

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF TALLMAN**

March 2, 2015

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EXHIBITS

- Exhibit A - Community**
- Exhibit B - Common Elements**
- Exhibit C - Certain Title Exceptions**
- Exhibit D - Part of Annexable Area**

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF TALLMAN**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TALLMAN ("Declaration") is made and entered into by CRAFT – AREP III TALLMAN ASSOCIATES, LLC, a Delaware limited liability company ("Declarant," as more fully defined below).

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in Douglas County, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference, as supplemented and amended from time to time (the "Community," as more fully defined below); and

WHEREAS, Declarant desires to subject and place upon the Community certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded; and

WHEREAS, the Tallman Gulch Metropolitan District (the "District"), has been organized under the laws of the State of Colorado, and the District may, by contract with the Association and pursuant to Section 32-1-1004 (8) of the Colorado Revised Statutes, enforce the covenants, conditions, restrictions and easements, and exercise the functions of the Board of Directors in furtherance of administering and enforcing the covenants, conditions and restrictions as set forth in this Declaration as set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Plat (as defined below), which includes the Community, has been recorded and that all of the Community shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which shall run with the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1. DEFINITIONS

Section 1.1. *Basic Definitions*

As used in this Declaration, the following terms have the meanings given to them in this Section 1.1.

"Agencies" means the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development, including the Federal Housing Administration (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

"Allocated Interests" means the share of Assessments and votes in the Association allocated to each Lot. The Allocated Interest with respect to the share of Assessments for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time. The Allocated Interest with respect to votes for each Lot shall be one (1), and upon the annexation to or withdrawal of Lots from the Community shall be one (1). The Allocated Interest for each Lot is subject to change as provided in this Declaration, including a decrease in the Allocated Interests of each Lot upon the annexation of additional property to this Property pursuant to Article 14 below.

"Annexable Area" means the property described on Exhibit D attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant may elect in its sole discretion in an amount not to exceed the maximum permitted to be annexed into the Community pursuant to CCIOA. Unless and until the Annexable Area or any portion thereof is annexed to this Declaration, neither the Annexable Area nor any portion thereof shall be subject to this Declaration or any provision hereof except the right of annexation by the Declarant that is provided in Section 14.4 of this Declaration.

"Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Sections 4.1 and Sections 4.7 through 4.15, inclusive, of this Declaration, "Assessment" means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other charges that are provided for in this Declaration.

"Association" means Tallman Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns, a community association as provided in CCIOA.

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association.

"Builder" means: (i) any Person who acquires more than one Lot for the purpose of constructing a residential structure on each such Lot for sale to the public; and (ii) any Person who acquires more than one Lot for sale to any Person fitting the description in

subsection (i) above and/or for constructing a residential structure on any of such Lots for sale to the public.

"CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

"Common Elements" means any real property (including the Improvements located thereon) and fixtures owned, used pursuant to Easement rights or leased by the Association, other than a Lot, which exists for the common use of more than one of the Owners. The Common Elements at the time of recordation of this Declaration are described on Exhibit B attached hereto and incorporated herein by this reference.

"Community" means real estate described in this Declaration, as supplemented and amended from time to time. The name of the Community is Tallman. The Community is a planned community under CCIOA.

"Declarant" means Craft – AREP Tallman Associates, LLC, a Delaware limited liability company and any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

"Declarant Control Period" means a length of time expiring twenty-five (25) years after initial recording of this Declaration in Douglas County, Colorado. However, the Declarant Control Period shall terminate earlier upon the first to occur of the following events, if any of the following occurs within the time period that is specified in the first sentence of this Section: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or two (2) years after any right to add new Lots to the Declaration was last exercised.

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Tallman and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, plats and maps.

"Design Guidelines" has the meaning given to that term in Section 5.4.

"Design Review Committee" or "Committee" means the committee appointed by the Declarant until automatic termination of the Special Declarant Rights as provided in the definition thereof set forth below and then by the Association, which Committee shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

"Development Rights" means the following rights or combination of rights hereby reserved by the Declarant, as provided in this Declaration:

- 1.1.1 build and complete Improvements in the Community;

1.1.2 add/annex real estate to this Community in accordance with Article 14 below;

1.1.3 create Lots and/or Common Elements;

1.1.4 subdivide or replat Lots; and

1.1.5 withdraw real estate from this Community in accordance with Article 14 below.

Subject to the approval of all governmental entities with jurisdiction thereover, the Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. Declarant may also assign on or more Development Rights to a Builder or to an Owner of a Lot through a Supplemental Declaration executed by Declarant. The Declarant's rights to exercise Development Rights shall terminate automatically as provided in the definition of "Special Declarant Rights" below.

"District" means the Tallman Gulch Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

"Governing Documents" means this Declaration, the Articles of Incorporation, Bylaws, and any rules and regulations, policies, procedures, and Design Guidelines of the Association.

"Improvements" means all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features. The foregoing shall include, without limitation, buildings, outbuildings, detached garages, leach fields, septic systems, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, utilities facilities, pipes, lines and exterior air conditioning, cooling, heating and water softening equipment, if any. For purposes of Article 5 of this Declaration (Design Review Committee) and only in such Article, the word "exterior" shall be inserted immediately preceding the fourth word "improvements" in the first sentence of this Section.

"Initially Unoccupied Lots" means only those Lots which have not been conveyed to the initial Owner other than the Declarant or Builder.

"Lot" means each platted lot depicted on the Plat (as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting)) which is included in the real property described on the attached Exhibit A or annexed to this Declaration, or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements (which may include one or more platted lots) and any publicly dedicated property. Each Lot shall constitute a "unit" under CCIOA and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

"Lots that May Be Included" means One Hundred Twenty-One (121) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including those Lots which may be included if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Community.

"Member" means all Owners of a Lot collectively or, following termination of the Community, of all former Owners entitled to distributions of proceeds under CCIOA or their heirs, personal representatives, successors and assigns.

"Owner" means each fee simple title holder of a Lot, including without limitation, the Declarant, Builder, or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one Owner of a Lot.

"Permittees" means and include an Owner's tenants, sub-tenants, contractors, subcontractors, agents, employees, licensees, lessees, sublessees, guests and invitees (including invitees and guests of lessees and sublessees) and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers and visitors.

"Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

"Plat" means the Final Plat of Tallman Gulch, Filing No. 1, recorded in the Office of the Clerk and Recorder of Douglas County, Colorado, as amended and supplemented from time to time.

"Security Interest" means an interest in real estate or personal property (including one or more Lots), created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.10 (Certificate of Status of Assessments) of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 7.2 (General Provisions of Insurance Policies) of this Declaration, "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of the County in which such property is located show the Administrator as having the record title to the Lot.

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.10 (Certificate of Status of Assessments) of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 7.2 (General

Provisions of Insurance Policies) of this Declaration, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the County in which such property is located, show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

“Service Plan” shall mean the Service Plan for Tallman Gulch Metropolitan District approved by Douglas County, Colorado, as amended, supplemented or otherwise modified from time to time. The Service Plan defines the powers and authorities of, as well as the limitations and restrictions on, the District.

“Special Declarant Rights” means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any Declarant Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically on the earlier of (i) the date upon which Declarant no longer owns any portion of the property described on the attached Exhibits A and D and (ii) the date which is twenty-five (25) years from the date of this Declaration.

“Supplemental Declaration” means a written instrument containing covenants, conditions, restrictions or equitable servitudes, or any combination thereof, that may hereafter be recorded on any portion of the Community.

Section 1.2. Usage

Wherever the context of this Declaration so requires:

- (a) references to one gender include all genders;
- (b) words used in the singular shall include the plural and words used in the plural shall include the singular;
- (c) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted under this Declaration;
- (d) “including” is not limiting;
- (e) “or” has the inclusive meaning represented by the phrase “and/or”;

(f) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;

(g) Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified; and

(h) references to any agreement, document or instrument (including this Declaration) means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

ARTICLE 2. MEMBERSHIP AND VOTING RIGHTS

Section 2.1. *Association. Membership*

The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if the Lot is owned by multiple Owners.

Section 2.2. *Voting Rights.*

Each Member shall be entitled to one (1) vote for each Lot owned except that no votes allocated to a Lot owned by the Association may be cast. The maximum number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

ARTICLE 3. ASSOCIATION

Section 3.1. *Association.*

The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws, including, without limitation, all powers necessary or desirable to effectuate such purposes, including the right to (a) operate, regulate, manage, maintain, alter, repair, replace, and charge fees in connection with the operation and use of the Common Elements; and (b) enforce all provisions of this Declaration.

Section 3.2. *Board of Directors; Authority.*

3.2.1 The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Bylaws. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee including, without limitation, the District, without a vote of the Members,

except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association. Such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

3.2.2 Except for those matters expressly reserved to the Members as provided in the Governing Documents and the Nonprofit Act, the Board may act in all instances on behalf of the Association, to:

- (a) Adopt and amend bylaws, rules and policies;
- (b) Determine Common Expenses and adopt and amend the Budget for revenues, expenditures and reserves;
- (c) Collect Assessments;
- (d) Accept title to and/or agree to maintain Improvements within the Community funded, constructed, installed and/or maintained by Declarant;
- (e) Agree to maintain or otherwise contract for the maintenance of parking spaces, sidewalks and/or landscaping areas other than Common Elements within any particular Lot (at such Lot Owner's election and expense) or outside of the Community, including, without limitation, any areas owned, leased or otherwise controlled by the District, and to include the cost thereof as Common Expenses;
- (f) Hire and terminate managing agents and other employees, agents and independent contractors;
- (g) 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 Community;
- (h) Make contracts and incur liabilities, except that any agreement for professional management of the Association's business or contracts providing for services to the Association by Declarant shall be subject to the limitations described in Section 3.9 below;
- (i) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (j) Cause additional Improvements to be made as a part of the Common Elements;
- (k) Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, subject to restrictions imposed by this Declaration or CCIOA;

(l) Subject to compliance with the Owner consent requirements imposed under Section 312 of CCIOA, dedicate, grant and convey any Common Element as public right-of-way;

(m) Grant easements, leases, licenses and concessions through or over the Common Elements;

(n) Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements (other than those Limited Common Elements described in Sections 202(1)(b) and (d) of the Act), provided that no fee, charge or payment may be assessed against any Owner or, absent such Owner's approval, its Permittees;

(o) Enforce any rules or policies adopted by the Board, including enforcement by levying and collecting charges or fines for the violation thereof;

(p) Impose charges (including late charges and default interest) for late payment of Assessments, recover reasonable attorneys' 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 provisions of the Governing Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within 30 days after they become due);

(q) Impose reasonable charges for the preparation and recordation of amendments to this Declaration, the Plat or statements of unpaid Assessments;

(r) Provide for the indemnification of its officers and members of the Board to the extent permitted by applicable law and maintain directors' and officers' liability insurance;

(s) Assign its right to future income, including the right to receive Assessments; provided, however, that such Board action shall be effective only with the consent of Owners holding sixty-seven percent (67%) of the Association votes;

(t) Exercise any other powers conferred by this Declaration or the Association Bylaws;

(u) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including those powers specified by the Colorado Nonprofit Corporation Act; and

(v) Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 3.3. *Election of Part of the Board of Directors During the Declarant Control Period.*

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Members other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by the Members other than the Declarant.

Section 3.4. *Authority of Declarant During the Declarant Control Period.*

Except as otherwise provided in this Article, during the Declarant Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors of the Association, and may remove all officers and directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Association before termination of the Declarant Control Period; but, in that event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 3.5. *Termination of Declarant Control Period.*

After termination of the Declarant Control Period, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. After the Members other than Declarant elect a majority of the Executive Board, Declarant shall deliver to the Association all Common Elements or property of the Association held by or controlled by Declarant, if and to the extent required by CCIOA.

Section 3.6. *Budget.*

3.6.1 Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by eighty percent (80%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last approved by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

3.6.2 The Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, at least once every two years by a Person selected by the Board of Directors. Such Person need not be a certified public accountant except in the case of an audit.

3.6.2.1. An audit shall be required only when both of the following conditions are met:

(i) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000.00); and

(ii) An audit is requested by the owners of at least one-third of the Units represented by the Association.

3.6.2.2. Copies of an audit or review under this subsection 3.6.2 shall be made available upon request to an Owner beginning not later than thirty (30) days after its completion.

3.6.3 In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.6 of this Declaration, Section 3.6 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

Section 3.7. *Rules and Regulations.*

Rules and regulations concerning and governing the Lots, Common Elements, and/or this Community may be adopted, amended and/or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations and applications of the provisions of this Declaration, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Board has the authority to adopt or vary one or more rules and regulations that are different for different types of residences, if any exist. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration. Such rules and regulations may include a mosquito control plan as set forth in the Plat.

Section 3.8. *Association Books and Records.*

3.8.1 The Association's books and records shall be subject to an audit or a review as provided in this Declaration. Subject to the fourth sentence of this Section, and subject to the provisions and restrictions set forth in CCIOA, including, without limitation, Section 317 thereof, the Association shall make available for inspection and copying by Owners, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, Design Guidelines, minutes of the most recent annual Association's meeting and of any Board meetings that occurred within the most recent six (6) months prior to such request, Association operating budget for the year in which

such request is made, Association's annual income and expenditures statement, the Association's annual balance sheet and such other information as set forth in Section 317 of CCIOA, in accordance with the Bylaws and CCIOA.

3.8.2 In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.8 of this Declaration, Section 3.8 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

Section 3.9. *Management Agreements and Other Contracts.*

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

Section 3.10. *Information Regarding Security Interests on Lots.*

Each Member shall, within twenty (20) days of encumbering its' Lot with a Security Interest, and at other times upon request of the Association, provide the Association with the name and address of such Security Interest Holder, a copy of the instrument(s) creating the Security Interest(s), and the loan number(s) (or other identifying number of such Security Interest(s)). Within twenty (20) days after any change in the name or address of a Security Interest Holder on a Member's Lot, and at other times upon request of the Association, such Member shall provide the aforesaid information to the Association with respect to each Security Interest held by such Security Interest Holder.

Section 3.11. *Cooperation with Other Community Associations and/or Any Metropolitan, Special, or Other Districts; Delegation of Authority to Any Metropolitan, Special, or Other District.*

3.11.1 The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any metropolitan, special, or other district(s), for any purposes, including without limitation: to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters; to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefore; to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association, any other community association(s) and/or any metropolitan, special, or other district(s); to collect assessments other charges, or other amounts; and/or to otherwise cooperate with any other community association(s) and/or any metropolitan, special, or other district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association, any other community association(s) and/or any metropolitan, special, or other district(s), as the Board of Directors may determine in its discretion from time to time. Additionally, the

Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any subassociations, other community association(s), and/or any district(s) to collect Assessments, other charges, or other amounts which may be due to such entity and to permit any such entity to collect Assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by the subassociations, other community association(s) and/or any district(s).

3.11.2 Without limiting the generality of the foregoing, the governing body of any metropolitan, special, or other district may furnish covenant enforcement and/or design review services, as well as any other matters, within such metropolitan, special, or other district area if the Board of Directors enters into a contract with a metropolitan district to define the duties and responsibilities of each of the contracting parties, including the covenants that may be enforced by said metropolitan district, and if the covenant enforcement services of such metropolitan district do not exceed the enforcement powers granted by this Declaration, the rules and regulations of the Association, or any similar document containing the covenants to be enforced.

Section 3.12. *Merger.*

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in the definition of "Special Declarant Rights" set forth in Section 1.1 of this Declaration.

Section 3.13. *Compliance with Maintenance Manuals.*

Notwithstanding anything to the contrary, the Board of Directors, acting on behalf of the Association, shall comply with all maintenance manuals, if any, given by the Declarant to the Board of Directors or the Association, or otherwise obtained by the Board of Directors or the Association, regarding maintenance, repair and/or replacement of any portion of the Community or any Improvements therein. Further, the Board of Directors shall cooperate, at no cost or expense to the Board of Directors, with all inspections that may be undertaken by or at the request of the Declarant, on or with respect to the Community and Improvements therein.

ARTICLE 4. ASSESSMENTS

Section 4.1. *Personal Obligation for Assessments.*

Each Owner of a Lot, including Declarant and each Builder, by acceptance of a deed therefor (or creation thereof through subdivision), whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual Assessments or charges, special Assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such Assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due,

from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all Assessments, fees, charges and other amounts attributable to their Lot. Each amount, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts (including Assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2. *Purpose of Assessments.*

The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association, or the Board of Directors, or which the Association or the Board of Directors, may be empowered to pursue pursuant to any of the Governing Documents of the Association, the Plat, any other documents, as amended, or by law.

Section 4.3. *Initial Annual Assessment.*

The amount of the annual Assessment against each Lot shall be determined in accordance with the Association budget. However, the rate of the Assessments against the Initially Unoccupied Lots shall be less than that against the other Lots, as provided in the next Section.

Section 4.4. *Rate of Assessment.*

4.4.1 Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual Assessments and special Assessments against the Initially Unoccupied Lots shall be set at a lower rate than the rate of annual Assessments and special Assessments against other Lots, because the Initially Unoccupied Lots receive and benefit from fewer services funded by the Assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Initially Unoccupied Lots shall pay annual and special Assessments at the rate of forty percent (40%) of any annual Assessment or special Assessment charged to Lots other than the Initially Unoccupied Lots.

4.4.2 The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis.

4.4.3 The Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute an advance against future amounts (including Assessments) due from the Declarant; provided, however, that any such advances which have not been credited against amounts (including Assessments) due from the Declarant as of termination of the Declarant Control Period shall then be repaid by the Association to the Declarant, without interest,

to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the Declarant Control Period terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against amounts (including Assessments) due from the Declarant until conveyance by the Declarant of all of the property described on the attached Exhibits A and D. If the Declarant elects in its discretion to advance any amounts as provided in this subsection, Declarant shall not, under any circumstances, be obligated to continue advance, payment or funding of any amount(s) in the future.

Section 4.5. *Date of Commencement of Annual Assessments.*

The annual Assessments shall commence at such time as the Board of Directors may determine in its discretion; provided that the Board must have adopted a budget that has not vetoed by the members, as provided in this Declaration. A budget shall be so adopted by the Board of Directors no less frequently than annually. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

Section 4.6. *Special Assessments.*

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, a special Assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon any portion of real property for which the Association has repair, replacement and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair, replacement or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any expense or deficit incurred by the Association. Any such special Assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the special Assessments against Initially Unoccupied Lots shall be set in accordance with Section 4.4.1 hereof.

Section 4.7. *Assessments/Charges for Services to Less Than All of the Lots In the Community.*

The Association may, at any time from time to time, provide services to less than all of the Lots in the Community. If such services are not funded by the annual Assessments or special Assessments, then such services shall be provided, if at all, pursuant to a written document that includes a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services (including overhead expenses of the Association). Services which may be provided by the Association pursuant to this Section include, without limitation, (a) the construction, care, operation, management, maintenance, repair, replacement, reconstruction and renovation of Improvements or property owned by such Owner(s); (b) the provision of any

services or functions; (c) the enforcement of the provisions of any declaration, covenants or any other document or agreement for, on behalf of, and in the name of, the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

Section 4.8. *Lien for Assessments.*

4.8.1 The Association has a lien on each Lot for any amount levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as Assessments under this Article. The amount of the lien shall include all those items set forth in this Declaration from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.8.2 Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, any officer or director of the Association, or managing agent of the Association, may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the Assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

Section 4.9. *Priority of Association Lien.*

4.9.1 A lien under this Article 4 is prior to all other liens and encumbrances on a Lot except:

4.9.1.1. liens and encumbrances recorded before the recordation of the Declaration;

4.9.1.2. a Security Interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the amount(s) due to the Association became delinquent; and

4.9.1.3. liens for real estate taxes and other governmental assessments or charges against the Lot.

4.9.2 A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.9.1.2 to the extent, if any, provided in CCIOA.

4.9.3 This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts made by the Association.

4.9.4 The Association's lien on a Lot for Assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

Section 4.10. *Certificate of Status of Assessments.*

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished after written request within such times as required by law, and is binding on the Association, the Board of Directors, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.11. *Effect of Non-Payment of Assessments; Remedies of the Association.*

Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a monthly late charge in such amount as may be determined, from time to time, by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, without limitation, in a foreclosure action, such judgment or decree shall include interest (as provided above) and reasonable attorney's fees, together with the costs of the action, and may include late charges as above provided. No Owner may be exempt from liability for payment of any Assessment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the Assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.12. *Application of Payments to the Association.*

Application of payments received by the Association from Owners for payment of amounts due to the Association by such Owners, shall be applied first to the payment of attorneys' fees, fines, late charges and any other amounts (other than annual Assessments or special Assessments) due to the Association (in the order listed), if any; second to the payment of accrued interest at the rate specified in Section 4.11 above, if any; and third to the payment of annual Assessments and Assessments due to the Association.

Section 4.13. *Surplus Funds.*

Any surplus funds of the Association remaining after payment of or provision for Association expenses, and any prepayment of or provision for reserves, shall be retained by the Association and need not be paid to the Owners or credited to them.

Section 4.14. Working Capital Fund.

The Association shall require the first Owner (other than the Declarant or a Builder) of each Lot to make a non-refundable contribution to the Association in the amount equal to two (2) months' annual Assessments (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Declaration). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Builder of each Lot and shall, until used, be maintained for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the transfer of its Lot, an Owner shall not be entitled to a credit from the Association for the aforesaid contribution to working capital fund.

Section 4.15. Other Charges.

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

Section 4.16. Charges for Misconduct.

If any Association expense is caused by the misconduct of any Owner or such Owner's Permittees, the Association may assess that Association expense exclusively against such Owner and such Owner's Lot.

ARTICLE 5.
DESIGN REVIEW COMMITTEE

Section 5.1. Composition of Committee; Authority of Representative.

5.1.1 The Design Review Committee shall consist of three (3) or more persons. Until automatic termination of the Special Declarant Rights as provided in the definition of "Special Declarant Rights" set forth in Section 1.1 of this Declaration, the Declarant has the right to appoint all members of the Design Review Committee; subsequent to such date, the Design Review Committee shall be appointed by the Board of Directors. The power to "appoint" the Design Review Committee, as provided herein, shall include without limitation the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power

of removal, as may be set from time to time in the discretion of the appointor. The appointments of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Design Review Committee expires. The members of the Design Review Committee shall not be "officers" of the Association as a result of their membership on the Design Review Committee and thus, as a result of such membership on the Design Review Committee, shall not have any of the rights or duties attributable to officers of the Association.

5.1.2 The Design Review Committee may at any time, from time to time, appoint a representative to act on its behalf. If the Design Review Committee does so, then the actions of such representative shall be the actions of the Design Review Committee, subject to the right of appeal as provided below. However, if such a representative is appointed by the Design Review Committee, then the Design Review Committee shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative's authority to act on behalf of the Design Review Committee and the power to at any time remove or replace such representative.

5.1.3 Declarant, during the time when Declarant has the right to appoint the Design Review Committee, and the Board thereafter, may delegate any or all design review and/or approval functions pursuant to this Declaration to any other architectural/design review committee, and may accept from any architectural/design review committee(s) delegation of any or all review and/or approval functions of such architectural/design review committee(s). The Design Review Committee shall also have the right and authority to otherwise cooperate with any architectural/design review committee in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time.

5.1.4 The party with the right to appoint the Design Review Committee may, at any time, determine to reclaim the delegated rights. To reclaim the delegated rights, written notice must be given to the governing body of the entity to whom delegation was made, that such right is being reclaimed by the Association, and the reclamation shall be effective upon receipt of the notice by the governing body of the entity to whom delegation was made. No delegation of design review and/or approval shall constitute a waiver of the Association's right of design review and/or approval as provided in this Declaration.

5.1.5 The Association has the authority and ability to delegate the rights and duties under this Article with conditions and restrictions that the entity accepting the delegation must follow.

Section 5.2. *Review and Approval by Committee; Reimbursement for Expenses; Requirement for Additional Approvals.*

5.2.1 Except as provided in Sections 5.9 (Variance) and 5.12 (Declarant's and Builder's Exemption) of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved by the Design Review Committee. However, plans and specifications may not be newly submitted or resubmitted for at least six (6) months from the latest previous rejection of such plans and specifications by the Design Review Committee or its representative, unless such plans and specifications are substantially different from those that have previously been submitted.

5.2.2 The Design Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures.

5.2.3 In its review of such plans, specifications and other materials and information, the Design Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process (including costs associated with hiring professionals to review such materials on behalf of the Design Review Committee). Such amounts, if any, shall be levied in addition to the Assessments against the Lot for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of Assessments, as more fully provided in this Declaration.

5.2.4 In addition to the required approvals by the Design Review Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by Douglas County, Colorado, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in any Improvement.

Section 5.3. *Procedures.*

The Design Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of all plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Design Review Committee fails to decide any request within forty-five (45) days after the complete submission

of all plans, specifications, materials and other information with respect thereto, then such request shall be deemed to have been denied by the Design Review Committee.

Section 5.4. *Design Guidelines.*

The Design Review Committee may, with the advice of the Board of Directors, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce, a manual of design and/or architectural design guidelines ("Design Guidelines") for the Community, or other design or architectural guidelines, to interpret and/or implement any provisions of law, this Article or the Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Design Review Committee, may state procedural requirements, or may specify acceptable improvement(s) that may be installed without the prior approval of the Design Review Committee. Any Design Guidelines so adopted shall be consistent, and not in conflict, with this Article, this Declaration, and applicable law.

Section 5.5. *Vote and Appeal.*

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a request is decided by a representative acting on behalf of the Design Review Committee, then any Person shall have the right to an appeal of such decision to the full Design Review Committee, upon a written request therefor submitted to the Design Review Committee within ten (10) days after such decision by the Design Review Committee's representative. The decision of the Design Review Committee shall be final. No additional or further appeals are permitted, nor will any be recognized.

Section 5.6. *Prosecution of Work After Approval.*

After approval of a request for architectural approval, the work to complete the same shall be accomplished as promptly and diligently as possible and in complete conformity with the approval. Failure to complete the proposed Improvement within (1) year after the date of approval of the application therefor, or to complete the Improvement in accordance with the description and materials furnished to the Design Review Committee and the conditions imposed with such approval, shall constitute a violation of this Article; provided, however, that the Design Review Committee, in its discretion, may grant extensions of time for completion of any proposed Improvements.

Section 5.7. *Inspection of Work.*

The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with this Article and any approval therefor granted by the Design Review Committee. However, unless the Design Review Committee expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with

the approval therefor, no such conformance shall be implied from inspection of the Improvement either during the work or after completion thereof.

Section 5.8. *Records.*

The Design Review Committee shall, for such period(s) as the Board may determine in its discretion from time to time, maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day subject to the provisions of Section 3.8 of this Declaration (Association Books and Records).

Section 5.9. *Variance.*

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article 5 or Article 11 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements, and shall not militate against the general intent and purpose hereof.

Section 5.10. *Waivers; No Precedent.*

The approval or consent of the Design Review Committee or any representative thereof shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee or any representative thereof as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

Section 5.11. *Liability.*

The Design Review Committee, and any members or representative thereof, shall not be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, the Design Review Committee shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the Design Review Committee shall not be deemed an approval of any of the same. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Design Review Committee.

Section 5.12. *Declarant's and Builder's Exemption.*

5.12.1 Notwithstanding anything to the contrary contained in this Declaration, the Declarant shall be exempt from the provisions of this Article except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.4 hereof), until automatic termination of the Special Declarant Rights as

provided in the definition of "Special Declarant Rights" set forth in Section 1.1 of this Declaration.

5.12.2 Notwithstanding anything to the contrary contained in this Declaration, as long as a Builder has received design approval from the Declarant prior to automatic termination of the Special Declarant Rights as provided in the definition of "Special Declarant Rights" set forth in Section 1.1 of this Declaration, such Builder shall be exempt from the provisions of this Article except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.4 hereof).

ARTICLE 6. DISTRICT DUTIES AND RESPONSIBILITIES

Section 6.1. *Implied Rights of the District.*

The District shall give and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, as agreed upon by the Board of Directors and the District, provided in the Service Plan, or given to it by law, and shall have and may exercise every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

6.1.1 be members of the Design Review Committee;

6.1.2 adopt and amend the Design Review Guidelines;

6.1.3 hire and terminate agents and independent contractors as necessary to assist the District in performing its duties authorized by this Declaration and enforcing the terms and conditions of this Declaration. The governing body of the District shall not be liable for any omission or improper exercise by any agent or independent contractor of any duty, power or function so delegated by written instrument executed by or on behalf of the governing body of the District.

Section 6.2. *Right to Make Rules and Regulations.*

The District shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable to the Community and to implement the provisions of this Declaration, including but not limited to, rules and regulations to protect and preserve property and property rights. All rules and regulations shall comply with the Governing Documents. The rules and regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Lots. The District may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties or otherwise. Each Owner, lessee, guest and Person shall be obligated to and shall comply with and abide by such rules and regulations and pay such fines or penalties upon failure to comply with or abide by such rules and regulations and such unpaid fines. If a conflict arises between the rules and regulations of the District and the rules and regulations of the Association, the rules and regulations of the Association shall control. If a conflict arises between the rules and

regulations of the District and the rules and regulations of the Association, then the rules and regulations of the Association controls.

Section 6.3. *Delegation of Authority to District.*

The delegation of authority to the District shall not limit or otherwise restrict the powers, rights, and authority of the Board of Directors or the Association. Nor shall such delegation relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

**ARTICLE 7.
INSURANCE**

Section 7.1. *Insurance.*

The Association shall maintain insurance in connection with the Common Elements and with respect to certain areas (for example, drainage easements and detention ponds) which are mentioned on plat(s), subdivision improvements agreement(s) or annexation document(s) of all or any portion of the Community. The Association shall maintain insurance as required by applicable law or applicable regulation, including without limitation CCIOA, which insurance shall include, without limitation, property insurance and commercial general liability insurance. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including, but not limited to, fidelity coverage, workers compensation insurance, and personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association as well as insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion from time to time.

Section 7.2. *General Provisions of Insurance Policies.*

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner, tenant, or member of such Owner's household. Further, all policies of insurance carried by the Association shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 7.3. *Deductibles.*

The Association may adopt and establish written non-discriminatory rules, regulations, policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association may, as determined by the Board of Directors in its discretion, be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or be partly or wholly borne by the Association and/or such Person. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question in such amount(s) as the Board of Directors deems appropriate, and the Association may collect such amount(s) from said Owner(s) in the same manner as any assessment.

Section 7.4. *Payment of Insurance Proceeds.*

Any loss covered by an insurance policy described in Section 7.1 of this Declaration must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to Section 8.1 of this Declaration (Damage or Destruction), the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired, restored or replaced and any budget or reserve deficit funded, or unless the Community is terminated.

Section 7.5. *Association Insurance as Primary Coverage.*

If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner and the Association may collect the amount from said Owner in the same manner as any Assessment.

Section 7.6. *Acceptable Insurance Companies.*

Each insurance policy purchased by the Association or the Owners under this Article 7 must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. Neither the Association nor any Owners shall obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or Assessments may

be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 7.7. *Insurance to be Maintained by Owners.*

An insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon, as well as on all the furnishings and personal property belonging to an Owner, including without limitation, all fixtures and furnishings, draperies, unattached carpeting, appliances, wallpaper and other items of personal property, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot, and the Association, its Board of Directors and any managing agent shall have no responsibility therefor. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided that no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such insurance carried by any Owner.

**ARTICLE 8.
DAMAGE OR DESTRUCTION**

Section 8.1. *Damage or Destruction.*

8.1.1 Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

8.1.1.1. the Community is terminated; or

8.1.1.2. repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

8.1.1.3. the Members casting sixty-seven percent (67%) of the Association votes, in person or by proxy, vote not to rebuild; or

8.1.1.4. prior to conveyance of any Lot to a Person other than the Declarant, a Security Interest Holder rightfully demands all or a substantial part of the insurance proceeds.

8.1.2 The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the

Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests for Assessments of all the Lots.

Section 8.2. *Lots.*

Except as otherwise provided in Section 8.1 of this Declaration, any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner(s) thereof. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a structure located on a Lot shall be destroyed or so damaged that the structure is no longer habitable or useable for the purpose for which it was constructed, then the Owner of such Lot shall, within a reasonable time not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the structure or demolish the same, in accordance with the approval of all applicable governmental entities. Demolition of a structure shall include removal of any foundation slab, basement walls and floors, regrading of the Lot to a level condition, and the installation of such landscaping as may be required by the Design Review Committee pursuant to a plan submitted to the Design Review Committee by the Owner of the Lot. If the Owner of a Lot does not either commence repair, reconstruction or demolition activities (if demolition is a permitted option) within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Design Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Section 9.4 hereof, enter upon the Lot for the purpose of completing such repair and reconstruction or demolishing the structure and then landscape the Lot in conformance with approved plans. The cost related to such repair and reconstruction or demolition and landscaping shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be subject to all the terms and provisions applicable to Assessments as provided in Article 4 hereof, including without limitation, interest, late charges, attorneys' fees and lien rights.

ARTICLE 9. EXTERIOR MAINTENANCE

Section 9.1. *General.*

9.1.1 Maintenance, repair or replacement of the Common Elements and all Improvements located thereon, and of any drainage structure or facilities (including without limitation underdrains and interceptor drains), or other public Improvements (including without limitation pedestrian and vehicular accesses and roadways) required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Without limiting the generality of the foregoing, the Association shall maintain and repair the Common Elements and the Improvements thereon. Further, the Association may provide such other maintenance, repair and replacement as the Board of

Directors deems appropriate from time to time. The costs to be expended for such maintenance and repair shall, subject to Section 9.6 of this Declaration (Acts or Omissions), be collected and enforced by the Association as Assessments as provided in Article 4 of this Declaration (Assessments).

9.1.2 The Plat and other documents, including replats, may provide for certain maintenance and/or inspections to be done by or for the Association, including without limitation inspection of Individual Sewage Disposal Systems as provided in Section 9.2 below. The costs, expenses and fees expended by the Association for the same shall be collected by the Association as Assessments as provided in Article 4 hereof.

9.1.3 Except as provided in subsections 9.1.1 and 9.1.2 above, the maintenance, repair and replacement of each Lot, and the Improvements thereon (including without limitation any Individual Sewage Disposal System) shall be the responsibility of the Owner of such Lot. Such maintenance, repair and replacement shall be done in compliance with this Declaration, the Design Guidelines, the rules and regulations of the Association, and all statutes, ordinances, laws and other requirements of all governmental agencies and entities with jurisdiction thereover.

Section 9.2. *Inspection of Individual Sewage Disposal Systems.*

After installation and approval by Tri-County Health Department of the Individual Sewage Disposal Systems, the Association will hire a third party to conduct annual inspections of Individual Sewage Disposal Systems in the Community. The costs, expenses and fees expended by the Association for such inspections, and reports therefrom, shall be collected by the Association as Assessments as provided in Article 4 hereof. The Association will communicate the results of such inspection of the Individual Sewage Disposal Systems on each Lot to the Owner thereof; the Owner of such Lot is responsible for scheduling and costs of all maintenance, repairs and pumping that may be recommended by such inspection and/or report. Note that it is the responsibility of each Owner to keep their Individual Sewage Disposal System in good working order at all times. The Owners shall hold the Association harmless from and against any and all actions or omissions by the inspection company that conducts such inspections.

Section 9.3. *Changed or Added Improvements.*

Any Improvement which has been changed, altered or modified by or for an Owner or occupant of a Lot shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Lot after conveyance of such Lot by Declarant, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner of such Lot. However, the Board of Directors may at any time, by resolution, elect to have the Association provide such maintenance, repair or replacement; provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

Section 9.4. *Association's Right to Maintain, Repair and Reconstruct.*

In the event any Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association or the District, in accordance with all applicable governmental requirements, may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or reconstruction. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to Assessments as provided in Article 4 of this Declaration (Assessments), including interest, late charges and lien rights.

Section 9.5. *Non-Interference with Grade and Drainage.*

8.4.1. Each Owner shall maintain the grading on its Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property. In the event that it is necessary or desirable to change the established drainage over any Lot or Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Design Review Committee for its review and approval, in accordance with Article 5 of this Declaration (Design Review Committee), and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant or a Builder, as applicable, is completed.

Section 9.6. *Acts or Omissions.*

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for demolition, removal, restoration, maintenance, repair or reconstruction of the Common Elements, a Lot, or any Improvements located thereon, is caused by the act or omission of any Owner or its Permittees, the cost of such demolition, removal, restoration, repair, maintenance, replacement, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado, and any amount incurred by the Association for such repair, maintenance, replacement and/or reconstruction shall be added to the Assessments to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration. A determination of the act or omission of any Owner, or any of its Permittees, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at a hearing after notice to the Owner.

ARTICLE 10. EASEMENTS AND ACCESS

Section 10.1. *Easements.*

In addition to any other easements which may be granted or reserved elsewhere in this Declaration or by law, the following Sections describe easements to which the Community is or will be subject.

Section 10.2. *Access Easement.*

Each Owner hereby grants: to the Association and the other Owners, and to their agents, employees and contractors, a right and easement on, over, across and through such Owner's Lot for maintenance, repair and replacement as provided in this Declaration, including without limitation as provided in Article 9 of this Declaration (Exterior Maintenance); to utility companies, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of utility meters and their appurtenances; and to the Association for and incidental to enforcement of any term or provision of any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Person responsible for the damage or expense to avoid damage is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, repair and/or replacement; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any dwelling unit shall not be subject to the easement that is granted in this Section.

Section 10.3. *Future Utilities Easements.*

Declarant hereby reserves the right to grant future easements to utility providers upon, across, over and under the Common Elements for utilities and the installation, use, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any; provided any such rights shall only be granted with the approval of all applicable governmental or quasi-governmental entities. By reservation of the right to grant future easements, it shall be expressly permissible to erect, use, and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, use, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. Declarant's right and authority to grant such future easements upon, across, over or under any part or all of the Common Elements shall automatically cease at such time as the Special Declarant Rights terminate as provided in the definition of "Special Declarant Rights" set forth in Section 1.1 of this Declaration, at which time said reserved right shall vest in the Association. The easement rights provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

Section 10.4. *Drainage and Drainage Facilities Access.*

10.4.1 The District, if it has the power and authority to do so, shall make decisions regarding any conflicts, disputes, or differences between or among Owners of one or more Lots relating to drainage and/or drainage facilities in the Community. If the District does not have the power and authority or the District delegates such power and authority to the Board of Directors, the Board of Directors shall have the power and authority to make decisions regarding any conflicts, disputes, or differences between or among Owners of one or more Lots relating to drainage and/or drainage facilities in the Community.

10.4.2 No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales.

10.4.3 The Association and/or the District shall be authorized to and shall have the power to enter Lots for the purpose of implementing any decision(s) made pursuant to subsection 10.4.1, including but not limited to, any decision(s) to construct, repair, replace or change drainage structures or drainageways, or to perform such grading, drainage or corrective work as the Association or District may deem necessary or desirable in their sole discretion from time to time.

Section 10.5. *Easement for Unannexed Property.*

The Declarant hereby reserves, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement and right-of-way on, over, across and under the Common Elements for vehicular and pedestrian access, ingress and egress (herein collectively the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for vehicular and pedestrian access and for utilities services to those portion(s) of the Annexable Area which have not been annexed, from time to time, into the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration. In the event Declarant develops and/or constructs Improvements on any such property, the same shall be subject to the approval of all applicable governmental entities.

**ARTICLE 11.
RESTRICTIONS**

Section 11.1. *General Plan.*

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots.

Section 11.2. *Restrictions Imposed.*

The Community is subject to (a) all easements and licenses as shown on any recorded plat or map affecting the Property, including the Plat and (b) any other easements or matters of record or of use as of the date of recordation of this Declaration. The recording data for all presently recorded easements, licenses and other matters is listed on Exhibit C attached hereto and incorporated herein by this reference. In addition, the Community is subject to all applicable laws of governmental authorities having jurisdiction over the Community, or any portion thereof. The Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration and the Plat.

Section 11.3. *Residential Use; Certain Permitted Business Activities.*

Subject to Section 14.6 of this Declaration (Declarant's and Builder's Use), Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

11.3.1 The business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

11.3.2 The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

11.3.3 The business does not result in an undue volume of traffic or parking within the Community, which determination may be made by the Board in its sole discretion from time to time;

11.3.4 The business conforms to all zoning provisions and is lawful in nature; and

11.3.5 The business conforms to any rules and regulations that may be imposed by the Board from time to time on a uniform basis to protect the peace, tranquility and quality of the Community.

Section 11.4. *Household Pets.*

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are kept in accordance with any applicable laws related to pets, are not kept for any commercial purpose and are not kept in such number or manner as to create a nuisance to any resident of the Lots. The Association shall have, and is hereby given, the right and authority to: set size or poundage limits on pets; regulate the type(s) of pets that are permitted to be kept;

determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or that an Owner is otherwise in violation of any provisions of this Section. The Association may take such action(s) as it may deem appropriate to correct any of the foregoing. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 4 of this Declaration (Assessments).

Section 11.5. *Temporary Structures; Unsightly Conditions.*

Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, or shack, shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Declarant or a Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

Section 11.6. *Miscellaneous Improvements.*

11.6.1 No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet; and such other signs, for such length(s) of time, which have the prior written approval of the Design Review Committee or are otherwise expressly permitted by CCIOA. Notwithstanding the foregoing, any signs, advertising, or billboards may be used by the Declarant only in compliance with applicable laws (without the prior written approval of the Design Review Committee).

11.6.2 No wood piles or storage areas shall be so located on any Lot as to be visible from a street, from the ground level of any other Lot or from the Common Elements.

11.6.3 No types of refrigerating, cooling or heating apparatus shall be permitted on a roof. No such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Design Review Committee subject to any provisions of the Design Guidelines.

11.6.4 Except as may otherwise be permitted by the Design Review Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot,

except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, the Association shall be empowered to adopt rules and regulations governing the types of "antenna" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

11.6.5 Fencing shall only be permitted in accordance with the Plat and Design Guidelines. In addition, no fences shall be permitted without the prior written approval of the Design Review Committee, except such fences as may be constructed, installed or located by the Declarant or a Builder (with the prior written approval of the Declarant) in the development of, or construction of Improvements in, the Community.

11.6.6 Other than as specifically permitted by Sections 106.5(1.5) and 106.7(1) of CCIOA, and then only in accordance with Design Guidelines meeting the provisions of Section 106.7(2) of CCIOA, no wind generators, clotheslines, drying yards, or service yards, shall be constructed, installed, erected or maintained on any Lot.

11.6.7 Accessory structures shall be permitted only with the prior, written approval of the Design Review Committee.

Section 11.7. *Vehicular Parking, Storage and Repairs.*

11.7.1 No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (excluding pickup trucks that are one ton or less), self-contained motorized recreational vehicle, jet ski, snow mobile, or other type of recreational or commercial vehicle or equipment, may be parked or stored on the Lots, or parked or stored on any property visible from the ground level of any other Lots, unless such parking or storage is entirely within the garage area of any Lot, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

11.7.2 No recreation vehicles or disassembled or partially disassembled vehicles of any type shall be parked, stored, maintained, or used on a Lot other than within the fully enclosed garage of that Lot. However, recreation vehicles and motor homes may be temporarily parked for a maximum of three (3) consecutive days in the driveway. Recreation vehicles shall include, but not be limited to, motor homes, pick-up trucks with camper shells, trailers, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain

vehicles, and other apparatus intended for use on land, water, or the air, and the trailers used for their transportation.

11.7.3 Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community, or parked or stored on any property visible from the ground level of any other Lot. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of forty-eight (48) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

11.7.4 In the event the Association shall determine that a vehicle is parked or stored on any Lot in violation of subsections 11.7.1, 11.7.2 or 11.7.3, above, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

11.7.5 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

11.7.6 This Section 11.7 shall be construed and applied in accordance with all applicable laws, including without limitation CCIOA.

Section 11.8. Nuisances.

No nuisance shall be permitted in the Community nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs the resident of any Lot or which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant or a Builder which are incidental to the development and construction of, and sales activities in, the Community. No noxious or offensive activity shall be carried on in the Community nor shall anything be done or placed in the Community which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no immoral, improper, offensive or unlawful use shall be permitted in the Community or any portion thereof.

All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

Section 11.9. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted on any Lot or within Improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot, except in a contained barbecue unit or outdoor gas fire pit, while attended. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 11.10. *No Annoying Light, Sounds or Odors.*

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled from any Lot.

Section 11.11. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup; provided, however, that no such container shall be deposited on a street for garbage pickup prior to 5:00 a.m. on the day such garbage will be picked up. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

Section 11.12. *Lots to Be Maintained.*

Each Lot shall at all times be kept in a clean, sightly and wholesome condition by the Owner of the Lot. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 11.11 of this Declaration (Restrictions on Trash and Materials).

Section 11.13. *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, or Improvement thereon. Any Owner shall have the right to lease his Lot, or any portion thereof, under the following conditions:

11.13.1 All leases shall be in writing; and

11.13.2 A copy of all leases shall be provided to the Board of Directors within ten (10) days of the commencement of such lease; and

11.13.3 All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of the Governing Documents; and that any failure by the lessee to comply with any of the Governing Documents, in any respect, shall be a default under the lease.

11.13.4 Under no circumstance may any lease be for "hotel" or other "short-term" rental purposes, i.e., rental or leasing on a day-to-day or week-to-week basis.

Section 11.14. *Landscaping of Lots.*

Subject to Section 106.5 of CCIOA, within the time frames as hereinafter provided, the Owner (other than Declarant or a Builder) of each Lot shall install and/or preserve landscaping in accordance with the Design Guidelines, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. For purposes of this Section, "landscaping" shall include native grasses and trees. The Owner of each Lot (other than Declarant or a Builder) shall install landscaping on such Lot within one hundred eighty (180) days after the later of issuance of a final certificate of occupancy on the dwelling unit constructed on such Lot or acquisition of such Lot by such Owner if said acquisition occurs between April 1 and October 1; if said acquisition does not occur between such dates, then such landscaping shall be installed by such Owner on or before the later of sixty (60) days after issuance of a final certificate of occupancy on the dwelling unit constructed on such Lot or the following October 1. Landscaping plans and other required documents shall be professionally done, shall be in accordance with the Design Guidelines, and shall be submitted to the Design Review Committee for review and approval prior to the installation of landscaping, except where installed by the Declarant or a Builder. If any Owner fails to comply with this Section, or with the requirements of the Design Review Committee in installation of landscaping, the Association may, at the direction of the Board of Directors, enter upon such Lot and install or maintain landscaping for which the Owner shall be obligated to pay, in accordance with and subject to the provisions of Section 9.4 of this Declaration (Association's Right to Maintain, Repair, and Reconstruct).

Section 11.15. *Restrictions on Mining or Drilling.*

No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 11.16. *High Pressure Gas Line.*

Each Owner, by acceptance of a deed to a Lot, acknowledges the existence of a high pressure gas line located in or in proximity to the Community and/or the Annexable Area, and each Owner assumes the risk of owning property near or adjacent to a high pressure gas line. Such risks include, without limitation: injury or damage to persons and/or property; explosion

and fire; and leakage. The waiver and release set out in Section 14.13 of this Declaration shall apply to this Section.

Section 11.17. *Non-Potable Water.*

Certain water that is or may be in the Community may be non-potable and should not be used as drinking water or for any use which might result in consumption of the same. Each Owner is solely responsible for any adverse consequence or reaction from consumption of any non-potable water by the Owner, an Owner's Permittees, or any animal(s) (such as dogs) for which such Owner is responsible. Further, neither the Declarant, the District nor the Association plan to attempt to protect any Person, animal or property from, or to provide any physical barriers or impediments to, any water in the Community. Neither the Declarant, the District nor the Association plan to provide signage warning about the possible dangers of consumption of non-potable water or other matters. The Declarant, the District, Builders, Association, Board of Directors, Design Review Committee, and their officers, directors, members, partners, agents and employees, hereby disclaim any responsibility for the safety of any Persons or property with respect to non-potable water. The waiver and release set out in Section 14.13 of this Declaration shall apply to this Section.

Section 11.18. *Individual Sewage Disposal Systems.*

Each Lot shall have its own Individual Sewage Disposal Systems to be installed and maintained by the Owner of such Lot, subject to an Individual Sewage Disposal System inspection program by the Association as provided in Section 9.2 hereof. However, no, septic tank, or other Individual Sewage Disposal System shall be installed on any Lot or within the Community without the prior written approval of the Design Review Committee and any applicable governmental entity(s) requiring prior written approval, including without limitation, the Tri-County Health Department. In addition, all Individual Sewage Disposal Systems within the Community shall be subject to all laws, rules and regulations of all governmental authorities having jurisdiction thereover. The waiver and release set out in Section 14.13 of this Declaration shall apply to this Section.

Section 11.19. *Additional Restrictions by Association.*

In addition to the restrictions on use and occupancy set forth above, the Association shall have and may exercise the right to control Owners' use and occupancy of their respective Lots and the Common Elements in any reasonable and lawful manner approved by the Board.

Section 11.20. *Additional Restrictions by Declarant.*

In addition to the restrictions on use and occupancy set forth above, Declarant shall have and may exercise the right at any time during the Declarant Control Period to amend this Declaration to create additional restrictions on any Owner's use and occupancy of its respective Lot and the Common Elements allocated to such Owner, provided that Declarant obtains the consent of the affected Owner.

Section 11.21. *No Assurance of Future Development.* Notwithstanding anything to the contrary contained in this Declaration or any other Community Instrument, Declarant makes

no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Community can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be made subject to this Declaration, or if subject to this Declaration at any time will remain subject hereto, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that such use will continue in effect. Declarant makes no representations or warranties as to the Common Elements. Each Owner specifically acknowledges that current plans for the Community do not include a clubhouse or pool, and that any development plans for the Community may change at any time and from time to time.

ARTICLE 12. PROPERTY RIGHTS IN THE COMMON ELEMENTS.

Section 12.1. *Owners' Easements of Enjoyment.*

Subject to this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to their Lots and for use for all other purposes for which they were intended, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 12.2. *Extent of Owners' Easements.*

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Owner may place any structure on the Common Elements. In addition, such rights and easements are subject to the following rights of the Association:

12.2.1 The right of the Association to borrow money for any purpose and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with CCIOA; and

12.2.2 The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

12.2.3 The right of the Association to promulgate and publish standards, guidelines, rules and regulations and policies and procedures, with which each Member shall strictly comply; and

12.2.4 The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Governing Documents; and

12.2.5 The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public or quasi-public agency, authority, district or utility for such purposes and subject to such conditions as may be

agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with CCIOA. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes shall not be deemed a transfer within the meaning of this subsection; and

12.2.6 The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, and their respective Permittees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

12.2.7 The right of the Association, through its Board of Directors to maintain, use, designate, improve, and otherwise act with respect to trail(s), now or hereafter on the Common Elements or otherwise. Without limiting the generality of the foregoing, the Board of Directors may grant easements to the general public over and across the Common Elements to use and access such trail(s).

12.2.8 The right of the Association, to transfer certain rights and obligations to the District in accordance with the terms of Article 6, and to enter into agreements to perform certain obligations of the District.

12.2.9 The right of the Association to close or limit the use of the Common Elements while maintaining, repairing or making replacements in the Common Elements.

Section 12.3. *Use of Common Elements by Declarant.*

Easements are hereby granted to and reserved by the Declarant on, over, under and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights or other rights of the Declarant, and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements through the Common Elements.

Section 12.4. *Delegation of Use.*

Any Owner may delegate its right of enjoyment to the Common Elements and facilities to its Permittees.

Section 12.5. *Payment of Taxes or Insurance by Security Interest Holders.*

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may be or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefore from the Association.

Section 12.6. *Conveyance or Encumbrance of Common Elements.*

Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with CCIOA and this Declaration.

Section 12.7. *Designation of Common Elements.*

Declarant in recording this Declaration has designated certain property as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements owned by the Association are not dedicated hereby for use by the general public; however, easements and other rights with respect to the Common Elements may be granted to the general public.

Section 12.8. *Duty to Accept Property and Facilities Transferred by Declarant.*

The Association shall accept title to any property, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple or easement interests to Common Elements, portions of the Annexable Area or other property as described on the attached Exhibit B.

**ARTICLE 13.
DISPUTE RESOLUTION**

Section 13.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.*

13.1.1 Each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) to the procedures set forth in this Article and not to a court of law.

13.1.2 By acceptance of a deed for a Lot, each Owner agrees to abide by the terms of this Article.

13.1.3 No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 13.2. *Definitions Applicable to this Article.*

For purposes of this Article only, the following terms have the meanings set forth in this Section:

13.2.1 "AAA" means the American Arbitration Association.

13.2.2 "Claimant" means any Party having a Claim.

13.2.3 "Claim" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Party under any of the Governing Documents; (ii) the design or construction of improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party.

13.2.4 "Inspecting Party" means a Party causing an inspection of the Subject Property to be made.

13.2.5 "Party" means each of the following: Declarant, its officers, directors, partners, members, employees and agents; the District, its officers, directors, partners, members, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any builder or contractor, its officers, directors, partners, members, employees and agents, who construct buildings, residences or other Improvements; and any Person not otherwise subject to this Declaration who agrees to submit to this Article.

13.2.6 "Respondent" means any Party against whom a Claimant asserts a Claim.

13.2.7 "Subject Property" means the property being inspected pursuant to the inspection right provided in Section 13.7 of this Declaration (Right to Inspect).

13.2.8 "Termination of Mediation" means a period of time expiring sixty (60) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than thirty (30) days after the Claimant has given notice to the Respondent of the Claim and if the parties are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

Section 13.3. *Approval Required for Association Actions.*

Except as provided in Section 13.6 of this Declaration (Exclusions from "Claim"), the approval of eighty percent (80%) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (with the "quorum" in such cases to be set as provided in Section 13.4 of this Declaration (Notice and Quorum for Association Actions)), must be obtained before the Association shall have the power to institute action on any Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit or other action brought against the Association. Such approval must be

obtained in accordance with the requirements of Section 13.4 of this Declaration (Notice and Quorum for Association Actions).

Section 13.4. Notice and Quorum for Association Actions.

Written notice of any meeting of Members which includes a vote pursuant to Section 13.3 of this Declaration (Approval Required for Association Actions) shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

13.4.1 A statement regarding the nature of the Claim. Such statement shall include, without limitation, the name(s) of the proposed Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

13.4.2 A good-faith estimate of the costs and fees, including the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

13.4.3 A statement advising Members that the costs and fees of prosecuting any Claim may substantially increase the amount of Assessments payable by the Owners to the Association; and

13.4.4 A good-faith estimate of the manner in which any monies reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

13.4.5 A good faith estimate of the projected time frame for resolution of the Claim; and

13.4.6 All terms and provisions of the agreement between the Association and the attorney(s) the Board proposes to have prosecute the Claim.

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast eighty percent (80%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

Section 13.5. Required Form of Proxy or Ballot.

Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement:

With full knowledge that my annual Assessments may be significantly increased by the costs and fees associated with the

proposed claim, I/we APPROVE the authority of the Association to bring such claim.

Section 13.6. Exclusions from "Claim".

Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim, cross-claim, mediation, arbitration or in any other manner, and the same shall not be subject to the provisions of this Article:

13.6.1 An action by the Association to enforce any provision of Article 4 of this Declaration (Assessments); and

13.6.2 An action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the Association or court may deem necessary in order to enforce any of the provisions of Article 11 of this Declaration (Restrictions) or of Article 5 of this Declaration (Design Review Committee); and

13.6.3 any action between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

13.6.4 any action in which any indispensable party is not a Party.

Section 13.7. Right to Inspect.

Prior to any Party commencing any proceeding to which another Party is a party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the Inspecting Party shall:

13.7.1 Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any Improvements to the Subject Property;

13.7.2 Minimize any disruption or inconvenience to any person who occupies the Subject Property;

13.7.3 Remove daily all debris caused by the inspection and located on the Subject Property; and

13.7.4 In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property and repair and replace all damage, and restore the Subject Property to the condition of the Subject Property as of the date of the inspection unless the Subject Property is to be immediately repaired.

The Inspecting Party shall not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Subject Property. The Inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section by the Inspecting Party.

Section 13.8. *Mandatory Procedures.*

13.8.1 Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

13.8.2 Notice. Prior to proceeding with any claim against a Respondent, each Claimant shall give a notice to each Respondent, which notice shall state plainly and concisely:

13.8.2.1. the nature of the Claim, including all persons involved and Respondent's role in the Claim;

13.8.2.2. the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

13.8.2.3. the specific relief and/or proposed remedy sought.

13.8.3 Mediation.

13.8.3.1. If the Parties do not resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional forty-five (45) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

13.8.3.2. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

13.8.3.3. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

13.8.3.4. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

13.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 13.8. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

13.8.4 Binding Arbitration.

13.8.4.1. Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the parties to the Claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

13.8.4.2. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

13.8.4.3. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the Claim.

Section 13.9. *Liability for Failure of Association to Maintain an Action.*

No director or officer of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent.

**ARTICLE 14.
GENERAL PROVISIONS**

Section 14.1. *Enforcement; Fines.*

14.1.1 This Section 14.1.1 is subject to Article 13 of this Declaration (Dispute Resolution). Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Governing Documents may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association, either itself or through the District, and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. Remedies for violation(s) of the Governing Documents shall be cumulative and no remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under any of such documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Association, either itself or through the District, or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter. Each applicable provision of this Declaration with respect to the an Owner, the Association or a Lot, including, without limitation, maintenance of any portion of the Community, shall be enforceable by Declarant by (i) a proceeding for injunctive relief, (ii) a suit or action to recover damages or (iii) any other right or remedy available under this Declaration, at law or in equity.

14.1.2 Subject to the following sentence, the Association shall have the right to levy and collect fines (as provided in Article 4 of this Declaration (Assessments)) for the violation of any provision of any of the aforesaid documents. Prior to collection of any fines, the Association, the Board of Directors, or an authorized management company of the Association, shall mail a notice of violation to the Person(s) alleged to be in violation of any such provision and such notified Person(s) has a right to a hearing in accordance with policies adopted by the Association.

Section 14.2. *Severability.*

All provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, including without limitation any provision(s) of Article 13 of this Declaration (Dispute

Resolution), by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 14.3. *Conflict of Provisions; Conflict with CCIOA.*

14.3.1 In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

14.3.2 In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with CCIOA, the terms or provisions of CCIOA shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with CCIOA, and any conflict with or violation of CCIOA by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

Section 14.4. *Annexation; Withdrawal.*

14.4.1 Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

14.4.2 Declarant anticipates phasing of this development, such that one or more additional phases of real property may be annexed into this Declaration by the Declarant which, if accomplished, will result in expansion of the Community. Notwithstanding subsection 14.4.1, above, until that date which is ten (10) years after the date of recording of this Declaration in Douglas County, Colorado, the Declarant may annex to this Declaration (i) all or any portion(s) of the Annexable Area, on a Lot-by-Lot basis and in any order, if at all, without consent of any other Owners, Security Interest Holders, or any other Person; provided that Declarant shall not be entitled to annex portions of the Additional Property (other than those dedicated for public use) not owned by Declarant without the prior written consent of the Owner thereof; and (ii) subject to the provisions of Section 222 of CCIOA, other real estate. Each such annexation shall be effected, if at all, by recording an Annexation of Additional Land or Supplemental Declaration in the Office of the Clerk and Recorder of Douglas County, Colorado, which document:

14.4.2.1. shall describe the real property being annexed;

14.4.2.2. shall refer to this Declaration, including the date and reception number of the recordation of this Declaration;

14.4.2.3. shall provide for annexation to this Declaration of the property described therein;

14.4.2.4. shall identify the owner(s) of the Lots thereby created;

14.4.2.5. shall assign an identifying number to each new Lot (which shall be its identifying number on the Plat);

14.4.2.6. shall describe any Common Elements within the property being annexed;

14.4.2.7. shall reallocate the Allocated Interests; and

14.4.2.8. may include such other provisions as the Declarant desires. Other provisions that may be included in an Annexation of Additional Land or Supplemental Declaration include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in the preceding sentence may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

Any portion of the Annexable Property so annexed to the Community shall be subject to the terms and conditions of this Declaration from and after the date of the recording of the Annexation of Additional Land or Supplemental Declaration annexing such portion of the Annexable Property to the Community.

14.4.3 In addition to the rights contained in subsection 14.4.2 and any other right to annex property into the Community set forth in CCIOA, and notwithstanding anything to the contrary contained in this Declaration, the Declarant (or any Builder so designated by the Declarant) may annex to this Declaration all or any portion(s) of the Annexable Area, on a Lot-by-Lot basis and in any order, if at all, until that date which is ten (10) years after the date of recording of this Declaration in Douglas County, Colorado, by recording an annexing deed pursuant to which any such property is conveyed by the Declarant (or any Builder so designated by the Declarant) subject to this Declaration. Each of such deeds shall be deemed to include the following provisions whether or not such provisions are contained in such deed: the property described in such deed shall be annexed to this Declaration; and the lot and/or tract designation of such Lot(s) and/or tract(s) shall be the identifying number and/or letter assigned to each such Lot(s) and/or tract(s); and the Common Elements, if any, included in such deed shall be the tracts, if any, listed on such deed; and the Allocated Interest appurtenant to each Lot in such property. Each annexation which is accomplished by recording of an annexing deed in accordance with this subsection shall be deemed to be effective upon the date of recording of such annexing deed. Notwithstanding the foregoing, a deed which does not convey property from the Declarant (or any Builder so designated by the Declarant) shall not be an annexing deed as provided in this subsection, nor shall a deed which otherwise complies with this subsection if the same states on its face that it is not an "annexing deed" and is initialed by the grantor of such deed.

14.4.4 The Declarant hereby reserves the right, from time to time, to record one or more documents in order to clarify the effect of any annexation(s), including without limitation any matters contained in Sections 14.4.1, 14.4.2, and/or 14.4.3. Each such document(s), if any such document(s) are recorded by the Declarant in its discretion, may state the legal description(s) of any property which has been annexed, and may include such other provisions which the Declarant, in its discretion, may determine in order to clarify any matter having to do with annexation of such property to this Declaration.

14.4.5 Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration, including, but not limited to (as to Lots), those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document). Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

14.4.6 The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration and which is owned by Declarant shall be subject to a right of withdrawal by the Declarant on a Lot-by-Lot basis. Such withdrawal may be accomplished, if at all, in accordance with CCIOA. Upon any such withdrawal, this Declaration shall be amended to (a) evidence such withdrawal, (b) change the Allocated Interests of the Lots remaining subject to this Declaration to reflect such withdrawal, and (c) provide for any reciprocal easements and covenants that may reasonably be required for the use and enjoyment of such withdrawn property, and the payment of expenses related to any Community easements and Common Elements such withdrawn property may continue to use. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, no later than automatic termination of the Special Declarant Rights as provided in the definition thereof set forth in Section 1.1 hereof.

Section 14.5. *Replatting of Lots.*

The Declarant hereby reserves the right, with the approval of applicable governmental entities, to replat any Lot(s) owned by the Declarant in the Community or owned by any other Owner (with the written consent of such Owner). Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot lines(s), for the purpose of accommodating Improvements which are constructed or are to be constructed. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in the definition thereof set forth in Section 1.1 hereof.

Section 14.6. *Declarant's and Builder's Use.*

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, as well as any Builder (but only with the express written consent of the Declarant), to perform such reasonable activities (including maintenance), and to maintain upon portions of the Lots and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the

construction and sale of Lots and development and construction of Improvements. The foregoing includes, without limitation, locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its reasonable discretion from time to time. Any real estate used as a sales office, management office, or a model, shall be a Lot. Further, nothing contained in this Declaration shall limit the rights of Declarant or require the Declarant to obtain approvals:

14.6.1 to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

14.6.2 to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or

14.6.3 to require Declarant to seek or obtain any approvals under this Declaration for any such activity.

Section 14.7. *Duration, Revocation, and Amendment.*

14.7.1 Each and every provision of this Declaration shall run with and bind the land from the date of recording of this Declaration until the date twenty-five (25) years from the date of this Declaration, and thereafter shall be automatically extended indefinitely unless and until terminated. Any such termination may be adopted by the Recording of a written statement of termination executed by the Owners holding at least eighty percent (80%) of the Lots. The termination shall be effective on Recording of such instrument or on such later date as is specifically stated in such instrument. No such instrument shall be required to be in any particular form.

14.7.2 Except as otherwise provided in this Declaration (including, without limitation Section 14.4 and subsections 14.7.3 and 14.7.4 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests.

14.7.3 Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in the definition of "Special Declarant Rights" set forth in Section 1.1 of this Declaration.

14.7.4 Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in the definition of "Special Declarant Rights" set forth in Section 1.1 of this Declaration.

14.7.5 Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory.

Section 14.8. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the Declarant Control Period shall be sent by registered or certified mail, postage prepaid, to Tallman Owners Association, Inc., c/o MSI Centennial, 6892 S. Yosemite Court, Suite 2-101, Centennial, Colorado 80112, unless such address is changed by the Association during the Declarant Control Period; subsequent to termination of the Declarant Control Period, the Association shall notify the Owners of a different address for notices.

Section 14.9. *Eminent Domain.*

The taking by eminent domain of a Lot(s) or Common Elements, or any portion thereof, shall be done in accordance with applicable law, including without limitation CCIOA.

Section 14.10. *Limitation on Liability.*

The Association, the Board of Directors, the Design Review Committee, the Declarant, the District, any Builder, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 14.13 (Waiver) shall apply to this Section.

Section 14.11. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Design Review Committee, the District, any Builder, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its' or their physical condition, structural integrity, freedom from defects, freedom from hazardous or toxic materials, substances or gases, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale,

operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 14.13 (Waiver) shall apply to this Section.

Section 14.12. *Disclaimer Regarding Safety.*

DECLARANT, THE BUILDERS, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE DISTRICT, THE BOARD OF DIRECTORS, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE BUILDER, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE DISTRICT, THE BOARD OF DIRECTORS, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 14.13 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 14.13. *Waiver.*

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Board of Directors, the Design Review Committee, the District, each Builder, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including without limitation, those contained in Sections 11.16, 11.17, 11.18, 14.10, 14.11, and 14.12.

Section 14.14. *Indemnification*

To the extent (i) permitted by applicable law and (ii) not covered by the insurance required under Article 10 above, each Owner ("Indemnifying Owner"), by taking title to a Lot, is hereby deemed to covenant to indemnify, defend, and hold harmless the Association, each other Owner, its Security Interest Holder, and their respective partners, officers, directors, shareholders, members, managers, employees, and agents (each, an "Indemnified Party") from and against any and all claims, actions, damages, liabilities and demands asserted by third persons (other than Indemnified Parties), including those for loss of life, personal injury and property damage, occasioned by or arising directly or indirectly, out of or in connection with the use, occupancy, operation or ownership (as applicable) by such Owner of its Lot or the easement areas associated with such Lot, or the failure of such Owner to perform any obligation with respect to those easement areas associated with such Owner's Lot that such Owner is required to operate, maintain, and/or repair under the terms of this Declaration. An Indemnified Party shall provide the Indemnifying Owner with prompt notice of any claim or other matter for which the

Indemnified Party may seek indemnity under this Article; provided, however, that the failure to provide such notice shall relieve the Indemnifying Owner of its indemnity obligations only to the extent that the Indemnifying Owner is damaged or prejudiced by such failure. The Indemnifying Owner or its covering insurer shall defend the Indemnified Party with respect to any such claim at the Indemnifying Owner's expense, with attorneys selected by the Indemnifying Owner who may also represent the Indemnifying Owner. If the Indemnified Party retains separate attorneys for its defense, it shall do so at its own expense. The Indemnifying Owner shall have sole right to conduct such defense (including decisions concerning the forum) and settle any claim, suit, proceeding, or other matter brought by the third party, provided that the Indemnified Party is released from any liability with respect to such claim. The Indemnified Party shall cooperate with the Indemnifying Owner in the defense of any claim, including the provision of documents and witnesses.

Section 14.15. *Headings.*

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 14.16. *Gender.*

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 14.17. *Run with Land; Binding Upon Successors.*

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements which are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Builders, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

~~Maced~~ IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 2 day of ~~February~~ 2015.

DECLARANT:

CRAFT – AREP III TALLMAN ASSOCIATES, LLC, a Delaware limited liability company

By: Craft Tallman Management, LLC, a Colorado limited liability company, its administrative member

By: 
Name: Timothy P. Craft
Title: Manager

STATE OF COLORADO

COUNTY OF Douglas

On this 2 day of ~~February~~ ^{MARCH} 2015, before me, personally appeared Timothy P. Craft who acknowledged himself/herself to be the Manager of Craft Tallman Management, LLC, a Colorado limited liability company, the administrative member of Craft – AREP III Tallman Associates, LLC, a Delaware limited liability company, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by himself/herself as such officer.

Witness my hand and official seal.

[SEAL]


Notary Public

My commission expires: 11-24-17

LUCINDA G. BRAY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134002786
MY COMMISSION EXPIRES 01/24/2017

EXHIBIT A
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
TALLMAN
(Community)

The following property as shown on the plat of Tallman Gulch, Filing No. 1, recorded in the official records of the Clerk and Recorder of Douglas County, Colorado, as amended and supplemented from time to time:

Lots 29 and 30, Tallman Gulch, Filing No. 1, Douglas County, Colorado.

**EXHIBIT B TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF TALLMAN**

(Common Elements)

All of the Association's right, title and interest in and to Tracts A, B, C-1, C-2, C-3, D, E, F-1, F-2 and G, Tallman Gulch, Filing No. 1, Douglas County, Colorado, pursuant to that certain Easement and Maintenance Agreement between the Association and Tallman Gulch Metropolitan District with respect thereto, recorded contemporaneously herewith in the official records of the Clerk and Recorder of Douglas County, Colorado.

**EXHIBIT C TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
TALLMAN**

(Certain Title Exceptions)

If recorded, the following documents are recorded in the office of the Clerk and Recorder of Douglas County, Colorado:

1. Taxes and assessments for the current year, including all taxes now or heretofore assessed, due or payable.
2. Any water rights or claims or title to water, in, on or under the land.
3. Reservation of Mineral Rights as contained in Deed recorded March 18, 1897 in Book 16 at Page 115.
4. Right of way for ditches and canals constructed by the authority of the United States, as reserved in United States Patent recorded June 24, 1901 in Book 12 at Page 165.
5. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded June 24, 1901 in Book 12 at Page 165; and any and all assignments thereof or interest therein.
6. Reservations by the Union Pacific Railway Land Company of: 1) All oil, coal and other minerals underlying subject property. 2) The exclusive right to prospect for, mine and remove oil, coal and other minerals and 3) The right of ingress and egress and regress to prospect for, mine and remove oil, coal and other minerals, all as contained in Deed recorded August 1, 1890 in Book 1 at Page 60.
7. Quit Claim Deed to Union Pacific Land Resources Corporation recorded April 15, 1971 in Book 217 at Page 147. Relinquishment and Quitclaim recorded November 30, 2006 under Reception No. 2006103108.
8. A right of way 25 feet wide along the west side of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 6, lying East of Hilltop Road as reserved in Deed recorded July 22, 1971, in Book 220 at Page 167.
9. Easements as set forth in Surveys recorded March 20, 1974 in Book 260 at Pages 642 and 643 and Notice thereto recorded April 15, 1974 in Book 261 at Page 575.
10. An easement for communication facilities and incidental purposes granted to Mountain States Telephone and Telegraph Company by the instrument recorded February 5, 1985 in Book 560 at Page 640.
11. An easement for water and incidental purposes granted to Parker Water & Sanitation District by the instrument recorded December 14, 1987 in Book 765 at Page 839.
12. Terms, conditions, provisions, agreements, easements and obligations contained in the Easement recorded December 14, 1987 in Book 765 at Page 841.
13. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Cherry Creek Basin Authority as evidenced by instrument recorded May 6, 1988 in Book 790 at Page 718.

14. An easement for utilities and incidental purposes granted to Intermountain Rural Electric Association by the instrument recorded November 3, 1997 in Book 1479 at Page 2338.
15. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Parker Water & Sanitation District as evidenced by instrument recorded March 17, 1999 in Book 1682 at Page 943 and in instrument recorded November 23, 2004 at Reception No. 2004119932.
16. Terms, conditions, provisions, agreements and obligations contained in the Non-Tributary Ground Water Consent Land Ownership Statement recorded April 5, 1999 in Book 1690 at Page 342, 344, 346 and 348.
17. Terms, conditions, provisions, agreements and obligations contained in the Easement Agreement recorded March 12, 2001 in Book 1984 at Page 464.
18. Terms, conditions, provisions, burdens and obligations as set forth in Parker Water and Sanitation District Real Property Inclusion Agreement recorded November 29, 2004 under Reception No. 2004121329.

Petition for Inclusion of Land recorded November 29, 2004 under Reception No. 2004121330.

19. Terms, conditions, provisions, burdens and obligations as set forth in Non-Tributary Ground Water Consent Landownership Statements recorded November 29, 2004 under Reception Nos. 2004121331, 2004121332, 2004121333 and 2004121334.
20. All water and water rights, including non-tributary and not non-tributary groundwater appurtenant to and underlying the subject property as conveyed to the Parker Water and Sanitation District by Deed recorded November 29, 2004 under Reception No. 2004121335.
21. Request for Notification of Surface Development as evidenced by instrument recorded May 16, 2002 in Book 2330 at Page 1437.

22. An easement for pipelines and incidental purposes granted to the Colorado Interstate Gas Company by the instrument recorded January 31, 1955 in Book 168 at Page 24, upon the terms and conditions set forth in the instrument, over an undefined portion of the land.

NOTE: Said easement specifically described and defined in Easement Agreement recorded November 28, 2000 in Book 1923 at Page 678.

23. Hilltop Development L.L.C. specifically reserves and retains all rights and interest it may have in Water Resource Toll Equivalents issued by the Parker Water & Sanitation District, Numbers 76-613 which were formerly an appurtenance to the property, except as may be set forth in an Option Agreement between grantor and grantee.
24. The Following Items as are shown on the ALTA/ACSM Survey By Bell Surveying Company dated February 21, 2005:
 - a. Water valves and Manholes located along west property line and any appurtenant easements associated thereto.
 - b. Trail traversing onto subject property.
 - c. Windmill and water tank and rights associated thereto.
25. Terms, conditions and provisions of Memorandum of Agreement recorded July 25, 2005 at Reception No. 2005067999.

26. Resolution No. R-006-052, regarding approval of the service plan for Tallman Gulch Metropolitan District as Recorded April 3, 2006 at Reception No. 2006027195.
27. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Tallman Gulch Metropolitan District, as evidenced by instrument recorded May 30, 2006, under Reception No. 2006045152 and re-recorded June 27, 2006 under Reception No. 2006054349.

Notice of Special Water District Authorization or Issuance of General Obligation Indebtedness recorded June 1, 2006 under Reception No. 2006046193.
28. Easements, conditions, covenants, restrictions, reservations and notes on the Plat of Tallman Gulch, Filing #1 recorded June 2, 2006 under Reception NO. 2006046645, as amended by 1st Amendment recorded September 20, 2007 at Reception No. 2007075023.
29. Terms, conditions, burdens, obligations and easements as set forth and granted in License Agreement recorded June 29, 2006 under Reception No. 2006055038.

Assignment and Assumption Agreement recorded January 11, 2007 under Reception No. 2007003509.
30. Terms, conditions, provisions, burdens and obligations as set forth in Water and/or Sewer Main Improvement Agreement for Tallman Gulch recorded December 11, 2006 under Reception No. 2006105997.
31. Right of Way Easement as granted to Inter Mountain Rural Electric Association recorded July 10, 2007 under Reception. No. 2007054637.
32. Right of Way Easement as granted to Inter Mountain Rural Electric Association recorded July 10, 2007 under Reception. No. 2007054638.
33. Farm Lease Agreement dated March 24, 2014 by and between LSC Tallman Limited Liability Company as Lessor, and Mountain View Farms and Ranches LLP as Lessee.
34. Option Agreement dated March 5, 2013, as amended, between LSC Tallman Colorado, LLC and Franklin J. Gardiner (options to all other optionees having been terminated), as assigned to Craft – AREP III Tallman Associates, LLC, a Delaware limited liability company, relating to Lot 12.

**EXHIBIT D TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF TALLMAN**

(Annexable Area)

All of the property as shown on the Final Plat of Tallman Gulch, Filing No. 1, recorded in the official records of the Clerk and Recorder of Douglas County, Colorado, as amended and supplemented from time to time, EXCEPT for that property shown on Exhibit A of this Declaration. The covenants, conditions and restrictions set forth in the Declaration shall only burden a portion of the Annexable Area at such time, if any, that such portion of the Annexable Area is made subject to the Declaration pursuant to the provisions thereof and with the appropriate written consent of the owner of such portion of the Annexable Area.