



2961219 06/14/2002 01:21P Weld County, CO
2 of 35 R 175.00 D 0.00 J.A. "Suki" Tsukamoto

THIS DECLARATION is made by Meyer Farm Development, Inc., a Colorado corporation,
Declarant.

DECLARATION

NOW, THEREFORE, Declarant, for itself, its successors and assigns hereby declares that all the Property (hereinafter defined) is made subject to this Declaration, and each part thereof is hereafter owned, conveyed, leased, occupied, maintained, altered and improved subject to the provisions set forth in this Declaration, which shall run with title to the Property and is binding upon all persons or entities possessing any interest in, or occupying or using any portion of, the Property, and upon their heirs, personal representatives, successors and assigns, and which inure to the benefit of each person or entity having any right, title, or interest in or to any portion of the Property. This Declaration intends to create a Planned Community pursuant to the Colorado Common Interest Ownership Act, as amended, and to the extent this Declaration is inconsistent with all applicable requirements of a Planned Community pursuant to said Act, the Act shall control.

ARTICLE 1

DEFINITIONS

Architectural Committee means the Board unless a separate architectural committee is established by the Board.

Articles of Incorporation means the duly filed Articles of Incorporation for St. Michael's Owner Association, as may be amended.

Association means and refers to St. Michael's Owner Association, its successors and assigns.

Board means the duly elected Board of Directors of the Association.

Bylaws means the duly adopted Bylaws of the Association.

Common Elements mean: (a) all real property together with any related improvements and appurtenances located with the Property and subject to the Plat and (b) all other real or personal property, wherever located, which the Association owns and/or has the obligation to maintain hereunder or pursuant to any other agreement including without limitation any landscape materials



within rights-of-way, detention ponds or similar property or improvements. Common Elements shall include by way of example and not limitation the following: (a) Outlots as reflected on the Plat; (b) all utility, drainage, detention and open space easements; (c) all rights-of-way, detention ponds or similar areas or improvements unless and until dedicated for public use (see Article VII); (d) all Improvements on or to any of (a), (b) or (c) above (including any improvements upon any rights-of-way, detention ponds or similar areas to the extent any agreements with the City of Greeley make the Association responsible for the maintenance, repair or replacement of any such improvements); and (e) all monument signage identifying St. Michael's Subdivision.

Common Expenses means every expense incurred by the Association pursuant to or in furtherance of this Declaration, the Articles or Bylaws, including without limitation the following: the cost of installation, operation, maintenance, repair and replacement of all Common Elements; acquisition and maintenance of any casualty, public liability and other insurance for the benefit of the Association; taxes and special assessments imposed upon the Common Elements; legal and accounting fees of the Association; payment of any deficit remaining from a previous assessment period; the creation and maintenance of any reasonable contingency, reserve, or similar fund; and any other sums declared Common Expenses by this Declaration.

Declarant means Meyer Farm Development, Inc.

Director means any duly elected member of the Board.

Dwelling Unit means a place of residence by a single family which may include only an individual living alone, or any number of persons living together as a single household who are interrelated by blood, marriage, adoption or other legal custodial relationship, or any number of such interrelated persons or an individual and not more than one (1) additional person unrelated by blood, adoption, guardianship, or other legal custodial relationship, not to exceed eight (8) persons.

His as used herein shall be gender neutral and shall mean his, hers, theirs and its.

Improvements means any building, fence, landscaping, wall, driveway, sidewalk, or other item of whatever kind or nature.

Lot means: Each individually identified and described parcel of land shown upon the Plat upon which an individual Dwelling Unit is or may be located pursuant to the Plat and applicable zoning. Notwithstanding the foregoing, in the instance of any duplex permitted pursuant to the Plat and applicable zoning, each individual Dwelling Unit within such duplex together with any land



appurtenant thereto shall be deemed a separate Lot whether or not individually identified and described upon the Plat. Subdivided duplex units will then become two (2) separate Lots.

Member means a member of the Association.

Membership shall mean all Members.

Mortgage means any mortgage deed, deed of trust, or other security instrument creating a consensual lien against any Lot and/or Dwelling Unit; **Mortgagee** means any grantee, beneficiary, or assignee of a Mortgage; **First Mortgage** means the Mortgage having first and paramount priority under applicable Colorado law; **First Mortgagee** means any grantee, beneficiary, or assignee of a First Mortgage.

Notice means notification in writing either hand delivered or sent prepaid by the U.S. Mail to the mailing address of the applicable Lot, or alternatively, to such other address designated in writing by the applicable Owner to the Association. If by mail, notice shall be deemed effective upon the earlier of actual receipt or on the third day following deposit in the U.S. Mail, properly addressed and postage paid.

Owner means the record owner, whether one or more persons or entities, of fee simple title to any Lot as shown in the records of the Clerk and Recorder for Weld County, Colorado.

Plat means all plans of St. Michael's subdivision as may be amended or supplemented from time to time, as approved by the City of Greeley and recorded in the records of the Clerk and Recorder for Weld County, Colorado.

Property means that land as described upon **Exhibit A** attached hereto and incorporated herein, and all appurtenances thereto.

Rules and Regulations means those rules and regulations which may be adopted by the Board concerning the use and enjoyment of the Property, and the enforcement of the covenants, conditions and restrictions of this Declaration.

Title Matters means all rights in and to the Property established by virtue of this Declaration or the Plat, or otherwise of record in the real estate records of the Clerk and Recorder for Weld County, Colorado, as of the date hereof (see **Exhibit B** attached hereto and incorporated herein by reference).



ARTICLE II
COMMON ELEMENTS

Section 2.1 Common Elements. All Common Elements shall be operated, maintained, repaired and replaced by the Association with all costs thereof being a Common Expense. Prior to conveyance of the first Lot by Declarant, the Common Elements, excluding any dedicated rights-of-way, detention ponds or similar dedicated public improvements or other property or improvements which the Association has the obligation to maintain hereunder or by separate agreement but which are not owned by Declarant, shall be conveyed by Declarant to the Association by quit claim deed, subject to all Title Matters, to be owned and held by the Association for the benefit of, and in trust for, the Owners. In the event that the Property is developed in phases such that any Common Elements within any later phase are not complete at the time of conveyance of the first Lot by Declarant, then prior to the conveyance of the first Lot within any such phase, all Common Elements within the applicable phase (excluding any dedicated public streets, detention ponds or similar dedicated public improvements or other property or improvements which the Association has the obligation to maintain hereunder or by separate agreement but which are not owned by Declarant) shall be conveyed by Declarant to the Association by quit claim deed, subject to all Title Matters, to be owned and held by the Association for the benefit of and in trust for, the Owners.

Section 2.2 Owners' Easement. Every Owner shall have a right and easement of enjoyment in and to the Common Elements (excluding any Common Elements as may have been dedicated for public use and benefit including without limitation all public streets, detention ponds or similar public improvements, in which instances each Owner shall have the same rights as the public generally) which shall be appurtenant to and shall pass with the title to every Lot, subject to this Declaration, the Articles and Bylaws, and the following limitations, reservations and exclusions:

- (1) The right of the Board to control the use of the Common Elements and to establish Rules and Regulations as provided herein;
- (2) The right of the Association to borrow money and to mortgage, pledge, deed in trust, or otherwise hypothecate the Common Elements as security for any such loan as provided herein; and



- (3) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility, or otherwise abandon, partition, subdivide, encumber, sell, or transfer any interest to all or any portion of the Common Elements as provided herein.

Section 2.3 Delegation of Use. Any Owner may delegate, subject to this Declaration and the Bylaws, his right of enjoyment in and to the Common Elements to those persons lawfully residing in his Dwelling Unit and their guests.

Section 2.4 Conveyance or Encumbrance of Common Elements. Common Elements may only be conveyed or encumbered by the Association if the Owners of at least sixty-six percent (66%) of the Lots not owned by Declarant, and at least sixty-six percent of the Owners of all Lots including those owned by Declarant, consent to the conveyance or encumbrance. All proceeds from any such conveyance or encumbrance shall be an asset of the Association. Such consent must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The agreement must specify a date after which it will be void unless recorded before that date. The agreement and any ratification thereof must be recorded in the real estate records of the county Clerk and Recorder for Weld County, Colorado, and is effective only upon such recordation. Thereafter, the Association shall have all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

Section 2.5 Negligent or Willful Acts Effecting The Common Elements. An Owner shall bear the expense of repair or replacement of any damage or destruction of any Common Element caused in whole or in part, as determined by the Board, by any negligent or willful acts or omissions by that Owner, other resident in his Dwelling Unit, or their guests, agents, or contractors. Any such expense shall be reimbursed to the association within thirty (30) days of the Association's furnishing Notice to such Owner that such reimbursement is owed, and together with costs of collection thereof, attorney fees, and interest thereon, shall be a personal obligation of the Owner and a charge and lien against such Owner's Lot as provided herein for assessments.