, primates, fish, fowl, livestock or insects of any kind shall be kept, raised, bred, maintained or boarded within or upon any part of the Powder Horn Subdivision.

Notwithstanding the foregoing, each Lot shall be entitled to a reasonable number of Household Pets, so long as such pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, or do not become a nuisance to other Lot Owners or Occupants. Household Pets must be kept under the owner's direct control at all times, and shall not be permitted to run free through the subdivision. All Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws.

The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet. Pet Owners may be subjected to fines as imposed by the Colorado Division of Wildlife if domestic pets are caught harassing or destroying wildlife. In addition to fines imposed by the Colorado Division of Wildlife, the Executive Board shall have the authority to levy fines against a Lot Owner or Occupant if their domestic pet is caught harassing or destroying wildlife. The amount of the fines shall be determined by the Executive Board.

The Executive Board shall have, and is hereby given, the right and authority to determine in its sole discretion that Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance to other Lot Owners or Occupants, or that a Lot Owner or Occupant is otherwise in violation of this Section 3.6.6, and to take such action or actions as it deems reasonably necessary to remedy the violation. Without limiting the generality of the foregoing, the Executive Board may require the owner or custodian of a dog that barks or howls excessively, or of a Household Pet with other offensive habits, to confine such animal indoors.

All Household Pets must be confined to the Owner's Lot and, when not within an enclosure, on a leash or under voice command at all times.

3.6.7 *Motor Vehicles.* No motorized vehicle which is either non-operational or non-licensed shall be kept or stored in Powder Horn Subdivision, unless said vehicle is kept or stored in a fully enclosed building.

3.6.8 *Temporary Residences.* No structure of temporary character, recreational vehicle, camper trailer, basement, tent or accessory building shall be used on any tract as a residence at any time.

3.6.9 *Mobile Homes.* Mobile homes, modular homes or manufactured homes shall not be permitted on any Lot within Powder Horn Subdivision. All homes must be placed on a permanent foundation.

3.6.10 *Land Use.* Commercial wood harvesting, mining (including the removal of soil, gravel or rock, except by the Declarant for the purpose of road or driveway or trail construction within the project) is prohibited. To the extent possible the natural vegetation shall be preserved.

3.6.11 *Hunting.* Hunting on any parcel is expressly prohibited.

3.6.12 *Sewage Disposal.* All lots shall dispose of sewage through the Pagosa Area Sanitation and Water District ("P.A.W.S."), or such other central or municipal sewage treatment facilities that may otherwise become available.

3.6.13 *Fences.* Fences shall not be erected on any parcel within the Association without the approval and consent of the Executive Board. Buried wire and hidden pet control fences transmitting an electric or high frequency signal detectable only through a transmitter are expressly permitted, and only their location must be approved. The cost of constructing and maintaining the fence shall be borne by the Owner. The Design Review Board shall have the express authority to approve or disapprove all fences, including location, height, and materials. No owner shall have the right to put up a perimeter fence around their entire property, unless such is expressly approved by the Design Review Board.

3.6.14 *Building Envelopes.* Although no Building Envelopes are designated on the plat, the Design Review Board must approve the construction of any improvement on any lot, including the location of those improvements. No building, structure or fence of any kind shall be constructed without the approval of the Design Review Board.

3.6.15 *Storage of Boats, Motorhomes, Travel Trailers.* No storage or keeping of boats, travel trailers, motor homes, equipment, machinery or any other such similar items shall be allowed on the Property except within a covered enclosure closed on at least three sides and such that the boat, travel trailers, motor homes, (or other such similar items) are not visible from another parcel within the Property (except for occasional, short term use by visitors).

3.6.16 *Diversion of Water.* Diversion of water from surface creeks, streams, springs or other channels, or through underground wells is expressly prohibited within the Association unless a valid well permit has been obtained by the Owner from the State Water Engineer or a valid water right is adjudicated by a court of competent jurisdiction.

3.6.17 *Utilities Underground.* All utility lines, including, but not limited to, telecommunication, cable television, natural gas, and electric lines installed or maintained on the Property shall be buried underground.

3.6.18 *Discharge of Firearms.* The discharge of firearms is expressly prohibited.



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3.6.19 *Outdoor Lighting.* Large outdoor mercury vapor and sodium lights and "farm lights" are prohibited on the Property. All outdoor lighting shall be such that the source of the light is not directly visible from other Tracts, which may require downward directed or shielded lights.

3.6.20 *Noise.* No outdoor speakers, use of off-road vehicles or other activity shall be conducted or used in such a manner that would disturb people or animals on other Lots.

3.6.21 *Satellite Dishes; Antennae.* No satellite dishes exceeding 24 inches in diameter shall be maintained on any Lot. No other antennae, radio or television signal distribution or capturing device shall be allowed on any Lot except for conventional television or FM radio antennae which are not visible from another Lot and do not exceed the height of a residence on the Lot by more than 6 feet.

3.6.22 *Continuity of Construction.* All construction, reconstruction, alterations or improvements shall be prosecuted diligently to completion. All exterior construction shall be completed within 18 months of the commencement thereof.

3.6.23 *Signs.* No sign of any kind shall be displayed to public view on any Lot except a sign identifying the Owner and/or the name of the ranch or address of the Lot, or advertising the Lot for sale. Any such allowed sign shall not be more than nine square feet in size.

3.6.24 *Setbacks.* Minimum setbacks shall be 20 feet from any side lot line, and 30 feet from front and rear lot lines; however, the location of any improvements must be specifically approved by the Design Review Board pursuant to Section 3.6.14 above.

3.6.25 *Wildfire Mitigation.* Reserved.

3.6.26 *Guest Houses.* A separate guess house structure is expressly prohibited. However, this provision shall not prohibit, with appropriate approvals, the construction of a "granny flat" which is connected to the principal structure, nor shall it prohibit a "granny flat" or "mother-in-law apartment" above a separate garage structure.

ARTICLE 4 DESIGN REVIEW BOARD

4.1 *Establishment of Design Review Board.* The Association shall have a Design Review Board, which shall consist of a minimum of one (1) member who may but shall not necessarily be Owners of Lots in the Powder Horn Subdivision. All members of the Design Review Board shall be appointed and removed from time to time by the Executive Board in its sole discretion. A member may be removed by the Executive Board at any time upon written notice, without cause. Subject to the 1-member minimum, the Executive Board may increase or decrease the size of the Design Review Board from time to time in its discretion. The Executive Board may hire or appoint a secretary for the Design Review Board, and shall provide appropriate compensation for such secretarial services.

4.2 *Establishment of Subcommittees.* The Design Review Board shall have the right but

never the obligation to establish subcommittees to perform one or more of the functions of the Design Review Board. For purposes of this Declaration, all references to the Design Review Board shall also refer to any subcommittees established by the Design Review Board. The procedures for establishment of subcommittees, the rights and duties thereof, and the limitations thereon may be established and adopted by the Design Review Board from time to time, in its discretion.

4.3 *Pre-Submission Conference.* It is strongly recommended, but shall not be required, that an Owner proposing to make Improvements to its Lot schedule a pre-submission conference with the Design Review Board to discuss the general nature and scope of the contemplated Improvements and the Committee's requirements and procedures in connection therewith. The Design Review Board shall give priority to the scheduling of such pre-submission conferences.

4.4 *Submission of Plans, Specifications and Data Regarding Proposed Improvements and Proposed Builder* Prior to commencement of work to accomplish any proposed Improvements, the Owner proposing to make such Improvements shall submit to the Design Review Board at its offices such descriptions, surveys, Lot plans, drainage plans, elevation drawings, construction plans, landscaping plans, specifications, and samples of materials and colors as the Design Review Board shall reasonably request showing among other things the nature, kind, shape, height, width, color, materials, and location of the proposed Improvements. The Owner shall also inform the Design Review Board of the identity of the Owner's proposed Builder, and shall provide the Design Review Board with any requested information about the proposed Builder. All submissions shall conform to and be in accordance with the Design Regulations established pursuant to Section 4.7. The Owner shall be entitled to receive a receipt for the same from the Design Review Board or its authorized agent. The Design Review Board may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvements and Builder, including without limitation financial information and references with respect to the proposed Builder. Until receipt by the Design Review Board of all required information and materials in connection with the proposed Improvements and Builder, the Design Review Board may postpone review of the application.

4.5 *Criteria for Approval or Disapproval.* The Design Review Board shall approve any proposed Improvements only if it determines in its reasonable discretion that the Design Regulations have been complied with; that the proposed Improvements will not be detrimental to the value or enjoyment of the surrounding areas in the Powder Horn Subdivision; that the siting, design and appearance of the proposed Improvements will be in harmony with the surrounding areas in the Powder Horn Subdivision; and that the upkeep and maintenance of the proposed Improvements will not become a burden on the Association. The Design Review Board may condition its approval of any proposed Improvements upon the making of such changes therein as the Design Review Board may deem appropriate.

The Design Review Board shall approve a proposed Builder unless it determines in the exercise of its reasonable discretion, based upon the information submitted to it by the Owner and such other information as may be available to the Committee, that the proposed Builder does not have the proven ability to perform and complete the work in a prompt, competent and workmanlike manner and to provide a finished work product of a quality which is consistent with the Design Regulations. Under no circumstances shall the Committee's approval of a Builder for a particular Owner or Improvement constitute approval of that Builder for any other Improvement on the same Lot or for any other like or



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unlike work on any other Lot.

Furthermore, the approval by the Committee of any Improvement or Builder shall in no event imply or require that such approval will be granted again in the future for the same or a similar Improvement or Builder, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Regulations, to grant or deny such approval in each instance on the merits of the particular application or proposal and considering the circumstances surrounding the same.

4.6 *Design Regulations.* The Executive Board has established an initial set of rules, procedures, standards, guidelines and requirements, including without limitation architectural, design and Design Regulations and guidelines, which shall govern the review and approval or disapproval of proposed Improvements within the Powder Horn Subdivision, of proposed Builders of such Improvements, and other matters provided for therein (the "Design Regulations"). The Executive Board may make such amendments and additions to the Design Regulations as the Committee deems necessary or appropriate from time to time to accomplish the purposes of (and as are not in conflict with) this Declaration and of any pertinent Supplemental Declaration and to ensure the orderly and attractive development of the Powder Horn Subdivision. The Design Regulations are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on the Powder Horn Subdivision, and on all Lot Owners, Occupants, Members or other Persons as if expressly set forth herein. A copy of the current Design Regulations shall, at all times, be a part of the Association's records. The Design Review Board shall have the right and authority to determine the existence of any violation of the Design Regulations or of any approvals granted or other determinations made by, or other requirements of, the Design Review Board, however, such determination shall be subject to appeal to the Executive Board.

4.7 *Design Review Fee.* The Executive Board shall, in the Design Regulations, provide for the payment of a fee to accompany each request for approval of any proposed Improvement and Builder. The Executive Board shall provide that the amount of such fee shall be in an amount necessary to cover the demonstrable costs and expenses associated with such review. The Design Review Board shall not take any action on a request for approval until all required fees are paid in connection therewith.

4.9 *Decision of Board.* Any decision of the Design Review Board shall be made within twenty (20) days after receipt by the Design Review Board of all materials and information required by the Design Review Board, unless such time period is extended by mutual written agreement. The decision shall be in writing and if the decision is not to approve the proposed Improvements or Builder, the reasons therefor shall be stated. The decision of the Design Review Board shall be promptly transmitted to the Owner at the address furnished by the Owner to the Design Review Board.

4.9 *Failure of Board to Act on Plans.* Any written request for approval of proposed Improvements and a proposed Builder shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Owner by the Design Review Board within thirty (30) days after the date of receipt by the Design Review Board of all required materials and information. In addition, the Design Review Board shall be entitled to inform the Owner that it needs an additional period of time, not to exceed an additional 30 days, to review the submittal.



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4.10 *Prosecution and Completion of Work After Approval.* Following the approval of any proposed Improvements by the Design Review Board for single family Lots, the proposed Improvements shall be completed by the Lot Owner using the Approved Builder: (a) as promptly and diligently as possible but in no event in excess of the time periods set forth below; (b) in compliance with the Design Regulations and with all applicable laws, regulations and codes, (c) in strict conformance with all plans and specifications and other materials presented to and approved by the Design Review Board; and (d) in accordance with any and all conditions imposed by the Design Review Board. All Improvements approved by the Design Review Board shall be completed, including issuance of a Certificate of Compliance and the removal of all construction equipment, materials and debris (i) within 18 months from the date of approval of such Improvements by the Design Review Board, or (ii) within such other time period as the Design Review Board may prescribe. Provided, however, that any and all landscaping and/or gardening approved by the Design Review Board which is related to the initial construction of a residence on a Lot shall be completed no later than 9 months immediately following the issuance of the Certificate of Compliance for such residence. Failure to comply with the terms and conditions of this Section 4.10 shall constitute noncompliance with the terms and provisions of this Declaration and the Design Review Board and/or the Executive Board shall have the right to invoke all rights and remedies provided to them hereunder, including but not limited to, the imposition of fines and penalties.

4.11 *Certificate of Compliance; Inspection of Work; Correction of Defects.* Upon the completion of any Improvements for which plans and specifications and a Builder have been approved by the Design Review Board, the Owner or the Approved Builder shall submit to the Committee a written Application for a Certificate of Compliance, on a form to be provided by the Committee, which Application shall certify that the Improvements have been completed in accordance with the plans, specifications and conditions approved by the Committee and with the Design Regulations. Until receipt of such Application, the Committee shall not be deemed to have any notice regarding completion of the Improvements.

Within thirty (30) days following receipt of the Application, the Design Review Board or its duly authorized representative shall inspect the Improvements. If the Committee finds that the Improvements have not been completed in accordance with the plans, specifications and conditions approved by the Committee and/or with the Design Regulations, it shall notify the Lot Owner in writing of such noncompliance within said thirty (30) day period, specifying the particulars of noncompliance, and shall request the Owner to remedy the same.

If upon the expiration of thirty (30) days from the date of such notification of non-compliance the Lot Owner shall have failed to remedy such noncompliance, the Design Review Board shall notify the Executive Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Executive Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Lot Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of the announcement of the Executive Board ruling. If the Lot Owner does not comply with the Executive Board ruling within such period, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Lot Owner shall reimburse the Association, upon demand, for all expenses, including interest on monies expended and attorneys' fees, incurred in connection therewith. If such expenses are not repaid by the Lot Owner to the Association within 30 days following delivery of a written demand therefore to the Owner, the Executive Board shall levy a



Reimbursement Assessment against such Owner and the Owner's Lot.

When the Design Review Board is satisfied that the Improvements have been completed in accordance with the plans, specifications and conditions approved by the Committee and with the Design Regulations, it shall issue to the Owner a Certificate of Compliance with respect to said Improvements. No newly-constructed residence on a Lot shall be occupied until (a) a Certificate of Compliance has been issued therefor, and (ii) if required by the Archuleta County, a Certificate of Occupancy has been issued therefor.

4.12 *Executive Board Power to Grant Variances.* The Executive Board may authorize variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration or the Design Regulations pertaining to proposed Improvements and Builders and the criteria therefor, including restrictions upon height, size, floor area, location or placement of structures, or similar restrictions, when unique circumstances not created by the Lot Owner, such as topography, natural obstructions, or aesthetic or environmental considerations would otherwise result in hardship.

All variances that are granted by the Executive Board must be evidenced in writing, must specify the Lot for which the variance is granted and the unique circumstances justifying the variance, and must be signed by at least a majority of the members of the Executive Board. If any such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration or the Design Regulations shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration or the Design Regulations for any purpose except as to the particular property and particular provision hereof covered by the variance. A copy of each variance request and approval, or denial, will be kept on file at the Association offices.

The granting of a variance in a particular instance shall in no event imply or require that such a variance will be granted again in the future in a similar situation, and the Executive Board shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Regulations, to grant or deny a variance in each instance on the merits of the particular application and considering the circumstances surrounding the same.

4.13 *Improvements and Builder Must Conform to Approvals.* No building, fence, wall, structure, landscaping or other Improvement of whatever type shall be commenced, constructed, erected, placed, installed, located, maintained or removed within the Powder Horn Subdivision, nor shall there be any additions or changes to the exterior of any residence or other structure or Improvement upon a Lot or the landscaping, grading or drainage thereof, including without limitation, the painting (other than painting with the same color and type of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Board in accordance with the Design Regulations.

4.14 *Compensation of Committee Members.* In the discretion of the Executive Board, the members of the Design Review Board shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder. Such compensation shall be set by the Executive Board from



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time to time.

4.15 *Meetings and Actions of Committee.* The Design Review Board shall meet from time to time as necessary to perform its duties hereunder. The Design Review Board may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Board, except the granting of approval to any Improvements or Builders and the granting of variances. The action of such Committee Representative within the authority of such Committee Representative shall constitute the action of the Design Review Board. A majority of the members of the Design Review Board shall constitute a quorum of the Committee. Actions of the Committee may be taken (without a meeting) by the written consent of a majority of the members thereof, or at a meeting at which a quorum is present in person or by proxy, by the vote of a majority of such members constituting the quorum, but in no event less than two (2) members.

4.16 *Records of Actions.* The Design Review Board shall report in writing to the Executive Board all final action of the Design Review Board, and the Executive Board shall keep a permanent record of such reported action.

4.17 *Non-liability for Approval or Disapproval of Plans and Specifications and Builders or for Issuance of a Certificate of Compliance.* Plans and specifications which are approved by the Design Review Board as to style, exterior design, appearance, location, and consistency with the Design Regulations, are not approved for engineering design or for compliance with zoning, building ordinances, environmental laws, or any other applicable laws or regulations, and by approving such plans and specifications, neither the Design Review Board, the members thereof, the Association, any Member, the Executive Board assumes any liability or responsibility therefor, or for any defect in any Improvement constructed from such plans and specifications. Neither the Design Review Board, any member thereof, the Association, the Executive Board nor the shall be liable to any Lot Owner, Occupant or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the issuance of a Certificate of Compliance for any Improvements, or (d) the development, or manner of development of any property within the Powder Horn Subdivision. The approval of plans and specifications by the Design Review Board, and/or the issuance of a Certificate of Compliance by the Design Review Board, shall not under any circumstances constitute or be deemed to be a representation or warranty that the plans, specifications or completed Improvements comply with applicable laws, ordinances or regulations, including but not limited to, zoning ordinances and building codes and environmental laws.

4.18 *Right to Inspect.* Any member or authorized consultant of the Design Review Board or of the Executive Board, or any authorized officer, employee or agent of the Association, may (but shall not be obligated to) at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice to the Lot Owner, in order to inspect Improvements constructed or being constructed on such Lot, to ascertain whether such Improvements have been or are being built or changed in compliance with the Design Regulations, the approvals granted by the Design Review Board, and this Declaration.



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4.19 *Reconstruction of Common Areas.* The reconstruction by the Association after destruction by casualty or otherwise of any Common Areas or Improvements thereon which is accomplished in substantial compliance with "as built" plans for such Common Areas or Improvements shall not require compliance with the provisions of this Article 4 or the Design Regulations.

4.20 *Enforcement.* The requirements and provisions of this Article 4 and/or of the Design Regulations shall be enforceable in accordance with the rights and procedures set forth herein below.

ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

5.1 *The Association.* Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

5.2 *Transfer of Membership.* An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot. The Association shall not create a right of first refusal on any Lot and Owners may transfer ownership of their Lots free from any such right.

5.3 *Membership.* The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Lot. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Article III of the Bylaws. Each Owner, including Declarant while Declarant owns any Lot, is subject to all the rights and duties assigned to Owners under the Association Documents.

5.4 *Voting.* There shall be one vote per Lot.

(a) The owner(s) of each Lot shall have one vote per Parcel owned.

(b) If only one of several owners of a Lot is present at a meeting of the Association, the owner present is entitled to cast the vote allocated to the Lot. If more than one of the owners is present, the votes allocated to the Lot may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the vote allocated to the Lot without protest being made promptly to the person presiding over the meeting by another owner of the Lot.

5.5 *Declarant Control.* Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act and as set forth in Articles VIII of the Association's Articles. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers are set out in the Articles and Bylaws of the Association. Declarant may voluntarily relinquish such power by recording a notice executed by Declarant with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.



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5.6 *Books and Records.* The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

5.7 *Manager.* The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

5.8 *Rights of Action.* The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

5.9 *Implied Rights and Obligations.* The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act, and by the Colorado Nonprofit Corporation Act.

5.10 *Notice.* Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or on the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Lot.

ARTICLE 6 POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

6.1.1 Adopt and amend bylaws and rules and regulations;

6.1.2 Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;

6.1.3 Hire and terminate managing agents and other employees, agents and independent



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contractors;

6.1.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;

6.1.5 Make contracts and incur liabilities;

6.1.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements, if any;

6.1.7 Cause additional improvements to be made as a part of the Common Elements, if any;

6.1.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements, if any, may be conveyed or subjected to a security interest only if Members entitled to cast at least fifty one percent (51%) of the votes agree to that action and if all Owners of Lots to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

6.1.9 Grant easements, leases, licenses and concessions through or over the Common Elements, if any;

6.1.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements, if any;

6.1.11 Impose charges for late payment of Assessments, recover reasonable attorney 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 was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;

6.1.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

6.1.13 Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;

6.1.14 Assign its right to future income, including the right to receive Assessments;

6.1.15 Exercise any other powers conferred by the Declaration or Association Bylaws;

6.1.16 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

6.1.17 Exercise any other powers necessary and proper for the governance and operation



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of the Association, including, but not limited to the creation of regulations for the use of common property.

ARTICLE 7 MECHANIC'S LIENS

7.1 *No Liability.* If any Owner shall cause any material to be furnished to his Lot or any labor to be performed therein or thereon, no Owner of any other Lot shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Lot.

7.2 *Indemnification.* If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements, if any, or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and hold all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

7.3 *Association Action.* Labor performed or materials furnished for the Common Elements, if any, if duly authorized by the Association in accordance with this Declaration or its Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements, if any. Any such lien shall be limited to the Common Elements, if any, and no lien may be effected against an individual Lot or Lots.

ARTICLE 8 EASEMENTS

8.1 *Recorded and Implied Easements.* The Property shall be subject to all easements as referenced in Exhibit B to this Declaration, and as shown on any Map or plat, as well as those of record, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), implied easements for the location of an entryway and perimeter wall or fence (if any), an easement for the path/trail located on various lots within the subdivision, which implied easements are hereby reserved by Declarant and dedicated to the Association, and otherwise as set forth in this Article.

8.2 *Utility Easements.* As set forth on the plat, there is hereby created an easement upon, across, over, in and under 10 feet (or 20 feet as the case may be) on each side of the applicable common side and interior rear Lot lines (as shown on plat) for installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV, and electricity. Said easement includes future utility services not presently available to the Lots which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Lots and to affix and



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maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations. Notwithstanding the foregoing all utility service lines shall be placed underground.

8.3 *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

ARTICLE 9 MAINTENANCE

9.1 *Maintenance by Owners.* Each Owner shall maintain and keep in repair his Lot and any structures or buildings thereon, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Owners.

9.2 *Maintenance by Association.* The Association shall be responsible for the maintenance and repair of the Common Elements, if any, (unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's Agent) including any drainage structure or facilities and such maintenance and repair shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep (including snow removal), repair and replacement, subject to any insurance then in effect, of all roads, trails and paths in the subdivision, including Tract C designated on the plat, as well as any entryway or perimeter wall/fencing. In the event the Association does not maintain or repair these Common Elements, if any, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

9.3 *Association Maintenance as Common Expense.* The cost of maintenance and repair by the Association, including but not limited to road maintenance and snow plowing, maintenance of the trails and paths, maintenance (including landscaping) of any gate, entry way, or common perimeter fencing (if any) shall be a Common Expense.

ARTICLE 10 INSURANCE

10.1 *General Insurance Provisions.* The Association shall acquire and pay for, out of the assessments levied under Article 11 below, any insurance policies required by the Colorado Common Interest Owners Act and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the Common Elements, if any. Such insurance shall conform to the requirements set forth in C.R.S. §38-33.3-313(4)(a)-(d). An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit.

10.2 *Common Expenses.* Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.



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ARTICLE 11 ASSESSMENTS

11.1 *Obligation.* Each Owner, including Declarant while an Owner of any Lot, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments.

11.2 *Budget.* Within thirty (30) days after the adoption of any proposed budget for the Association by the Executive Board pursuant to the terms of Article II, section 2.2 of the Bylaws, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners pursuant to the provisions in the Bylaws. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

11.3 *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, if any, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the Property, care of grounds within the Common Elements, if any, routine repairs, replacements and renovations within and of the Common Elements, if any, wages, common water and utility charges for the Common Elements, if any, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements, if any, on a periodic basis, as needed.

Annual Assessments shall be payable on a yearly basis in advance and shall be due on June 1, of each year. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

11.4 *Apportionment of Annual Assessments.* The Common Expenses shall be allocated among the Lots equally for Common Expenses in effect on the date of assessment.

11.5 *Special Assessments.* In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may



determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, if any, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 11.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Lots any extraordinary maintenance, repair or restoration work on fewer than all of the Lots shall be borne by the Owners of those affected Lots only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Lot or the actions of a particular Owner (or his agents, servants, guests, tenants or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

11.6 *Default Assessments.* All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

11.7 *Effect of Nonpayment; Assessment Lien.* Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) Assess an interest charge from the due date at the yearly rate of eighteen percent (18%), or such other lawful rate as the Executive Board may establish;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Suspend the rights of the Owner, and the Owner's family, guests, lessees and invitees, to use Common Element facilities during any period of delinquency;
- (v) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (vi) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (vii) Proceed with foreclosure as set forth in more detail below.



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Assessments chargeable to any Lot shall constitute a lien on such Lot. The Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

11.8 *Personal Obligation.* Each Assessment against a Lot is the personal obligation of the person who owned the Lot at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or any part of the Common Elements, if any. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

11.9 *Payment by Mortgagee.* Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

11.10 *Statement of Status of Assessment Payment.* Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

11.11 *Maintenance Accounts; Accounting.* If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other Associations managed by the other person or manager, (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.



ARTICLE 12 DAMAGE OR DESTRUCTION

12.1 *The Role of the Executive Board.* Except as provided in Section 9.2, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 11 is sometimes referred to as the "Association-Insured Property").

12.2 *Disbursement of Funds for Repair and Reconstruction.* The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, the remainder to be divided among the Lots first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE 13 CONDEMNATION

13.1 *Rights of Owners.* Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

13.2 *Partial Condemnation; Distribution of Award; Reconstruction.* The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such Common Elements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such Common Elements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Lots, first to the Mortgagees and then to the Owners, as their interests appear.

13.3 *Complete Condemnation.* If all of the Property is taken, condemned, sold or otherwise



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disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that the approval is first obtained of fifty-one percent (51%) of First Mortgagees of Lots subject to First Mortgages (which percentage is measured by votes allocated to such Lots), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 12.2 above.

ARTICLE 14 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to Article 10, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 10 upon their damage or destruction as provided in Article 10, or a complete or partial taking as provided in Article 13, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 15 RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

15.1 *Reserved Development and Special Declarant Rights.* Declarant shall have all such reserved development and declarant rights (if any) as set forth elsewhere in this agreement, or in the Articles and Bylaws of the Powder Horn Homeowner's Association. In addition, Declarant shall have the right to complete improvements as indicated on any map or plat filed with the respect to the property; the right to maintain offices, signs and model residences on the lots owned by Declarant or its members, which will remain the property of Declarant and may be removed from the property by Declarant at any time; the right to use easements through the Common Elements on the property for the purpose of making improvements on the property; the right to appoint any officer or director of the Association, as provided in this Declaration or in the Articles or Bylaws of the Association; the right of ingress and egress over and upon, under and across the Common Elements, and the right to store materials thereon and to make sure other use thereof as may be reasonably necessary or incident to the construction of the improvements on any of the property subject to this Declaration; the right to construct an entryway and partial perimeter fence/wall on Lots provided however, that no such right shall be exercised by Declarant in such a way as to unreasonably and materially interfere with the occupancy, use, enjoyment or access to an owners lot by that owner or his family, tenants, employees, guests or invitees.

15.2 *Termination of Rights.* The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by the Act, (a) Sixty days after conveyance of 75 percent of initially designated 41 Lots to Owners other than Declarant; (b) Two years after Declarant has ceased to offer Lots for sale in the ordinary course of business; (c) Two years after



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any right to add new Lots was last exercised; or (d) Two years after the recordation of this Declaration, whichever is later. Any management contracts, contracts or leases between the Association and the Declarant or an affiliate of the Declarant, or any contracts or leases which are not bona fide or were unconscionable to the Owners may be terminated by the Executive Board after the end of the Declarant control upon not less than 90 days notice to the other party.

15.3 *Transfer of Records.* Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including the following:

15.3.1 The original or a certified copy of this recorded Declaration;

15.3.2 An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the period of Declarant control ended;

15.3.3 The Association funds or control thereof;

15.3.4 A copy of any plans and specifications used in the construction of the Common Elements, if any;

15.3.5 All insurance policies in force;

15.3.6 All certificates of occupancy, if any;

15.3.7 Any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

15.3.8 Written warranties of any contractors, subcontractors, suppliers, and manufacturers that are still effective;

15.3.9 A roster of Owners and mortgagees and their addresses and telephone numbers, if known, as shown in the Declarant's records;

15.3.10 Employment contracts in which the Association is a contracting party; and

15.3.11 Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person(s) performing the service.

ARTICLE 16 DESIGN REVIEW

No alteration or additions to the Common Elements shall be made unless first approved in writing by the Executive Board. The Executive Board shall exercise reasonable judgment to the end that all modifications to the Common Elements conform to and harmonize with existing surroundings and



structures. The Executive Board has the absolute right to deny any requested changes which the Executive Board reasonably determines do not conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any proposed fences on individual parcels which the Executive Board reasonably determines will not conform to and harmonize with existing surroundings and structures.

ARTICLE 17 MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Lots. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

17.1 *Distribution of Insurance or Condemnation Proceeds.* In the event of a distribution of insurance proceeds or condemnation awards allocable among the Lots for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Lot.

17.2 *Right to Pay Taxes and Charges.* Mortgagees who hold First Mortgages against Lots may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

17.3 *Audited Financial Statement.* Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Lot or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee.

17.4 *Notice of Action.* Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Lot number), will be entitled to timely written notice of:

17.4.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Lot or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Lot or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Lot, or (d) the purposes to which any Lot or the Common Elements are restricted or any amendment set forth in Section 18.2 below;

17.4.2 Any proposed termination of the common interest community;

17.4.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Agency;



17.4.4 Any delinquency in the payment of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;

17.4.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 10.

17.5 *Action by Mortgagee.* If this Declaration or any Association Documents require the approval of Mortgagees then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

17.6 *Liability of First Mortgagee.* Notwithstanding any other provision of this Article 17, a First Mortgagee shall not be liable for any assessment, charge, penalty or fine and the lien for any such assessment, charge, penalty or fine shall be junior to any First Mortgage on a Lot taken in good faith, for value, and perfected by recording in the office of the Clerk and Recorder for Archuleta County, Colorado, prior to the time a lien for failure to pay any such amount is recorded. Any First Mortgagee who acquires title to such Lot by foreclosure or deed in lieu of foreclosure shall acquire title to such Lot free and clear of any lien for unpaid assessments attributable to expenses of the Association arising after the date upon which the First Mortgage receives a deed to the Lot. The Association shall retain the right to collect all unpaid assessments, charges, penalties or fines from any excess bid at foreclosure or from the predecessor Owner pursuant to Article 11, Paragraph 11.8.

ARTICLE 18 DURATION OF COVENANTS AND AMENDMENT

18.1 *Term.* The covenants and restrictions of this Declaration shall run with and bind the land for twenty years and shall be automatically extended for successive twenty year periods, unless an instrument is signed revoking or terminating the subdivision pursuant to the provisions of Article 18.3 of this Declaration or the Act.

18.2 *Amendment.* This Declaration, or any provision of it (except the Provisions of Article 15 which shall not be amended without the consent of the Declarant during the period of Declarant Control, may be amended at any time by Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose.

Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under the Act.

18.3 *Revocation.* This Declaration shall not be revoked nor shall the regime created hereby be terminated (except as provided in Article 12 regarding total destruction and Article 13 regarding total



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condemnation), without (a) the consent of all of the Owners evidenced by a written instrument duly recorded with the Clerk and Recorder.

ARTICLE 19
 GENERAL PROVISIONS

19.1 *Restriction on Declarant Powers.* Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

19.2 *Enforcement.* Except as otherwise provided in this Declaration, the Executive Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

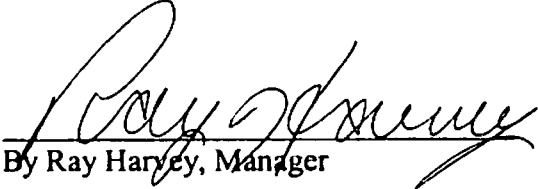
19.3 *Severability.* Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

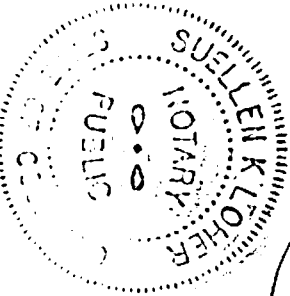
19.4 *Conflicts Between Documents.* In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

19.5 *Perpetuities.* If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

DECLARANT:

Powder Horn Development, LLC


 By Ray Harvey, Manager



STATE OF COLORADO)
 COUNTY OF ARCHULETA) ss.

The foregoing instrument was acknowledged before me this 16 day of September, 2002, by Ray Harvey, Manager of Powder Horn Development, LLC. Witness my hand and official seal.

My commission expires: MARCH 21, 2006
S. K. Lohar
 Notary Public



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LIST OF EXHIBITS

Exhibit A	Property Description
Exhibit B	Easements and Licenses of Record



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Exhibit "A"

Lots 1 – 41 inclusive, and Tracts A, B and C, of the Powder Horn Subdivision, according to the plat thereof recorded in the real estate records of Archuleta County, Colorado at Reception No. 20208425



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**DESIGN REGULATIONS
OF
POWDER HORN SUBDIVISION**

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DESIGN REGULATIONS OF POWDER HORN SUBDIVISION

These Design Regulations have been established by the Powder Horn Subdivision Design Review Board in accordance with the Declaration of Covenants, Conditions and Restrictions for Powder Horn Subdivision. As these Design Regulations are subject to amendment from time to time, it is the responsibility of each interested party to obtain a copy of the most recently revised version.

1. OVERVIEW

A comprehensive design review process has been established pursuant to these Design Regulations, providing each owner the opportunity to draw upon the expertise and knowledge which has been acquired during the planning and development of Powder Horn Subdivision. Since the preservation and enhancement of landscape at Powder Horn Subdivision are of primary concern, the Design Review Board has been established and charged with the responsibility of insuring that these principles are adhered to throughout all phases of development.

For this reason, the design review process has been established, encompassing the following five phases:

(1) The Pre-Design Conference, during which each owner along with his architect/designer may review their ideas and the natural aspects of the lot with a representative of the Design Review Board before any plans are prepared.

(2) The Preliminary Submittal, at which time the Design Review Board can review conceptual plans to insure conformance with the Design Regulations before the owner finalizes his design.

(3) The Final Submittal, at which time the Design Review Board can review final construction documents to confirm that they are consistent with the previously approved preliminary plans.

(4) The Pre-Construction Conference, during which each builder may review the construction regulations with a representative of the Design Review Board to insure understanding of, and future compliance with, these regulations.

(5) The Final Inspection of the improvements by a representative of the Design Review Board to determine whether actual construction has been completed in strict compliance with the approved plans and Design Regulations.

The Design Review Process was developed to provide adequate check-points throughout the design and development phases, so that time and money are not wasted on plans and designs which do not adhere to the Design Regulations or to the overall principles of Powder Horn Subdivision. This process is a proven and streamlined one and will not result in time delays, provided each owner performs in the spirit with which the Design Regulations are intended, namely, a sensitive approach to the development of his lot within this unique community.

It is strongly recommended that an owner retain competent professional services for planning and design to insure a thorough analysis and understanding of a particular lot and the owner's special needs and living patterns, as well as to provide the ability to communicate to the Design Review Board the concept and design of a proposed residence or improvement.



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The Design Review Process is intended to operate concurrently with the plan review process required by Archuleta County for obtaining a building permit. However, the Powder Horn Subdivision Design Review Process is independent of the Archuleta County Plan Review and is solely intended to enforce the Powder Horn Subdivision Design Regulations.

2. SITE PLANNING AND LANDSCAPE GUIDELINES

The climate, terrain and existing vegetation at Powder Horn Subdivision are all important factors which must be considered in the design of any improvements to properties within its borders. It is the intent of the following guidelines to insure environmentally sound and aesthetically pleasing development at Powder Horn Subdivision for the mutual benefit and enjoyment of all its members.

2.1 SITE WORK

No excessive excavation or fill will be permitted on any lot except where specifically allowed by the Design Review Board due to terrain considerations; every attempt should be made to balance cut and fill with minimal use of retaining walls and engineered building pads.

2.2 GRADING AND DRAINAGE

Site grading and drainage must occur with minimum disruption to the lot, without altering natural drainage patterns as runoff leaves the lot, and without causing conditions that could lead to unnecessary soil erosion.

2.3 ACCESS DRIVES

The location of Access drives must be approved and shall be constructed only in accordance with that approval.

2.4 UTILITIES

All utilities must be placed underground, except temporary lines during construction of a residence. Electric and telephone have been provided for each lot at the property line. All disturbed areas must be restored to their natural condition.

During the development of the plumbing design for each residence, absentee owners should seriously consider the installation of a residential fire sprinkler system to provide an additional measure of protection of their investment during prolonged periods of vacancy.

Electrical service has been provided to the transformer cabinets near the property line. Trenching from the transformer cabinet to the residence is the responsibility of the owner and shall be routed to minimize disruption to the existing landscape; disrupted areas shall be restored to their original condition.

It is required that before any construction begins on any lot within the subdivision that anyone commencing such work shall call 1-800-922-1987 to determine the location of utility lines on any subject lot or common area.



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2.5 WALLS AND FENCING

Any type of walls or fencing, including materials, height and design, must be approved by the Design Review Board. No barbed wire, razor wire or other fencing materials which are injurious or dangerous to wildlife or persons shall be used on any Lot.

2.6 MECHANICAL EQUIPMENT

No roof mounted or wall mounted mechanical equipment will be permitted. Any exterior mechanical equipment required must be ground mounted adjacent to the residence and shielded from view by walls of sufficient height to buffer sounds.

3. ARCHITECTURAL DESIGN STANDARDS

The following architectural standards have evolved in response to climatic and aesthetic considerations at Powder Horn Subdivision.

It is the intent of these standards to evoke a sympathetic response to the character of this high valley region, promoting architectural design compatible with the natural landscape that is environmentally sound.

3.1 SIZE

It is expected that residences will exceed 2,000 square feet of living area, except and unless there are special circumstances or unique design solutions, which can only be approved by the Design Review Board.

3.2 HEIGHT OF STRUCTURES

Notwithstanding the setback/vertical limits set forth on the plat, Ridge lines shall not exceed a height of 35 feet above natural grade directly below.

Flat roof parapets shall not exceed 29 feet in height from adjacent natural grade.

3.3 FOUNDATIONS

The following exterior treatments are required:

1. Foundation walls must be finished in a material compatible with and repeated in the construction of the residence, or screened from view by backfill and landscape.
2. Foundation piers must be screened from view by exterior wall materials continued to finished grade, or through the use of skirting, backfill and landscape.

3.4 EXTERIOR MATERIALS

There exist many traditions in high country architecture which will be encouraged at Powder Horn Subdivision along with certain regional adaptation.

Exterior materials should generally be natural materials that blend and are compatible with the native landscape. The predominant exterior materials will consist of wood or native stone, including shingles,



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beveled horizontal or vertical board siding, board-on-board and batt, field-stone, stucco or brick. Some combination of materials may be required.

Plywood siding is prohibited unless the applicant can demonstrate to the Design Review Board that the specific proposed application would result in a finished appearance indistinguishable from an individual board siding application.

The use of metal or fiberglass siding, composition asbestos siding is prohibited.

The aesthetic merits of any combination of exterior materials are subject to review and approval by the Design Review Board in order to maintain the architectural integrity and consistent visual experience of Powder Horn Subdivision.

3.5 ROOFS

The predominant roof material at Powder Horn Subdivision will be architectural grade composition fiberglass shingles, with a minimum weight of 300 pounds per square. Colors shall be natural earth tones, and color scheme shall blend to the exterior colors as outlined in Section 3.7. Slate, flat concrete tiles or other similar roofing materials may be considered and approved in the sole discretion of the Design Review Board.

The use of asphalt shingles of standard thickness, any type of barrel or "S" tiles, asphalt roll roofing, or reflective metal surfaces (including propanal) is prohibited.

3.6 CHIMNEYS AND OUTDOOR FIRES

Due to the extreme fire danger usually present in this high forest region, all chimneys must be equipped with a U.L. or I.C.B.O. approved spark arrestor, including outdoor fireplaces.

3.7 EXTERIOR COLORS

The color of exterior materials must generally be subdued to blend with the natural landscape. Earth tones are recommended, although accent colors which are used judiciously and with restraint may be permitted.

In no case will colors approaching the primary range (red, blue and yellow) be permitted, except on trim.

It is the intent at Powder Horn Subdivision to preserve the appearance of the natural landscape and preclude the use of colors that would appear out of place and, therefore, offensive to the eye.

3.8 WINDOWS AND SKYLIGHTS

The glass of windows and skylights must not be highly reflective, nor may their frames consist of reflective material that is left unfinished. This especially applies to aluminum frames which must be anodized or finished with baked enamel.

3.9 BUILDING PROJECTIONS

All projections from a residence or other structure including, but not limited to, chimney flues, vents, flashing, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the surface



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from which they project, or must be of an approved color. All building projections must be contained within the building envelope.

3.10 SOLAR APPLICATION

Passive solar design is encouraged. Active solar applications can result in excessive glare and reflection, and can only be approved by the Design Review Board if they are integrated into the structures or landscaping on a lot and are not visible from any other lot or common area.

3.11 CHANGES OR ADDITIONAL CONSTRUCTION

Changes or additions to the approved plans before, during, or after the construction must first be approved by the Design Review Board.

4. CONSTRUCTION REGULATIONS

In order to insure that the natural landscape of each lot is preserved and the nuisances inherent in any construction process are kept to a minimum, the following regulations shall be enforced during the construction period of all improvements at Powder Horn Subdivision.

Any violation of these regulations by the owner's agent, representative, builder, contractor or subcontractor shall be deemed a violation by the owner.

4.1 CONSTRUCTION TRAILERS

Upon commencement of construction, a construction trailer or portable field office may be located on the building site. The type, size and color of any portable office must be approved by a representative of the Design Review Board during the preconstruction conference. At the same time, the provision of temporary power and telephone will be determined. A construction trailer may not remain on a site for a period of time exceeding six months without written approval of the Design Review Board.

4.2 TRASH RECEPTACLES AND DEBRIS REMOVAL

Owners and builders shall clean up all trash and debris at the end of each day; an approved trash receptacle must remain on the site at all times for this purpose to contain all lightweight materials or packaging. Trash receptacles must be emptied at least once a week at an appropriate off-site facility.

Owners and builders are prohibited from dumping, burying, or burning trash anywhere on the lot or in Powder Horn Subdivision.

Heavy debris, such as broken stone, wood scrap, or the like must be removed from the site immediately upon completion of the work of each trade that has generated the debris.

Concrete trucks may be washed out only in areas approved by the developer, and never on a lot at Powder Horn Subdivision; concrete washout areas will be clearly posted.

During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore, or effecting other lots or any open space. Any clean-up costs incurred by the Design Review Board or the Association in enforcing these requirements shall be payable



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by the owner. Dirt, mud, or debris resulting from activity on each construction site shall be promptly removed from public or private roads, open spaces and driveways or other portions of Powder Horn Subdivision.

4.3 SANITARY FACILITIES

Each owner or builder shall be responsible for providing adequate sanitary facilities for his construction workers. Portable toilets must be located within the building envelope.

4.4 CONSTRUCTION ACCESS

The approved access drive will be the only construction access to any lot.

4.5 VEHICLES AND PARKING AREAS

Construction crews shall not park on, or otherwise use, undeveloped portions of lots or open space. All vehicles shall be parked within the building envelope or in the right of way adjoining the lot. Changing oil or other vehicle maintenance is prohibited.

4.6 DUST AND NOISE CONTROL

The contractor shall be responsible for controlling dust and noise from the construction site, including the removal of dirt and mud from public or private roads that is the result of construction activity on the site.

The playing of radios or use of other audio equipment by construction crews during the improvement of any lot at Powder Horn Subdivision is prohibited.

4.7 MATERIAL DELIVERIES

All building materials, equipment and machinery required to construct a residence on any lot at Powder Horn Subdivision must be delivered to and remain within the boundaries of each lot. This includes all building materials, earth-moving equipment or machinery that will remain overnight.

4.8 FIRES AND FLAMMABLE MATERIALS

Careless disposition of cigarettes and other flammable materials, as well as the build-up of potentially flammable materials constituting a fire hazard, are prohibited. At least one 10-pound ABC-Rated Dry Chemical Fire Extinguisher shall be present and available in a conspicuous place on the construction site at all times.

No fire of any type for any reason will be permitted on a construction site at Powder Horn Subdivision.

4.9 RESTORATION OF PROPERTY

Upon completion of construction, each owner and builder shall clean his construction site and repair all property which has been damaged, including but not limited to, restoring grades, planting shrubs and trees and approved or required by the Design Review Board, and repair of streets, driveways, pathways, drains, culverts, ditches, signs, lighting and fencing.

5. DESIGN REVIEW PROCEDURES

Plans and specifications shall be submitted to the Design Review Board in accordance with the following conference and submittal requirements and review procedures.

5.1 PRE-DESIGN CONFERENCE

Prior to preparing preliminary plans for any proposed improvement, it is mandatory that the owner and/or his architect meet with a representative of the Design Review Board to discuss proposed plans and to resolve any questions regarding building requirements at Powder Horn Subdivision. This informal review is to offer guidance prior to initiating preliminary design.

5.2 PRELIMINARY DESIGN SUBMITTAL

When the preliminary design is complete, plans that are submitted must include all of the following exhibits; no review will commence until the submittal is complete:

- (1) Site plan (scale at 1" = 1' 0" or larger), showing the entire property, location of the proposed building envelope, the residence and all buildings, driveway, parking area, existing and proposed topography, proposed finished floor elevations, all trees of 8" diameter or greater, special terrain features to be preserved and trees to be removed.
- (2) Survey (scale 1" = 1' or larger), by a registered land surveyor or licensed civil engineer showing lot boundaries and dimensions, topography (2 feet contours or less), major terrain features, all trees of 4" diameter or greater, edge of pavement or curb, and utility locations.
- (3) Floor plans (scale 1/4" = 1' 0") showing proposed finished floor elevations.
- (4) All exterior elevations (scale 1/4" = 1' 0") showing both existing and proposed grade lines, plate heights, ridge heights, roof pitch and an indication of all exterior materials and colors.
- (5) If the Board deems it appropriate due to slope considerations or complexity of design, a study model may be required (same scale as site plan), which accurately depicts all the proposed improvements and their relationship to the site.
- (6) Any other drawings, materials, or samples requested by the Design Review Board.
- (7) A design review fee in the amount of 15 cents per livable enclosed square foot of the residence and accessory buildings.

5.3 POSTING OF PROPERTY

As soon as the submission of preliminary plans are completed, the Design Review Board will post a notice on the lot stating that plans have been submitted with respect to the lot and will be available for review by other owners. The lot will be posted for 7 days, during which time owners may submit written comments regarding the lot to the Design Review Board.

5.4 PRELIMINARY DESIGN REVIEW

The Design Review Board will review the plans and respond in writing within 10 days after the review, but no later than 30 days after a submittal is complete.

Results of reviews will not be discussed over the telephone by members of the Design Review Board with an owner or his architect or builder, and no owner, architect or builder shall have the right to attend any meeting of the Design Review Board unless specifically requested by the Design Review Board.

Any response an owner may wish to make regarding the results of a design review must be addressed to the Design Review Board in writing.

5.5 FINAL DESIGN SUBMITTAL

After preliminary approval is obtained from the Design Review Board, the following documents are to be submitted for final review; no review will commence until the submittal is complete.

- (1) Site plan (scale at 1" = 1' 0" or larger), showing the entire property, location of the building envelope, the residence and all buildings, driveway, parking area, finished floor elevations, all utility sources and connections, and site walls.
- (2) Floor plans (scale 1/4" = 1' 0") showing finished floor elevations.
- (3) Roof plan (scale 1/4" = 1' 0") showing all roof pitches.
- (4) Building section (scale 1/8" = 1' 0") showing existing and proposed gradelines.
- (5) All exterior elevations (scale 1/4" = 1' 0") showing both existing and proposed grade lines, plate heights, roof pitch and an indication of exterior materials and colors.
- (6) Paint chips and literature as requested by the Design Review Board depicting or describing exterior materials.
- (7) Complete landscape plan (scale 1" = 10') showing size and type of all proposed plants, irrigation system, all decorative materials or borders and all retained plants.
- (8) On-site staking of all building corners and other improvements, is requested by the Design Review Board.

5.6 SITE INSPECTION

As soon as the submission of final plans is complete, a representative of the Design Review Board will inspect the lot to determine that the conditions as depicted in the final submittal are accurate and complete.

5.7 FINAL DESIGN REVIEW

The Design Review Board will review the plans and respond in writing within 10 days after the review, but no later than 20 days after a submittal is complete.



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Results of reviews will not be discussed over the telephone by members of the Design Review Board with an owner or his architect or builder, and no owner, architect or builder shall have the right to attend any meeting of the Design Review Board unless specifically requested by the Design Review Board.

Any response an owner may wish to make regarding the results of a design review must be addressed to the Design Review Board in writing.

5.8 RESUBMITTAL OF PLANS

In the event of any disapproval by the Design Review Board of either a preliminary or a final submittal, a resubmission of plans should follow the same procedure as an original submittal. An additional design review fee shall accompany each such submittal as required by the Design Review Board.

5.9 PRE-CONSTRUCTION CONFERENCE

Prior to commencing construction, the builder must meet with a representative of the Design Review Board to review construction procedures and coordinate his activities in Powder Horn Subdivision.

5.10 COMMENCEMENT OF CONSTRUCTION

Upon receipt of final approval from the Design Review Board, and having satisfied all Archuleta County review processes, the owner shall satisfy all conditions and commence the construction or any work pursuant to the approved plans within one year from the date of such approval.

If the owner fails to begin construction within this time period, any approval given shall be deemed revoked.

The owner shall, in any event, complete the construction of any improvement on his lot within one year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the owner due to labor strikes, fires, national emergencies or natural calamities.

If the owner fails to comply with this schedule, the Design Review Board shall either have the exterior of the improvement completed in accordance with the approved plans or remove the improvement, with all expenses incurred to be reimbursed to the Design Review Board by the owner.

5.11 INSPECTIONS OF WORK IN PROGRESS

The Design Review Board may inspect all work in progress and give notice of noncompliance. Absence of such inspection or notification during the construction period does not constitute an approval by the Design Review Board of work in progress or compliance with these Design Regulations.

5.12 SUBSEQUENT CHANGES

Additional construction or other improvements to a residence or lot, or changes during construction or after completion of an approved structure, must be submitted to the Design Review Board for approval prior to making such changes or additions.



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5.13 FINAL RELEASE

Upon completion of any residence or other improvement, the owner shall give written notice of completion to the Design Review Board.

Within 10 days of such notification, a representation of the Design Review Board may inspect the residence or other improvements for compliance. If all improvements comply with these Design Regulations, the Design Review Board may issue a written approval to the owner, constituting a final release of the improvements by the Design Review Board, said release to be issued within 30 days of the final inspection.

If it is found that the work was not done in strict compliance with the approved plans or any portion of these Design Regulations, the Design Review Board may issue a written notice of noncompliance to the owner specifying the particulars of noncompliance, said notice to be issued within 30 days of the final inspection.

The owner shall have 30 days from the date of notice of noncompliance within which to remedy the noncomplying portions of his improvement. If, by the end of this time period the owner has failed to remedy the noncompliance, the Design Review Board may take action to remove the noncomplying improvements as provided for in these Design Regulations including, without limitation, injunctive relief or the imposition of a fine.

5.14 NONWAIVER

The approval by the Design Review Board of any plans, drawings, or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently or additionally submitted for approval. Failure to enforce any of the Design Regulations shall not constitute a waiver of same.

5.15 RIGHT OF WAIVER

The Design' Review Board reserves the right to waive or vary any of the procedures set forth herein at its discretion, for good cause shown.

5.16 EXEMPTIONS

Utility and maintenance buildings, structures, and cabinets located on nonresidential tracts are exempted from the "Architectural Design Standards" portion of this document. However, the Design Review Board will endeavor to attain as high a level of conformance with these standards as is practical for these types of facilities.

6. DESIGN REVIEW BOARD ORGANIZATION

6.1 MEETINGS

The Design Review Board shall meet from time to time as necessary to properly perform its duties. The vote of a majority of the members shall constitute an act by the Design Review Board.

The Design Review Board shall keep on file all submittals and copies of all written responses to owners to serve as record of all actions taken.

6.2 COMPENSATION

Unless authorized by the Association, the members of the Design Review Board shall not receive any compensation for services rendered.

All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of their duties. Professional consultants and representatives of the Design Review Board retained for assistance in the review process shall be paid such compensation as the Design Review Board determines.

6.3 AMENDMENT OF DESIGN REGULATIONS

Until the designated "turnover" date, the Executive Board may, from time to time and at its sole discretion, amend or revise any portion of these Design Regulations. All such amendments or revisions shall be appended to and made a part of the Design Regulations.

Each owner is responsible for obtaining from the Design Review Board a copy of the most recently revised Design Regulations.

6.4 NONLIABILITY

Neither the Design Review Board, any member thereof, nor the developer, shall be liable to the Association or to any owner or other person for any loss or damage claimed on account of any of the following:

- (1) The approval or disapproval of any plans, drawings and specifications, whether or not defective.
- (2) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- (3) The development, or manner of development of any property within Powder Horn Subdivision.

Every owner or other person, by submission of plans and specifications to the Design Review Board for approval, agrees that he will not bring any action or suit against the Design Review Board, any of its members, nor the developer, regarding any action taken by the Design Review Board.

Approval by the Design Review Board of any improvement at Powder Horn Subdivision only refers to the Powder Horn Subdivision Design Regulations and in no way implies conformance with local government regulations. It shall be the sole responsibility of the owner to comply with all applicable government ordinances or regulations, including but not limited to zoning ordinances and local building codes.

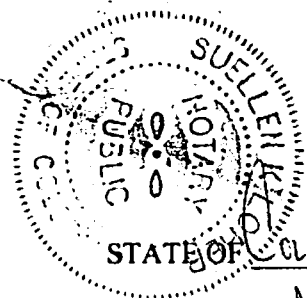
6.5 ENFORCEMENT

The Design Review Board may, at any time, inspect a lot or improvement and, upon discovering a violation of these Design Regulations, provide a written notice of noncompliance to the owner, including a reasonable time limit within which to correct the violation. If an owner fails to comply within this time period, the Design Review Board or its authorized agents may enter the lot and correct the violation at the expense of the owner of such lot; said expense to be secured by a lien upon such lot enforceable in accordance with the Declaration.

In the event of any violation of these Design Regulations, the Design Review Board may, at its sole discretion and in addition to restoration expenses, impose without limitation a punitive fine, commensurate with the severity of the violation.

6.6 SEVERABILITY

If any provision of these Design Regulations, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Design Regulations, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of these Design Regulations shall be constructed as if such invalid part were never included therein.



POWDER HORN DEVELOPMENT, LLC

By: Ray Harvey, Manager

STATE OF COLORADO)
COUNTY OF ARCHULETA) ss.

Subscribed and sworn to before me this 16 day of September, 2002 by Ray Harvey,
Manager of Powder Horn Development, LLC. Witness my hand and official seal.

My Commission Expires:

MARCH 21, 2002

Notary Public