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C KRUSE, CLK&REC MONTROSE, CO DECCOV R 126.00 D 0.00

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
IRON HORSE SINGLE FAMILY COMMUNITY**

THIS DECLARATION is made and declared this 15 day of May, 2006, by **Darter, LLC**, a Colorado limited liability company, hereinafter referred to as "Declarant."

RECITALS

A. Declarant is the owner of certain real property situate in Montrose County, Colorado, known and described on the Plat attached hereto as Exhibit A and incorporated herein by this reference, hereinafter referred to as the "Properties";

CLERKS NOTE:
NO EXHIBIT "A"
ATTACHED

B. Declarant desires to develop and improve the Properties as a planned community as defined in section 38-33.3-103(22), C.R.S., and subject the same to the covenants, conditions and restrictions hereinafter set forth.

C. All alterations of the Properties must comply with applicable zoning requirements, the City of Montrose Land Use Code, and conditions of approval by the governing municipality, if any.

Declarant hereby makes the following declaration of covenants, conditions and restrictions:

ARTICLE I
DEFINITIONS

1.1 "Allocated Interests" shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in Sections 4.3.B. and Article V of this Declaration.

1.2 "Architectural Control Committee" or "ACC" shall mean and refer to the Architectural Control Committee referred to in Section 4.6 of this Declaration.

1.3 "Articles" shall mean and refer to the Articles of Incorporation of Iron Horse Single Family Homeowners Association, Inc.

1.4 "Association" shall mean and refer to Iron Horse Single Family Homeowners Association, Inc., a Colorado nonprofit corporation, formed for the purpose of being and



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THIS DECLARATION is made and declared this 15 day of May, 2006, by Darter, LLC, a Colorado limited liability company, hereinafter referred to as "Declarant."

RECITALS

A. Declarant is the owner of certain real property situate in Montrose County, Colorado, known and described on the Plat attached hereto as Exhibit A and incorporated herein by this reference, hereinafter referred to as the "Properties";

CLERKS NOTE:
NO EXHIBIT X
ATTACHED

B. Declarant desires to develop and improve the Properties as a planned community as defined in section 38-33.3-103(22), C.R.S., and subject the same to the covenants, conditions and restrictions hereinafter set forth.

C. All alterations of the Properties must comply with applicable zoning requirements, the City of Montrose Land Use Code, and conditions of approval by the governing municipality, if any.

Declarant hereby makes the following declaration of covenants, conditions and restrictions:

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1.1 "Allocated Interests" shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in Sections 4.3.B. and Article V of this Declaration.

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constituting the entity for the furtherance of the interests of the Owners of property in Iron Horse Single Family Community and enforcing the restrictions set forth in this Declaration.

1.5 "Basement" as used herein shall mean a floor space, the floor of which is more than four (4) feet below the grade of the surface at the exterior of the House.

1.6 "Board" shall mean and refer to the Executive Board of the Association.

1.7 "Building" shall mean and refer to any Building, including all fixtures and improvements thereto, situate on the Properties.

1.8 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.9 "Colorado Common Interest Ownership Act" shall mean and refer to Title 38, Article 33.3 of the Colorado Revised Statutes, as the same may exist on the date that these Covenants are recorded, and as the same may be amended from time to time hereafter, or any statute of similar effect.

1.10 "Common Elements" shall mean and refer to all of the Properties, including any Improvements thereto, except for the individual Lots as shown on the Plat and irrigation lines and systems of the Iron Horse Single Family Community and all property necessary for such irrigation lines and systems shown on the Plat.

1.11 "Declarant" shall mean and refer to Darter, LLC, a Colorado limited liability company.

1.12 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.13 "House" shall mean a single family residential Building.

1.14 "Improvements" shall mean and refer to any and all Buildings, House, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, irrigation facilities such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Properties.

1.15 "Iron Horse Community" shall mean and refer to the Single Family Community and the Iron Horse Townhome Community.



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1.16 "Lot" shall mean and refer to that part of the Properties owned in fee simple by the Owners. The boundaries of each Lot, and an identifying number for each Lot, are reflected on the Plat.

1.17 "Member" shall mean and refer to a person or entity which is a member of the Association.

1.18 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.19 "Plat" shall mean and refer to that certain plat of the Properties to be recorded in the Montrose County Clerk and Recorder's official records.

1.20 "Properties" shall mean and refer to all of the real estate situate within the area described in Exhibit A.

1.21 "Single Family Community" shall mean and refer to Iron Horse Single Family Community.

1.22 "Unit" shall mean a physical portion of the Property designated for separate ownership and consisting of an individual air-space unit. Unless otherwise stated in this Declaration or depicted or shown on the Townhome Map, the boundaries of a Unit are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors as shown on the Townhome Map; all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint and finish, flooring and any other materials constituting any part of the finished surfaces are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements; all spaces, interior partitions and other fixtures and improvements within the boundaries of the Unit are part of the Unit; if any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of the Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Element shall be a part of the Common Elements; and, any shutters, awnings, window-boxes, doorsteps, stoops, porches, balconies and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.



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ARTICLE II GENERAL DECLARATION

2.1 Intent. By making the Declaration hereunder, Declarant specifically intends to enhance, perfect and preserve the value, desirability and attractiveness of the Properties and, to provide for the maintenance of the Common Elements, Improvements and Buildings thereon in a manner beneficial to all Owners.

2.2 Estate Subject to Declaration. By this Declaration, Declarant expressly intends and does hereby subject the Properties to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

2.3 Owners' Rights to Common Elements. Every Owner shall have a right and easement of enjoyment in and to the Common Elements, except for the tract containing the drainage ditch and easement on the west side of the Subdivision, which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration and the Articles and Bylaws of the Association. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities for the members of his family, his tenants, or contract purchasers who reside on the Properties.

2.4 Recording Data. The recorded easements and licenses appurtenant to, or included in, the Iron Horse Single Family Community, or to which any portion of Iron Horse Single Family Community may become subject by virtue of a reservation herein will be found on the Plat to be recorded in the Montrose County Clerk and Recorder's Records. These easements include, but are not limited to, a temporary construction ingress and egress easement, irrigation water access easements, utility easements, shared driveway easements and multipurpose easements.

2.5 Maximum Number of Lots and Units. The maximum number of combined Lots and Units in the Iron Horse Community shall not exceed 400 Lots and Units or the maximum number of Lots and Units allowed by any governmental entity having jurisdiction over the



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property, pursuant to any development plan for the property and the Development Property. Declarant shall not be obligated to expand the Iron Horse Community beyond the number of Lots and Units initially submitted pursuant to this Declaration.

ARTICLE III RESTRICTIONS ON USE

3.1 Building Restrictions.

A. All Lots shall only be used for residential purposes as more specifically defined in this Declaration. Only single-family dwellings, private garages for not less than two (2) cars and other outbuildings directly incidental to residential use shall be erected, altered, placed or permitted to remain on any Lot. At no time shall there be more than one single family residential Building situate upon any Lot.

B. Only new, site-built Buildings and pre-built storage sheds shall be permitted within the Properties, and no Building for occupancy shall be moved upon the Properties. Further, no temporary Building or structure of any type whatsoever shall be used at any time for a residence, either temporary or permanent. No manufactured homes, mobile homes, trailer homes or other moveable structures shall be permitted as dwellings within the Properties.

C. The resubdivision of Lots into smaller units is prohibited.

D. The Single Family Community is located in the City of Montrose and is zoned R2 and R3. All Buildings shall meet or exceed City of Montrose and Montrose County standards and requirements.

E. Buildings shall be located on the Lots as required by the City of Montrose Land Use Code.

F. No structure of a temporary character, trailer, teepee, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

G. Entry features and open space improvements shall be subject to the restrictions set forth in subsection I above.

H. An Owner shall not change, modify, alter or in any way make any substantial change to any exterior wall, surface, roof, deck, patio, entry, landscaping,



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paving, trees, shrubbery or other improvements without the approval of the Architectural Control Committee. Notwithstanding the previous sentence, changes may be made if set forth in a written "defensible space plan" made for the Lot by a qualified agency or authority and filed with the Association in accordance with C.R.S. § 38-33.3- 106.5 (2005).

I. Outbuildings shall be constructed using colors similar to the primary structure and shall resemble the primary structure in architectural style. Outbuildings may be constructed using vinyl siding and roofing materials. Location of outbuildings shall be to the rear of the primary structure and shall be subject to the same setbacks as the primary structure. No outbuildings shall be constructed prior to written approval from the Architectural Control Committee as to location, size, use and materials.

J. Detached garages are not allowed.

3.2 Maintenance of Lots, Buildings, Improvements and Common Elements.

A. The Owners shall keep, maintain and repair their Lots, Buildings and Improvements, including landscaping and vegetation in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration. In the event the Owners fail to keep, maintain or repair their Lots, Buildings or Improvements in accordance herewith, the Association shall conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner(s) on whose Lot, Building or Improvements the maintenance or repairs were conducted as a reimbursement assessment pursuant to Section 5.4 hereof.

B. The Owners shall not cause or permit any damage, deterioration or the accumulation of trash and debris upon the Common Elements.

C. The Common Elements shall be owned in common by all of the Owners of the Lots and shall remain undivided. By the acceptance of his or her deed or other instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Owner agrees not to institute any action therefor. Furthermore, each Owner agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the complying Owner to personally collect, jointly and severally, from the parties violating the same, the attorney's fees, costs and other damages the complying Owner incurs in connection therewith. As used in the Declaration, attorney's fees shall be deemed to mean the full and actual cost of any legal services actually performed in connection with the matters

involved, calculated on the basis of the usual fees charged by the attorneys performing such services and shall not be limited to "reasonable attorneys' fees" as defined by any statute or rule of court. Further, all Owners covenant that they shall neither by act nor omission seek to abandon, subdivide, encumber, sell or transfer the Common Elements without first obtaining the written consent of seventy-five percent (75%) of the Owners of the individual Lots. Each such Owner shall have one (1) vote for each Lot owned by it. Any such action without the written consent of such Owners shall be null and void.

D. The Association shall be responsible for the maintenance, upkeep, repair and restoration of the Common Elements for both the Association and the Iron Horse Townhomes Association. The Iron Horse Townhomes Association shall pay a pro-rata share of fees to the Association for the maintenance, upkeep, repair and restoration of the Common Elements in such amount as the Association shall determine.

E. Each Owner shall be entitled to exclusive ownership of his or her Lot. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

F. No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate on any Lot or the Common Elements. All garbage, rubbish and trash shall be placed and kept in covered containers. All containers shall be kept within garages or enclosed backyards so as to not be visible from neighboring property, except to make the same available for collection during regular trash collection days, and then only for a period of from 7:00 A.M. through 8:00 P.M. on such trash collection days.

G. No above or below ground tanks of any kind, including but not exclusively oil, fuel and water tanks shall be permitted on lots that are smaller than five acres.

H. The Association or Declarant, upon the failure of the Owner of any Lot, to maintain his/her Lot and Improvements, including the payment of any taxes assessed thereon, in a reasonable satisfactory manner as determined by the Association, or upon use by the Owner in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the Lot and/or Improvements, or abate the improper use, or pay the taxes thereon, and any costs incurred shall be charged against the Owner of said Lot and collected in the manner set forth in Article V hereof.

I. Driveways shall be surfaced with gravel, concrete, asphalt, masonry pavers or similar materials.



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3.3 Home Occupations and Offensive Activities.

A. Lots shall be used for residential purposes only.

B. No Lot or Building may be used for commercial purposes of any type whatsoever excepting for home occupations and agricultural uses. For purposes of this section, "home occupations" shall mean an occupation by the resident conducted entirely within the House which does not entail the employment of third persons on the premises, does not entail the delivery of goods or services to customers upon the premises, and does not entail visits by customers to the premises. For example, but not by limitation, an insurance agent may use his House as a personal office so long as his customers are not permitted to come to the House; however, the establishment of a barber shop or a beauty shop would be prohibited.

C. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his own vehicle.

D. No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Properties, unless an attack upon Livestock is occurring.

3.4 Restrictions on Occupants and Pets.

A. At no time shall any single family residence be permanently occupied by more than one family.

B. Household pets shall be allowed on Lots. The number of household pets shall be as specified in the City of Montrose Land Use Code. Household pets shall be contained on their Owner's property or on a leash and not permitted to run loose. At the request of any Owner, the Association shall determine whether a particular animal shall be considered a nuisance, or whether the number of any such animals on any Lot is in compliance. Habitually barking dogs and vicious animals are prohibited, at the sole discretion of the Association. Household pets shall be under the control of their owners at all times.

C. No animal may be kept which is a nuisance or annoyance to other Owners' property. At the request of any Owner, the Association shall determine whether a



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particular animal shall be considered a nuisance, or whether the number of any such animals on any Lot is in compliance. Habitually barking dogs and vicious animals are prohibited, at the sole discretion of the Association. All animals shall be under the control of their owners at all times.

3.5 Parking.

A. All residences shall be constructed so as to provide sufficient off street parking to accommodate not less than four automobiles.

B. No Lot roadway or easement shall be used as a parking, storage or accommodation area for any type of junk vehicles or vehicles under repair. Only those cars and trucks incidental to residential family use will be permitted within the Single Family Community. However, emergency vehicles bearing official emblems and weighing less than 10,000 lbs shall be permitted in the streets, owners' driveways, or the association's guest parking spaces, if any, when: 1) having the vehicle while at home is a condition of an Owner's employment as an emergency service provider and 2) it does not impede the safe and efficient use of the streets by other Owners as determined in the sole discretion of the Board.

C. All vehicles, boats, campers, trailers, snowmobiles, motorcycles or other recreational vehicles, devices or equipment, or vehicles used for business (other than normal passenger-type vehicles) shall be stored or parked in a neat and orderly manner and shall be stored or parked no closer to the front line of the Lot than the Building on the Lot which is closest to the front line of the Lot and be enclosed behind fencing approved by the ACC in conformity with paragraph 3.8. Recreational vehicles, boats and trailers shall not be parked on the streets adjacent to each Lot but can be parked behind fencing approved by the ACC.

3.6 Landscaping.

A. During the course of construction, all precautions shall be taken to provide for a minimum disturbance of the land. To preserve and enhance the neat character of the Iron Horse Single Family Community area, native landscaping is encouraged.

B. Each Owner shall grade, landscape and plant those portions of his Lot not graded, landscaped or planted on the date such Lot was first conveyed to the Owner by Declarant within one (1) year after completion of construction of any Building on the Lot. All grading, landscaping and planting performed or conducted by the Owner shall be first approved by the Architectural Control Committee, and once installed in



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accordance with the approval of the Architectural Control Committee shall not be changed from its appearance. All vegetation shall be properly cultivated (including watering unless prohibited by local watering restrictions) and neatly trimmed. Should the Owner of any Lot fail to comply with landscaping guidelines as set forth herein, the Association may, at its sole discretion, cause such landscaping to be completed upon subject Lot and assess the Owner for all costs incurred.

C. No Owner shall remove, alter, injure or interfere in any way whatsoever with any tree, shrub or other landscaping or Improvement placed upon the Properties by Declarant or the Association unless such is done in accordance with a written "defensible space plan" developed for the property and filed with the Association in accordance with C.R.S. § 38-33.3-106.5 (2005).

D. No tree, shrub or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or the Replat such as to hinder, or interfere with the purposes for which such easement was created.

3.7 Signs. Political campaign signs shall be permitted to be displayed on Lots only to the extent provided by local ordinance or other governing law. Should there be no ordinance or local governing law, or if the same should be repealed, political signs are prohibited in their entirety to be displayed on Lots except during the 45 days prior to the election on which the ballot issue or political office to which it pertains is to be voted for and the seven (7) days immediately following the election date. During the permitted times described, Members are permitted to place one political campaign sign no larger than 36 inches by 48 inches in dimension per political office or ballot issue being voted upon on their Lot. No political signs may be placed on Common Elements at any time or allowed to remain thereon. No sign of any other kind, type, or nature shall be displayed to the public view on any Lot or Common Element except one professional sign of not more than four (4) square feet, a sign of not more than five (5) square feet advertising the Lot for sale or rent, or signs used and erected by a builder to advertise the Property during the period when construction and sales of any dwelling occur. Signs on the Common Elements are governed by the Association.

3.8 Fences. To preserve the open nature and to maintain the scenic views for the benefit of all Owners, no fence shall be erected on a Lot without the approval of the Architectural Control Committee. Fences six (6) feet in height or less will be considered for placement at any location on the Lot. All fences other than pasture fences shall be of white vinyl or cedar wood as approved by the ACC. No chain link or other metal fencing shall be allowed except that approved wire mesh may be used for the purpose of kennel space for household pets



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or to be attached to open wood fencing located on the Lot. All private fencing will require City of Montrose approval.

3.9 Wildlife. No hunting, shooting, trapping or otherwise killing or harming of wildlife shall be permitted in Iron Horse Single Family Community, unless necessary to protect Livestock being attacked, it being the intent hereof to conserve and protect all wildlife to the fullest extent possible. However, the Iron Horse Homeowners Association shall be allowed to control nuisance animals.

3.10 Drainage. No landscape modifications or alterations shall be made that obstruct, divert or otherwise alter the natural water drainage courses and patterns. No structures including sheds, slabs, curbing and raised landscaping which will affect the flow of storm water or other surface drainage are allowed in identified drainage easements.

3.11 Miscellaneous.

A. No Lot shall be used in any manner whatsoever to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances or other mineral of any type.

B. All facilities for permanent utilities service shall be kept or maintained underground, or in the original condition at such time the Lot and Improvements thereupon are first conveyed to the Owner by Declarant.

C. Antennas and small satellite dishes for reception of television signals are permitted. No other types of antenna shall be erected, used or maintained out of doors, except as shall be permitted by the Architectural Control Committee.

3.12 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents and contractors of improvements, structures or signs necessary or convenient to the development, sale, operation or other disposition of the Lots or Improvements situate within the Properties, provided that this exemption shall not be interpreted to impose limitations on the power of the Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.



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ARTICLE IV THE ASSOCIATION

4.1 Purpose and Membership. By acceptance of a deed to a Lot, each Owner shall be a member of the Association, which is a Colorado nonprofit corporation, organized for the general purpose of being and constituting an entity for the furtherance of the mutual interests of the Owners of the Properties pursuant to this Declaration and the Articles and Bylaws, including without limitation, enforcement of the Declaration; owning, repairing and maintaining the Common Elements; maintenance and use of any Lots, Buildings and Improvements; levying and enforcing assessments to defray the cost and expenses of operation; and, providing other utilities and services pursuant to the Articles and Bylaws. This is a Colorado Common Interest Community as defined by the Colorado Common Interest Community Act. The business of the Association will be conducted according to the Act.

4.2 Directors of the Association. The affairs of this Association shall be initially managed by a board of three (3) directors (the "Board"). When Declarant relinquishes control of the Board to the Owners pursuant to Section 4.3.C. below, the Board shall be managed by at least three (3) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

4.3 Voting Rights.

A. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

B. The Association shall have one class of voting membership, each Owner being entitled to vote one vote for each Lot owned upon matters subject to vote by the Members as provided in the Articles, Bylaws, Policies, Procedures, Rules, and Regulations of the Association. A vote for each Lot shall be exercised as the Owner determines, but in no event shall more than one vote be cast with respect to any Lot.

C. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant or two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration



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of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33⅓%) of the members of the Board must be elected by Owners other than Declarant. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in section 38-33.3-303(9), C.R.S. (2005).

4.4 Limitation Upon Liability.

A. Indemnification of Officers and Board Members. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action of for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

B. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Properties, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Properties or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

4.5 Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance so far as such insurance coverage is obtainable:



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A. Property insurance on the Common Elements and also on property that must become a Common Element for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

B. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board Member. All Members of the Board of Directors shall also be named as additional insureds. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

C. Insurance policies carried pursuant to both immediately preceding subsections of Section 4.5 must provide that:

(1) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(2) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

(3) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

D. Workers' Compensation coverage upon employees, if any.

E. Fidelity bonds to protect against dishonest acts on the part of those who handle receipt and disbursement of Association funds. Such bonds shall (1) name the Association as an obligee; (2) be written in an amount not less than Fifty Thousand Dollars (\$50,000.00); (3) contain waivers of any defense based upon the exclusion of



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persons serving without compensation from any definition of "employee" or similar expression; (4) provide that no modification in any substantial manner, or cancellation shall be had without thirty (30) days' prior written notice to the Association.

F. Such other insurance as the Board may deem desirable for the benefit of the Owners.

4.6 Architectural Control Committee.

A. No Building or exterior Improvement of any kind shall be erected, placed or altered on any Lot until the construction plans and specifications, and a plan showing the location of the structure or Improvement, have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finished grade elevation all to be in conformity with this Declaration, including, but not limited to, the requirements set forth in Section 3.1.

B. The Architectural Control Committee shall consist of three (3) persons to be appointed by the majority of the Board. The method and manner of the Architectural Control Committee's appointment, replacement and removal, as well as method of operation, to the extent not provided herein, shall be as set forth in the Articles, Bylaws, Policies, Procedures, Rules, and Regulations of the Association.

C. No Improvement, including Owners' landscapings, shall be installed, erected or altered within the Properties except upon the prior written consent and approval of the Architectural Control Committee.

D. Duplicate copies of plans and specifications relating to an Improvement shall be submitted to the Architectural Control Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and a perspective sketch if requested, and other details necessary to explain any feature or component of the Improvements.

E. The Architectural Control Committee's approval or disapproval as required in this Declaration shall be in writing. In the event the Architectural Control Committee, or its designated representative, fails to approve or disapprove within fifteen (15) days after sufficient plans and specifications have been submitted to it, approval will not be



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required, and the related covenants shall be deemed to have been fully complied with. Two complete sets of finished plans and specifications for construction shall be submitted at time of application, one copy of which will be retained by the Architectural Control Committee for its records. Approval or disapproval as required in this Declaration shall be determined by majority vote of the members of the Architectural Control Committee.

F. The Architectural Control Committee and the members thereof shall not be liable for damage to any person submitting requests for approval or to any Owner within the Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request. The actions of the Architectural Control Committee shall be deemed conclusively binding upon the Owners.

G. Neither the members of the Architectural Control Committee, nor such representatives as it may designate, shall be entitled to any compensation for services performed pursuant to this Declaration.

H. In addition to all the other criteria herein set forth, the Architectural Control Committee shall generally determine whether the proposed Improvement will protect the then value and future values of then developed Lots and Common Areas and those yet to be developed. The Architectural Control Committee shall, in the exercise of its judgment and determination, use reason and good faith. Among the other considerations applied, the Architectural Control Committee will determine and base its approval or rejection upon the fact of whether said proposed Improvements are reasonably compatible with other Improvements erected and planned in the Single Family Community. The Architectural Control Committee shall evaluate the proposed construction as to location of the Property, harmony of exterior design, materials and colors with existing dwellings and surroundings, finished grade evaluation and other criteria as it deems necessary for the purposes set forth in this paragraph.

4.7 Ownership and Maintenance.

A. The ownership, maintenance, repair and restoration of the Common Elements, together with Improvements thereon, shall be vested solely in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing and restoring the Common Elements and Improvements thereon shall be borne by the Owners and the Owners of Iron Horse Townhomes Association as a regular assessment as provided in Section 5.2, hereof.

B. The Association shall further be charged with the maintenance, repair and restoration to any Improvement situate on any Lot provided the Owner thereof fails to



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repair, restore or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Section 5.4, hereof.

4.8 Association Water.

A. All Owners of Lots with lawns shall be required to install sprinkler systems to maintain their lawns.

B. The irrigation facilities to be owned by the Association shall consist of a system of pipes and pipelines so as to provide water to the Common Elements and all Lots. The irrigation facilities, including any easements in connection therewith, shall be solely owned, operated and maintained by the Association.

C. It shall be the obligation of the Association to own, operate, maintain and repair the irrigation facilities for the distribution of water to the Common Elements and all Lots. Owners shall be responsible for operation and maintenance and repair of the private sprinkler system installed on their lot.

D. The Association shall have an easement across all Common Elements and Lots as reasonably necessary to operate, maintain, and repair the irrigation facilities.

E. Restrictions.

No Owner shall, without the approval of the Association:

(1) have or cause irrigation water to be diverted from the irrigation system Common Elements;

(2) change or attempt to change the point of diversion or method of transportation of his/her percentage allocation of irrigation water from the irrigation system Common Elements;

(3) use or attempt to use such water in an exchange or plan of augmentation in conjunction with any water right not embodied, evidenced or represented by the Association's decrees, or to use or attempt to change the use of such water for any purposes not consistent with the uses set forth in the Association's decrees.

4.9 Duty of Association. The Association shall have the duty of maintaining and repairing all of the Common Elements within the Single Family Community. The cost of all



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such maintenance shall be a common expense to all of the Owners. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

4.10 Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and the Articles of Incorporation and Amendments, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.

- A. Maintenance, repair and restoration of the Common Elements, except only as otherwise provided.
- B. The obtaining and maintaining of all required insurance as provided herein.
- C. Collection of assessments for irrigation water and maintenance and repair of the irrigation system.

ARTICLE V ASSESSMENTS

5.1 Owner's Obligation. By accepting a deed to any Lot, each Owner agrees to pay to the Association all the assessments, to be fixed and levied from time to time as provided in the Declaration, Articles, Bylaws, Policies, Procedures, Rules, and Regulations. Such assessments, together with interest accruing thereon and the costs of collection in the event of a delinquency of payment, shall be the personal obligation of the person who is the Owner, or the persons who are jointly and severally the Owner, at the time the assessment was made.

5.2 Regular Assessments.

A. At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the cost and expenses to be incurred by the Association during such fiscal year in performing its functions, and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such fiscal year which is attributable to the operation and maintenance assessments for the prior fiscal year. The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the Common Elements, which sums may include, among other things, expenses of management, taxes and special assessments, premiums for all



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insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Subject to Section 5.2.B. hereof, the sum or net estimate so determined shall be assessed to the Owners as an operation and maintenance assessment by dividing the total estimate by the total number of single family residential Lots and assessing the resulting amount to the Owner of each Lot. Assessments shall be paid in one (1) annual installment due on or before the 10th day of each January.

B. Within ten (10) days after adoption of any proposed budget for the Association, the 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 Board.

5.3 Special Assessments. If at any time during the fiscal year the regular assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy. The special assessment shall be assessed to the Owners by dividing the total estimate by the total number of residential Lots and assessing the resulting amount to the Owner of each Lot, such assessment to be paid either in equal monthly installments over the balance of the remaining fiscal year, or in a lump sum upon billing as the Board shall determine.

5.4 Reimbursement Assessment. The Board may levy an assessment against any Owner as a result of such Owner's failure to landscape his Lot, including a sprinkler system, rebuild damaged Improvements or to restore or maintain his Lot or the Improvements situate thereon. Such assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses incurred for the repair, maintenance or restoration of such Owner's Lot or Improvements, and shall be due and payable to the Association when levied.

5.5 Reserve Fund. The Association will establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined



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by the Association and shall be funded through annual payments of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes. Each Owner, at the time the Owner acquires his or her Lot, shall make a non-refundable contribution to the Reserve Fund of the Association in the amount of \$150.00. Such payment shall not be considered as an advance payment of regular or special assessment or relieve an Owner from making the regular or special assessment when the same become due.

5.6 Maintenance Fund. The Iron Horse Townhomes Association shall pay a pro-rata share of fees to the Association for the maintenance, upkeep, repair and restoration of the Common Elements in such amount as the Association shall determine.

5.7 Capital Improvements. In addition to regular and special assessments, the Association may levy, in any assessment year, a special assessment for the purposes of defraying in whole or in part the cost of any capital Improvement upon the Common Elements, including fixtures, landscaping or personal property related thereto, provided that such assessment shall have the assent of a majority of the members of the Association subject to the assessment.

5.8 Enforcement. In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

A. The Association may elect to accelerate and declare immediately due and payable the remaining balance of regular or special assessments for such fiscal year.

B. The Association may bring a suit at law to collect the delinquent assessments, including any accelerated assessment. Any judgment rendered in such action shall include a sum for costs of suit, including a reasonable attorney's fees.

C. All delinquent assessments shall be a lien on the Owner's Lot to which the provisions of section 38-33.3-316, C.R.S. (2005), shall apply.

D. Beginning with second month of delinquency, a five percent (5%) penalty will be added to all delinquent amounts each month until payments are current.

5.9 Out-of-State Owners Who Are Not Occupants. In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:



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- A. Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or
- B. Pay the regular assessment pursuant to Section 5.2 hereof in advance by the 10th day of the first month of the fiscal year; or
- C. Either or both of the immediately preceding subsections of Section 5.8 hereof.

ARTICLE VI CASUALTY, DAMAGE AND REPLACEMENT OF IMPROVEMENTS

6.1 Owner's Insurance. All Owners shall keep and maintain fire and casualty insurance upon all Improvements situate on their Lots to the full insurable value thereof, and shall provide a certificate of insurance with the President of the Association upon request, not less than ten (10) days after such request, such certificate providing for not less than thirty (30) days' written notice of cancellation, surrender or modification.

6.2 Loss, Damage or Destruction of Improvements Other Than Buildings. In the event of a loss, destruction or damage to any Improvements situate on any Owner's Lot exclusive of the residential building, such Owner shall, after first obtaining the approval of the Architectural Control Committee, replace, repair or restore such damaged Improvement with an identical Improvement as to the one destroyed, lost or damaged. In the event an Owner fails to make such repair, replacement or restoration within ninety (90) days of the loss, damage or destruction, the Association shall have the option to make such repair, restoration or replacement and charge the cost thereof to the Owner as a reimbursement assessment.

In the event of loss, damage or destruction of any Improvement situate upon the Common Elements, the Association shall within ninety (90) days of such loss, damage or destruction, replace, repair or restore such Improvement with an identical Improvement.

6.3 Loss, Damage or Destruction to Buildings. In the event of loss, damage or destruction of any residential building, the Owner thereof shall repair, restore or rebuild the same within one year following such damage or destruction. The new structure shall be rebuilt in the same location, following the same floor plan and elevation and using the same exterior materials and stain as the building which had been lost, damaged or destroyed. It is the specific intent of this section to impose upon the Owner of each Lot, the obligation to replace any destroyed building with a new building having the identical appearance as the building destroyed and the



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other residences within the Properties. Further, following completion of the repair, restoration or replacement of the damaged structure, the Owner shall repair, replace or restore any landscaping or other Improvements involved in the damage, destruction or loss to the residents within ninety (90) days of completion of the structure. However, in the event completion is after September 1st of any year, landscaping shall be completed by May 1st of the following calendar year.

ARTICLE VII USE OF SUBDIVISION FOR SALES PURPOSES

Maintenance of Sales Office and Models. Notwithstanding any other provision of this Declaration, Declarant reserves the right to maintain a sales office and/or model homes in the Subdivision for sales purposes. Declarant shall maintain no more than one sales office and no more than two model homes at any time. Each sales office or home shall occupy no more than one Lot, and Declarant reserves the right to use any unsold Lot for such purposes.

ARTICLE VIII CASUALTY, DAMAGE AND REPLACEMENT OF IMPROVEMENTS

8.1 Owner's Insurance. All Owners shall keep and maintain fire and casualty insurance upon all Improvements situate on their Lots to the full insurable value thereof, and file the certificate of insurance with the President of the Association, such certificate providing for ten (10) days' written notice of cancellation, surrender or modification.

8.2 Loss, Damage or Destruction of Improvements Other Than Buildings. In the event of a loss, destruction or damage to any Improvements situate on any Owner's Lot exclusive of the residential building, such Owner shall, after first obtaining the approval of the Architectural Control Committee, replace, repair or restore such damaged Improvement with an identical Improvement as to the one destroyed, lost or damaged. In the event an Owner fails to make such repair, replacement or restoration within ninety (90) days of the loss, damage or destruction, the Association shall have the option to make such repair, restoration or replacement and charge the cost thereof to the Owner as a reimbursement assessment.

In the event of loss, damage or destruction of any Improvement situate upon the Common Elements, the Association shall within ninety (90) days of such loss, damage or destruction, replace, repair or restore such Improvement with an identical Improvement.

8.3 Loss, Damage or Destruction to Buildings. In the event of loss, damage or destruction of any Building, the Owner thereof shall repair, restore or rebuild the same within one year following such damage or destruction. The new structure shall comply with the



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building restrictions set forth in Article III. It is the specific intent of this section to impose upon the Owner of each Lot, the obligation to replace any destroyed building with a new building which complies with the building restrictions set forth in Article III. Further, following completion of the repair, restoration or replacement of the damaged structure, the Owner shall repair, replace or restore any landscaping or other Improvements involved in the damage, destruction or loss to the residents within ninety (90) days of completion of the structure. However, in the event completion is after September 1st of any year, landscaping shall be completed by May 1st of the following calendar year.

ARTICLE IX USE OF SINGLE FAMILY COMMUNITY FOR SALES PURPOSES

9.1 Maintenance of Sales Office and Models. Declarant reserves the right to maintain a sales office and/or model homes in the Single Family Community for sales purposes. Declarant shall maintain no more than one sales office and no more than two model homes at any time. Each sales office or home shall occupy no more than one Lot, and Declarant reserves the right to use any unsold Lot for such purposes.

ARTICLE X STREET LIGHTING

10.1 Tariffs for Street Lighting. Iron Horse Single Family Community may be subject to the terms and provisions of an unconditional restrictive covenant which provides in substance that present and subsequent owners of property in the area proposed to be served are subject to and bound by present and future tariffs applicable to street lighting service filed with the Public Utilities Commission of the State of Colorado.

ARTICLE XI GENERAL PROVISIONS AND MISCELLANEOUS

11.1 Assessments. The Single Family Community shall be responsible for the maintenance and upkeep of all common areas for both the Single Family Community and the Iron Horse Townhomes Association, Inc. (Townhomes Association). The Townhomes Association shall pay to the Single Family Community a proportionate share of assessments to cover the maintenance and upkeep of the common areas.

11.2 Enforcement. The Association, or any Owner, shall have the right to enforce by any 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 Association or by any Owner to enforce any covenant or restriction herein contained shall in no



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event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

11.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

11.4 Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by Declarant at any time prior to the recording of the first deed from Declarant to an Owner. Thereafter, this Declaration may not be amended for any purpose whatsoever for a five (5) year period, and thereafter, this Declaration shall only be amended by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Any amendment must be recorded.

11.5 Limitation on Association. Any action, resolution or attempted action of the Association in conflict with any term or provision of this Declaration shall be void and of no force and effect whatsoever.

11.6 Notice. Notice of matters affecting Iron Horse Single Family Community may be given to Owners by mailing such notice by first class mail to the last address provided by the Owner to the Association. If no address has been provided by Owner, such notice shall be mailed to the address of Owner's Lot.



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IN WITNESS WHEREOF, Declarant sets its hand and seal the 25th day of
May, 2006.

Darter, LLC, a Colorado limited liability company

By: 

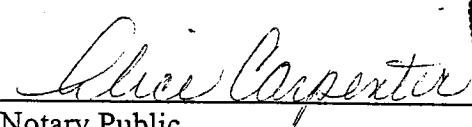
Terry Lawrence, manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 25th day of
May, 2006, by Terry Lawrence, manager of Darter, LLC, a Colorado
limited liability company.

Witness my hand and official seal.

My commission expires: 2/28/07.


Alice Carpenter
Notary Public

