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TRACY K. BAKER  
ARAPAHOE COUNTY

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
OVERLOOK AT CHERRY CREEK

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
OVERLOOK AT CHERRY CREEK**

Sugarbush Home Building Co. LLC, a Colorado limited liability company with an office at 7475 Dakin Street, Suite 330, Denver, Colorado 80221 ("Declarant") hereby submits the real property in Arapahoe County, Colorado shown on Exhibit A attached and incorporated herein, to the provisions of the Colorado Common Interest Ownership Act, Colorado Revised Statute 38-33.3-101 et seq., as amended, for the purpose of creating Overlook at Cherry Creek and making the improvements shown in the Plat. Declarant hereby DECLARES that the property described in Exhibit A shall be held and conveyed subject to the following terms, covenants, restrictions and conditions, which shall run with the above described property and be binding on all parties having any right, title, or interest therein or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1.1. Act: The Colorado Common Interest Ownership Act, as it may be amended.

Section 1.2. Agencies: The Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA) or any other governmental or quasi-governmental agency or any other entity which may perform functions similar to those currently performed by such entities.

Section 1.3. Allocated Interests: The Common Expense liability and votes in the Association which are allocated to Lots. Subject to the provisions of Article VII hereof, the Common Expense liability for each Lot shall be a fraction, the numerator of which is one and the denominator of which is the total number of Lots then in the Common Interest Community.

Section 1.4. Architectural Review Committee: The committee appointed by the Board of Directors to review and approve or disapprove plans for Improvements submitted by any Owner, as provided in Article VIII of this Declaration.

Section 1.5. Articles of Incorporation: The Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.6. Association: Overlook at Cherry Creek Homeowners Association, Inc., a nonprofit corporation organized pursuant to Section 38-33.3-220 of the Act.

Section 1.7. Board of Directors or Board: The Board elected pursuant to the Association's Bylaws or appointed by the Declarant; the "Executive Board" as the term is used in the Act.

Section 1.8. Builder or Developer: Any Person who acquires any part of the Property to construct



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Initial Improvements thereon.

Section 1.9. Bylaws: The Bylaws of the Association, as they may be amended from time to time.

Section 1.10. Common Elements: Any Property within the Common Interest Community owned or leased by the Association or owned or leased by others but maintained by the Association for the benefit of its Members. The Common Elements upon execution of this Declaration by Declarant are described in Exhibit B to this Declaration.

Section 1.11. Common Expenses: The expenses or financial liabilities for the operation of the Common Interest Community. These expenses include:

- A. Expenses of administration, maintenance, repair or replacement of any Common Elements or property owned or maintained (under an easement, license or contract) by the Association;
- B. Expenses declared to be Common Expenses by the Documents or by the Act;
- C. Expenses agreed upon as Common Expenses by the Board;
- D. Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held or maintained (under an easement, license or contract) by the Association; and
- E. The costs and expenses incurred by the Association, benefitting fewer than all the Lots, shall be a Common Expense, when assessed exclusively against those Lots benefitted.

Section 1.12. Common Expense Assessments: The funds required to be paid by each Owner in payment of a Common Expense liability, including Annual Common Expense Assessments, Special Assessments, and Common Expenses attributable to fewer than all Lots.

Section 1.13. Common Interest Community: The real property subject to this Declaration.

Section 1.14. Declarant: Sugarbush Home Building Co. LLC, a Colorado limited liability company, or its successors as defined in Section 38-33.3-103(12) of the Act.

Section 1.15. Declaration: This document, including any amendments and plats.

Section 1.16. Development Property: The real property described in Exhibit C attached hereto and incorporated herein by this reference, which is subject to the provisions of Article V.

Section 1.17. Development Rights: The rights as defined by Section 38-33.3-103(14) of the Act

reserved by the Declarant under Article V of this Declaration.

Section 1.18. Director: A member of the Board of Directors.

Section 1.19. Documents: This Declaration, and the Plat, Articles of Incorporation, Bylaws, Architectural Guidelines, and the Rules as they be amended from time to time.

Section 1.20. Dwelling Unit: The residence constructed on each Lot within the Common Interest Community and any replacement thereof, including the patio, deck, basement, garage, and out buildings, if applicable. Dwelling Unit shall include the Lot upon which such Dwelling Unit is constructed.

Section 1.21. First Security Interest: A Security Interest that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.22. Improvements: Any exterior construction, structure, fixture, landscaping or facilities existing or to be placed on a Lot, other than Initial Improvements, including but not limited to: buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors or panels, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, streets, drainage facilities, landscaping (including any material change in slope, pitch or drainage pattern), hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, ground covers, exterior light fixtures, poles, basketball stands, trampolines, or other recreational or sporting equipment, signs, satellite dishes, antennas, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

Section 1.23. Initial Improvements: Except for Improvements defined in Section 1.22 above, any improvements of any nature whatsoever constructed (other than by Declarant) on any part of the Property, including but not limited to: (a) the construction, installation, erection or expansion of any building, structure or other improvements, including utility facilities; (b) the grading, excavation, filling or similar disturbance to the surface of the Property including, without limitation, change of grade, ground level, and drainage pattern; (c) landscaping, planting, clearing or removing of trees, shrubs, grass or perennial plants; and (d) any change, alteration, modification, expansion, or addition to any previously approved Initial Improvement, including any change of exterior appearance, finish material, color or texture.

Section 1.24. Lots: Each platted lot which is a physical portion of the Common Interest Community, other than Common Elements, designated for separate ownership or occupancy, the boundaries of which are described on the Plat. The term "Lot" as used herein is synonymous with the term "Unit" as the latter term is used in the Act.

Section 1.25. Majority of Owners: More than fifty percent (50%) of the votes in the Association.

Section 1.26. Manager: A person, firm or other business entity employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.27. Member: Each Owner, as set forth in Sections 1.29 and 4.1 below.

Section 1.28. Notice and Hearing: The right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon, as provided for herein, or in the Bylaws.

Section 1.29. Owner: Any Person who is the owner of record of the fee simple title to any Lot, but not a Person having an interest in a Lot solely as security for an obligation. The Declarant is the initial owner of any Lot created by this Declaration.

Section 1.30. Period of Declarant Control: That period of time defined in Section 4.4 below.

Section 1.31. Permitted User: (a) Any person who resides with an Owner; (b) an Owner's guest or invitee; or (c) an occupant or tenant of a Dwelling Unit and any member of his or her household, invitee or cohabitant of any such person.

Section 1.32. Person: A natural person, corporation, trust, partnership, association, joint venture, or other legal or commercial entity or combination thereof.

Section 1.33. Plat: The plat for Cherry Creek Overlook Subdivision Filing No. 1, filed in the office of the Arapahoe County Clerk and Recorder, Arapahoe County, Colorado, as it may be amended from time to time.

Section 1.34. Project Documents: The Site Plan for the project recorded on July 12, 2000 in Book 181, Page 15, Reception No. 85007 in the offices of the Arapahoe County Clerk and Recorder, and the plans for the project on file with the City of Aurora, Colorado at file number 200094.

Section 1.35. Property: The Lots, Common Elements and Improvements subject to this Declaration.

Section 1.36. Rules: Rules, regulations and restrictions adopted and amended by the Board pursuant to this Declaration.

Section 1.37. Security Interest: An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, assignment of lease or rents intended as security, pledge of an ownership interest, and any other consensual lien or title retention contract intended as security for an obligation. "Security Interest" shall also 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 Arapahoe County, Colorado, show the Administrator as having the record title to the Lot.

Section 1.38. Special Assessments: Those Common Expenses Assessments defined in Subsection D of Section 7.1 below.

Section 1.39. Special Declarant Rights: Rights reserved for the benefit of a Declarant as described in Article V of this Declaration.

ARTICLE II  
SCOPE OF THE COMMON INTEREST COMMUNITY AND ASSOCIATION

Section 2.1. The Common Interest Community: The name of the Common Interest Community is Overlook at Cherry Creek. It is a planned community.

Section 2.2. The Association: The name of the Association is Overlook at Cherry Creek Homeowners Association, Inc.

Section 2.3. Maximum Number of Lots: The Declarant reserves the right to create a maximum of 48 Lots.

Section 2.4. Identification of Lots: The identification number of each Lot is shown on the Plat.

Section 2.5. Lot Boundaries: The boundaries of each Lot are located as shown on the Plat.

ARTICLE III  
THE COMMON ELEMENTS

Section 3.1. Title to the Common Elements: The Declarant hereby covenants that it will convey the Common Elements to the Association by appropriate instrument, suitable for recording in the records of the Arapahoe County Clerk and Recorder.

Section 3.2. Duty to Accept the Common Elements Transferred by Declarant: The Association shall accept title to the Common Elements conveyed by Declarant and agrees to own and maintain any property, including all Improvements located thereon, and personal property relating thereto, transferred to the Association by Declarant as Common Elements. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all liens and encumbrances (other than the lien of real estate taxes not then due and payable).

Section 3.3. Owners' Easements: Every Owner shall have a nonexclusive right and easement for the purpose of access to his or her Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot. Any

Owner may delegate his or her right of enjoyment to the Common Elements and facilities to his or her Permitted Users.

Section 3.4. The Association's Rights: The rights of each Owner shall be subject to the Development Rights and Special Declarant Rights reserved herein and the following rights of the Association:

A. To borrow money to improve the Common Elements and to mortgage said property as security for any such loan; provided, however, the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by eighty percent (80%) of the Owners of Lots not owned by the Declarant.

B. To convey or dedicate all or any part of the Common Elements, or interest therein, to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by eighty percent (80%) of the Owners of Lots not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. The granting of permits, licenses and easements for public utilities or for other purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause.

C. To adopt and distribute Rules to Owners with which each Owner and their Permitted Users shall strictly comply.

D. To suspend the voting rights of a Member for any period during which any Common Expense Assessment remains unpaid and, for a period not to exceed sixty (60) days for any infraction of the Declaration, Bylaws or Rules, unless the infraction is ongoing, in which case the suspension shall continue for the duration of the infraction and for a maximum of sixty (60) days thereafter.

E. To take such steps as are reasonably necessary to protect the Common Elements against foreclosure.

F. To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Elements by Owners and Permitted Users for any purpose(s) the Board may deem to be useful, beneficial or otherwise appropriate.

G. To close or limit the use of the Common Elements temporarily while maintaining, repairing and making replacements in the Common Elements, or permanently if approved by Members holding eighty percent (80%) of the votes in the Association, in person or by proxy.

Section 3.5. Payment of Taxes, Assessments or Insurance by Holders of First Security Interests: Holders of First Security Interests shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may 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 First Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE IV  
THE ASSOCIATION; DECLARANT CONTROL PERIOD

Section 4.1. Membership: Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall terminate on transfer of a fee simple title by the Owner, but may not be separated from the ownership of a Lot. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration shall be amplified by the Articles of Incorporation, Bylaws, Rules, and any design guidelines and architectural guidelines adopted by the Board.

Section 4.2. Voting Rights: The Association shall have one class of voting membership. The total 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. Each Member is entitled to one vote for each Lot owned. If more than one person holds such interest, the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any Lot.

Section 4.3. Authority of Board: Except as otherwise provided in this Declaration or the Bylaws, the Board may act in all instances on behalf of the Association.

Section 4.4. Declarant Control of the Association:

A. Subject to Subsections 4.4(B) and (C), there shall be a "Period of Declarant Control" during which a Declarant, or Persons designated by the Declarant, may appoint and remove the officers and members of the Board. The Period of Declarant Control terminates no later than the earlier of:

- (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than the Declarant; or
- (ii) Two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business to Owners other than Declarant; or
- (iii) Two (2) years after any right to add new Lots was last exercised.

A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, 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.

B. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners other than the Declarant.

C. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than a Declarant, not less than thirty-three and one third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

D. Not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Owners other than Declarant. The Board shall elect or appoint the officers. The Members elected to the Board shall take office upon election.

E. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 38-33.3-308 of the Act, the Owners, by a vote of sixty-seven percent (67%) of all persons present (but not by proxy) and entitled to vote at a meeting of the Owners at which a quorum is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by the Declarant.

Section 4.5. Delivery of Documents by Declarant: Within sixty (60) days after the Owners other than the Declarant elect a majority of the Members of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if any, to the extent required by the Act.

Section 4.6 Management Agreements and Other Contracts: Any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) day's prior written notice.

## ARTICLE V DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 5.1. Reservation of Development Rights: The Declarant reserves the following withdrawal

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and Development Rights:

- A. The right by amendment to subject all or any part of the Development Property to this Common Interest Community, to replat it as deemed desirable, and create Lots and Common Elements and to subdivide Lots, or convert Lots into Common Elements. The consent of the existing Owners or Security Interest Holders shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.
- B. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property and on the Development Property, however, notwithstanding anything herein to the contrary, Declarant does not reserve and specifically disclaims any right or easement hereunder to construct underground utility lines, pipes, wires, ducts, conduits and other facilities either above or below ground upon that portion of any Lot where permanent Improvements may be located on said Lot.
- C. The right to withdraw from the Common Interest Community or the Development Property, any portion of the Common Interest Community in accordance with the Act. ("Withdrawn Property").
- D. If all or any part of the Development Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to record an instrument surrendering a development right, or withdrawing all or any portion of the Property or any property reserved for future development in the Declaration or on the Plat from the Common Interest Community by recording a document evidencing such surrender or withdrawal in the office of the Clerk and Recorder of Arapahoe County; provided, however, that no portion of the Property may be withdrawn after a Lot in that portion of the Property has been conveyed to a Purchaser other than a Declarant.

Section 5.2. Limitations on Development Rights: The Development Rights reserved in Section 5.1 are limited as follows:

- A. The Development Rights may be exercised at any time, but not more than ten (10) years after the recording of the initial Declaration.
- B. All Lots and Common Elements created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Lots created under this Declaration as initially recorded.

Section 5.3. Phasing of Development Rights: No assurances are made by the Declarant regarding the Development Rights reserved as to whether the Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed. The exercise of



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Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

Section 5.4. Special Declarant Rights: The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- A. To complete Improvements indicated on the Plat or as required by any other land use approval document required or approved by the City of Aurora;
- B. To exercise any Development Right reserved herein;
- C. To maintain construction, sales and management offices, signs advertising the Common Interest Community and models in such numbers, of such sizes at such locations as Declarant may determine from time to time. Any real estate used as a sales office, management office or a model shall be a Lot. Declarant also reserve the right for Declarant and any Builder to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners;
- D. To use and to permit others to use easements through the Common Interest Community for construction, and to discharge Declarant's obligations under the Act and this Declaration;
- E. To appoint or remove any officer of the Association or a Board of Directors member during a period of Declarant control subject to the provisions of Section 4.4 of this Declaration;
- F. To merge or consolidate the Common Interest Community with another Common Interest Community; or
- G. To amend the Declaration and the Plat in connection with the exercise of any development rights;
- H. To appoint or remove any Architectural Review Committee member; and
- I. To exercise any other Declarant right created by any other provision of this Declaration.

Section 5.5. Rights Transferable: Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Arapahoe County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 5.6. Limitations on Special Declarant Rights: Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant or any transferee of Rights pursuant to Section 5.5 until the earlier of the following: as long as the Declarant or transferee (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Lots or Common Elements; (c) owns any Lot; (d) owns any Security Interest in any Lots; or (e) fifteen (15) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

Section 5.7. Interference with Special Declarant Rights: Neither any Builder, the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

Section 5.8. Construction; Declarant's Easement: The Declarant and each Builder reserve the right to perform warranty work, and repairs and construction work on Lots and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed without the consent or approval of the Board of Directors. The Declarant and each Builder has an easement through each Lot and the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development or Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities or metropolitan or special improvement districts, the State, riparian owners or upland owners to fulfill the plan of development.

Section 5.9. Declarant's Personal Property: The Declarant for itself and each Builder reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Common Elements that is owned by them and has not been represented as property of the Association. The Declarant for itself and each Builder reserves the right to remove from the property (promptly after the sale of the last Lot) any and all goods and improvements owned by them and used in development, marketing and construction, whether or not they have become fixtures.

Section 5.10. Reciprocal Easements: If all or part of the Development Property is not submitted to this Declaration, or if property is withdrawn from the Common Interest Community:

A. The owner(s) of the Development Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Common Interest Community; and

B. The Owner(s) in the Common Interest Community shall have whatever easements are necessary or desirable, if any, consistent with development and improvement of any Development Property or Withdrawn Property, for access, utility service, repair, maintenance and emergencies over and across the Development Property and Withdrawn Property.

Within a reasonable time after exercise of any such easement, Declarant shall prepare and record in the office of the Clerk and Recorder of the County where the Property is located whatever documents are necessary to evidence such easements and shall amend Exhibit D to this Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the Owners of the Development Property and the Withdrawn Property and the Owners in the Common Interest Community shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall exclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

ARTICLE VI  
MAINTENANCE

Section 6.1. Common Elements: The Association shall manage, operate, insure, maintain, repair and replace all of the Common Elements, including, without limitation, landscape tracts; roads; curbs; gutters; sidewalks, entry monumentation, entry lights and entry gates; gate houses; mail kiosks; fencing, dumpster enclosures, and any drainage structure or facility or other public improvements required by local governmental entities under Section 38-33.3-307(1.5) of the Act. The Association shall be responsible for replacing any diseased or dead trees, shrubs or sod in the Common Elements with trees, shrubs or sod of the same type as existed prior to replacement, in conformance with the Project Documents. The Association shall maintain the surface area of Tract A as required by the Project Documents, including periodic mowing, and fence repair as needed. Fencing of Tract A shall include wire mesh on the on the side interior to Tract A so as to prevent intrusions into Tract A. In all respects, the Association shall carry out its obligations in compliance with the Project Documents.

Section 6.2. Lots: The Association shall be responsible for maintenance, repair and replacement of all landscaping within the Common Interest Community, except for the Lots described as Lots 6 and 7, Block 1, Cherry Creek Overlook Subdivision Filing No. 1 (the "Pre-existing Lots"). The Owners of the Pre-existing Lots shall be responsible for maintenance, repair and replacement of the landscaping on their own lots, unless such responsibility is assumed by the Association upon approval of the Board. Such responsibility may be approved, rescinded or reinstated from time to time, at the Board's discretion. In any event, the expense of maintenance, repair or replacement of landscaping on the Pre-existing Lots shall be borne by the Owners thereof. The Association shall be responsible for maintaining all fencing within the Common Interest Community. The Association shall be responsible for replacing any diseased or dead trees, shrubs or sod on the Lots (except the Pre-existing Lots) with trees, shrubs or sod of the same type as existed prior to replacement. Except as specified in Section 6.1 above and in this Section 6.2, each Owner shall maintain, repair and replace, at their own expense, all portions of their Lot and Dwelling Unit.

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Section 6.3. Right of Access: Any person authorized by the Board of Directors shall have the right of access to all portions of any Lot for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Common Interest Community, for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing and replacing utility meters and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

Section 6.4. Repairs Resulting From Negligence: Each Owner will reimburse the Association for the costs, expenses and fees for maintenance, repair or replacement to the Common Elements caused intentionally, negligently or by the failure to properly maintain, repair or make replacements to a Lot (including drainage): If such expense is caused by misconduct, it will be assessed following Notice and Hearing. If damage is inflicted on any Lot as a result of entry thereon by the Association, through maintenance access under Section 6.3, the Association will be responsible to repair such damage.

#### ARTICLE VII ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 7.1. Apportionment of Common Expenses: Except as provided in Section 6.4 and Section 7.2, all Common Expenses shall be assessed against all Lots in accord with the Allocated Interests. If additional Lots are added to the Common Interest Community, then the Common Expense liability shall be reallocated and any Common Expense Assessment not yet due shall be recalculated.

- A. Payment of Initial Expenses. Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses.
- B. Annual Common Expense Assessment. Annual Common Expense Assessments shall be sufficient to meet the expected needs of the Association. The Annual Common Expense Assessments shall include an adequate reserve fund for replacement of those items that must be maintained, repaired or replaced on a non-regular basis.
- C. Levy of Assessments. The Annual Common Expense Assessment shall be levied on an annual basis against all Lots, except that, unless responsibility for maintenance of landscaping on the Pre-existing Lots is assumed by the Association as above provided, the Pre-existing Lots shall have no obligation to share in the Common Expenses for landscaping maintenance, repair or replacement. The Annual Common Expense Assessment shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments may be collected in monthly, quarterly, biannual or annual installments, or in any other manner as determined by the Board of Directors. Common

Expense Assessments may begin on the first day of the month in which conveyance of the first Lot to an Owner other than the Declarant occurs. The assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to the Documents, or by law; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. No assessment may be levied retroactively.

Common Expenses attributable to fewer than all Lots may be levied at any time, shall be due and payable as established by the Board, and are exempt from any voting requirements by the membership required for Special Assessments called for under this Declaration.

D. Special Assessments. In addition to the Annual Common Expense Assessments authorized in this Article, but subject to the limitations set forth herein, the Association, with the approval of the votes of sixty-seven percent (67%) of the Members voting in person or by proxy at a meeting duly called for such purpose, may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of: (1) defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of the Common Elements, including fixtures and personal property related thereto; or (2) for repair or reconstruction of any damaged or destroyed Improvements located on said Common Elements; or (3) for the funding of any operating deficit incurred by the Association. Any Special Assessment shall be levied against each Lot according to the Allocated Interests. A meeting of the Members called for the purpose of considering the establishment of a Special Assessment shall be held in conformance with Subsection E of this Section 7.1.

E. Notice and Quorum for any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Subsection D of this Section 7.1 shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.2. Common Expenses Attributable to Fewer than all Lots:

A. Any insurance premium increase attributable to a particular Lot by virtue of activities in or construction of the Lot shall be assessed against that Lot.

B. Any landscaping or maintenance expenses incurred by the Association and attributable to the Pre-existing Lots shall be assessed against such Lots.

C. Each Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently or by the failure to properly maintain, repair or make replacements to a Lot including drainage. Such expense will be assessed following Notice and Hearing. If a Common Expense is caused by the misconduct of an Owner or Permitted User, the Association may assess that expense exclusively against that Owner's Lot.

D. Fees, charges, late charges, attorney fees, taxes, impositions, fines, collection costs and interest charged against an Owner pursuant to the Documents and the Act may be assessed against that Lot as Common Expense Assessments.

E. Any common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted.

Section 7.3. Lien:

A. The Association has a lien on a Lot for a Common Expense Assessment levied against the Lot pursuant to this Declaration from the time the Common Expense Assessment or fine becomes due. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to the Documents or as allowed by the Act are enforceable as assessments under this Article VII. If a Common Expense Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations.

B. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a Security Interest on the Lot which has priority over all other Security Interests on the Lot and recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. A lien under this Section is also prior to all Security Interests described in Subdivision (2) above of this Subsection B to the extent of an amount equal to the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to Section 7.4 which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution by either the Association or the holder of a First Security Interest of an action or a nonjudicial foreclosure either to enforce or extinguish either the Association's lien or a Security Interest described in Subdivision (2) of this Subsection B. This Subsection B does not affect the priority of mechanics' or materialmen's

liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision of Section 38-41-201 or 15-11-201, C.R.S. The Association's lien on a Lot for any assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

C. Recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment is not required. However, the Board of Directors or Manager of the Association may prepare and record in Arapahoe County a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a notice of lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof.

D. A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of the Common Expense Assessment becomes due. This Section does not prohibit an action to recover sums for which Subsection (A) of this Section creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure. The Association's lien may be foreclosed by the same procedure by which a mortgage or deed of trust on real estate is foreclosed. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same.

E. A judgment or decree in any action brought under this Section shall entitle the Association to costs and reasonable attorney fees, which shall be additional Common Expense Assessments; and is enforceable by execution. Any payments received by the Association in the discharge of an Owner's obligation may be applied to attorney fees and costs first, then late fees, penalties and interest, and then the oldest balance due.

F. In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments.

G. If a holder of a first or second Security Interest in a Lot forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against that Lot which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection B of this Section of the

Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

H. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any First Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable Colorado law: No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 7.4. Budget Adoption and Ratification: Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Board of Directors shall mail first class or deliver a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) or more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least sixty-seven percent (67%) of all Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners continues until the Owners ratify a new budget proposed by the Board. In lieu of a budget ratification meeting, action may be taken by written ballot in accord with C.R.S. Section 7-127-109 within the above-stated timetable.

Section 7.5. Certificate of Payment of Common Expense Assessments: The Association, upon written request, shall furnish an Owner or their designee, or a holder of a Security Interest or its designee, a written statement setting out the amount of unpaid Common Expense Assessments against the Lot. Said request shall be delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent. The statement shall be furnished within fourteen (14) calendar days after receipt of the request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, and is binding on the Association, the Board of Directors and each Owner, or the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such statement.

Section 7.6. Effect of Nonpayment of Assessments: Remedies of the Association: Any assessment not paid within ten (10) days after the due date thereof shall be delinquent, subject to fees authorized by Section 7.2, including (a) interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors and (b) a default charge in a reasonable amount. Fees, including attorney fees, charges, late charges, fines and interest may be charged pursuant to the Act and the Documents due to late payment of assessments under this Section. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Lot. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include



interest on the assessment and attorney's fees, together with the costs of the action, and other fees.

Section 7.7. Acceleration of Common Expense Assessments: If any Owner does not make the payment of any Common Expense Assessment levied against their Lot within ten (10) days of the date due, the Board of Directors shall have the right to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable for that Lot.

Section 7.8. No Waiver of Liability for Common Expenses: No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements, by abandonment of the Lot against which the Common Expense Assessments are made, or because of dissatisfaction with the Association's performance.

Section 7.9. Personal Liability of Owners: Each Owner, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is personally liable for Common Expense Assessments made against such Owner's Lot during the period of ownership of such Lot, at the time a Common Expense Assessment or portion of the assessment is due and payable. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, including fees described in Section 7.2. 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 setoff or deduction.

Section 7.10. Surplus Funds: Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves need not be paid to the Owners in proportion to their Common Expense Liability but shall be credited to them to reduce their future Common Expense Assessments.

## ARTICLE VIII ARCHITECTURAL REVIEW COMMITTEE

Section 8.1. Written Approval of Plans Required: No Improvements (other than Initial Improvements), including specifically landscaping, shall be constructed, erected, placed, planted, applied or installed upon any Lot unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Review Committee. In all respects, such Improvements shall be in compliance with the provisions of the Project Documents. Said plans and specifications shall show exterior design, height, materials, color, and location of the Improvements, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information that may be required by the Architectural Review Committee. However, the Declarant, and any Builder shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's or Builder's construction on, or sales of, any Initial

Improvements on any Lot. The Architectural 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. In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) reimburse the Architectural Review Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the Common Expense Assessment against the Lot for which the request for Architectural 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 such assessments, as more fully provided in this Declaration. All work authorized by the Architectural Review Committee shall be completed within the time limits established therefor, if any, but in any event, not later than one year after the approval was granted.

Section 8.2. Guidelines, Standards, Rules, Regulations and Procedures: The Board of Directors or the Architectural Review Committee may, from time to time, adopt, promulgate, amend or otherwise revise guidelines, standards, rules and regulations and procedures governing Architectural Review for the purposes of:

- A. Further enhancing, defining, or interpreting what items or improvements are covered by this Article VIII; and
- B. Providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the Board of Directors or Architectural Review Committee, deem to be proper, necessary or in the best interests of the community; provided that the Architectural Review Committee shall not, in its review or approval of any application, be deemed to be giving any opinion, warranty or representation as to compliance with any of the foregoing.

In determining what is in the best interests of the community, the Board of Directors or Architectural Review Committee may, but shall not be required to, solicit input from: (1) Owners whose Lots are near a proposed improvement or item to be placed on a Lot; or (2) from the entire community. The Architectural Review Committee shall not be bound by said input but shall use its best judgment in approving or disapproving the proposed improvement or item.

Any guidelines, standards, rules and regulations, procedure or amendment thereto, shall apply to construction, additions, modifications, installations or items placed on a Lot occurring after the date such guidelines, standards, rules and regulations, procedures or amendments are published or otherwise made available to all Owners.

Section 8.3. Membership of Committee: The Architectural Review Committee shall consist of three (3) or more persons, who need not be Members, appointed by the Board of Directors; provided, however, that until all of the Lots have had a Dwelling Unit constructed thereon and have been conveyed to the first Owner thereof (other than Declarant or a Builder), Declarant may at its option

appoint the Architectural Review Committee. The power to appoint shall include the power to fill any vacancy and remove any member of the Architectural 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 Board.

Section 8.4. Procedures: The Architectural Review Committee shall approve or disapprove all requests for approval within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Architectural Review Committee fails to approve or disapprove any request within thirty (30) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been disapproved by the Architectural Review Committee. However, applicant may resubmit the application.

Section 8.5. Vote and Appeal: A majority vote of the Architectural 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. If a representative acting on behalf of the Architectural Review Committee approves or denies a request for architectural approval, any Owner shall have the right to an appeal of such decision to the full Architectural Review Committee, upon a request therefor submitted to the Architectural Review Committee within thirty (30) days after such approval or denial by the Committee's representative. If an application for architectural approval is approved or denied by the Architectural Review Committee, whether pursuant to an original request for approval or on appeal from a decision of a representative of the Architectural Review Committee, any Owner shall have the right to appeal such decision to the Board of Directors, if a written request for a hearing on an appeal of the same shall be submitted to the Board within thirty (30) days after such approval or denial by the Architectural Review Committee.

Section 8.6. Records: The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it, and such records shall be available to Members for inspection at reasonable hours.

Section 8.7. Liability: The Architectural Review Committee and the members thereof, as well as the Declarant, the Association, the Board of Directors, or any representative of the Architectural Review Committee appointed to act on its behalf, shall not be liable for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Review Committee for any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder, if such action was in good faith or without malice. In reviewing any matter, the Architectural Review Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

Section 8.8. Variance: The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article, 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 (1) shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood; (2) shall not militate against the general intent and purpose hereof; and (3) shall not set a precedent for any other applicant.

Section 8.9. Waivers: The approval or consent of the Architectural Review Committee, any representative thereof, or the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Architectural Review Committee, any representative thereof, or the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

ARTICLE IX  
RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 9.1. Restrictions Imposed: All of the Lots shall be held, conveyed, used, improved, occupied, owned, resided upon and secured, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Board shall have the power to adopt, amend, repeal and enforce more specific and restrictive design and architectural guidelines and rules, regulations and restrictions as the Board deems to be reasonable and necessary to carry out the intent of this Declaration.

Section 9.2. No Nuisance or Annoyance: No noxious, offensive, dangerous or unsafe activity shall be conducted in or on any Lot, nor shall anything be done, either willfully or negligently, which is an annoyance or nuisance to the other Owners or Permitted Users. No Owner or Permitted User shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, comforts or convenience of other Owners or Permitted Users. Habitually barking, howling or yelping dogs shall be deemed a nuisance. The use of exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices on any Lot may be regulated or prohibited by the Architectural Guidelines and Rules. The terms "annoyance" and "nuisance" shall not include any activities of Declarant or a Builder reasonably necessary to the development and construction of, and sales activities on, the Lots, provided such activities of the Declarant or a Builder shall not unreasonably interfere with any reasonable use of a Lot, or with any ingress and egress to or from a Lot and a public way.

Section 9.3. Business and Occupancy Use Restrictions: Subject to the Special Declarant Rights reserved under Article V, the Board shall have the power to promulgate and enforce Architectural Guidelines and Rules regarding business and occupancy use restrictions, provided, however, that business, trade, professional or commercial Improvement or building devoted to business, trade,

professional, commercial or public enterprises may be erected or used on any Lot only if the existence or operation of such activity or use is not apparent or detectable by sight, sound, or smell from the exterior of the Lot, does not materially increase traffic or increase the insurance obligation or premium of the Association, and does not violate zoning resolutions.

Section 9.4. Animals: No livestock, birds, poultry, reptiles, insects or animals of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owner of each Lot may keep no more than two each of dogs, cats, or other domestic animals which are bona fide household pets, so long as such animals are not kept for any commercial purposes and are not kept in such a manner as to create a nuisance to any resident of any Lot. Owners may be required to remove any animal causing or creating a nuisance or unreasonable disturbance or noise from the Lot upon five (5) days' written notice following Notice and Hearing from the Board of Directors. Owners and Permitted Users shall hold the Association harmless from any claim resulting from any action of their pets. The right to keep animals may be further regulated by Rules issued by the Board, and shall be coupled with the responsibility to pay for any damage caused by such animals, as well as any costs incurred by the Association, 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 this Declaration.

Section 9.5. Restrictions on Trash and Refuse: 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 on any Lot unless placed in a suitable container with attached lid, or in a dumpster located in a screened, designated garbage area solely for the purpose of garbage pickup or composting. 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. Each Owner must utilize a competent provider of trash collection and disposal service. The Board may require all Lots to be served by one trash collection and disposal company.

Section 9.6. Vehicular Parking, Storage, Use and Repairs:

A. Parking in the driveways of any Lot having a driveway, at its shortest length from the curb to the garage is fifteen feet or less, is not permitted at any time, other than as an expedience for loading or unloading.

B. No recreational vehicle, including but not limited to, trailers of any kind, campers (including camper shells and motor homes), buses, vans, boats or boat accessories, and trucks larger than three-quarter (3/4) ton, self contained and other motorized recreational vehicles, all terrain vehicles, any other vehicle clearly designed or designated by the manufacturer or the owner thereof (through signage or accessories) to be a recreational vehicle, even though it may be licensed by a state as a passenger vehicle, shall be parked, placed, stored or maintained anywhere within the Common Interest Community unless such parking or storage is within an enclosure such that they are not visible from any other Lot or from the Common Elements or from any street within the Common Interest Community, except in emergencies

or as a temporary expedience for loading or unloading, unless in conformance with the Rules adopted by the Board. The provisions of this Section 9.6 A shall not restrict trucks or other commercial vehicles which are necessary for construction of for the maintenance of the Lots or Improvements located thereon.

C. No abandoned or inoperable vehicle of any kind shall be stored or parked on any Lot unless it cannot be seen from any other Lot, the Common Elements or any street within the Common Interest Community. An "abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not be deemed to be abandoned.

D. If the Association shall determine that a vehicle is parked, stored or used in violation of this Section 9.6 or in violation of any County or State regulation, then a written notice describing said vehicle shall be delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner 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 give notice that the vehicle will be towed if it is not removed within twenty-four (24) hours, at the sole expense of the owner of the vehicle or the Lot.

E. No motorcycles, all terrain vehicles or other motorized vehicles of any kind may be operated on the Lots or Common Elements other than on driveways on the Lots or on public streets and roadways. All vehicles must be licensed to operate on public streets and roadways.

F. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat, may be performed or conducted on any Lot unless it is done in a manner and location that screens the sight and sound of the activity from the street and from any other 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.

Section 9.7. Restrictions on Leasing: Upon leasing a Lot, the Owner shall advise the Association of the name and phone number of the tenant, and whether the tenant has the right to use the Common Elements. All leases shall include a provision that the lease is subject to the terms of the Documents. Failure of the tenant to comply with the terms of the Documents shall constitute a default enforceable by either the Association or Owner, or by both of them. The tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the Owner notice of

its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Section 9.8. No Unlawful Use of Property: No unlawful use may be made of the Property. Owners and Permitted Users shall comply with and conform to all applicable laws and regulations of the United States, the State of Colorado and all other governmental ordinances, rules and regulations; violations thereof shall be a breach of this Declaration, subject to enforcement by the Association. Determination of whether an activity violates this covenant shall be at the sole discretion of the Board of Directors or other committees and shall be subject to the Rules.

Section 9.9 Penalties for Infractions: The Board may establish and enforce penalties for the infraction of these restrictions, Rules or Architectural Guidelines, including, without limitation, the levying and collecting of fines for the violation of any of such Rules in compliance with the Act.

## ARTICLE X INSURANCE

Section 10.1. Coverage: To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, or if any policy is canceled, or not renewed, without a replacement policy having been obtained, the Association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners at their respective last known addresses.

Section 10.2. Property Insurance Coverage: The Association shall obtain property insurance on the Common Elements for broad form covered causes of loss and on all personal property owned by the Association. The property insurance will be for an amount equal to one hundred percent (100%) of the full insurable replacement cost of the insured property less applicable deductibles, exclusive of land, foundations, excavations and other items normally excluded from property policies. The Board of Directors is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the property, and the cost of such appraisals shall be a Common Expense.

Section 10.3. Liability Insurance: Commercial General Liability insurance, as set forth in Section 38-33.3-313(b) of the Act, will be maintained in an amount determined by the Board of Directors, but in no event shall it be less than \$1,000,000. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained. This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, existence, or maintenance of the Common Elements and the activities of the Association; and may also include, if applicable, comprehensive automobile liability insurance, garage keeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location and use, but not less than any amount specified in the association documents.

Section 10.4 Mandatory Provisions. The insurance policies carried pursuant to Sections 10.2 and 10.3 shall provide that:

- A. Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;
- B. The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner;
- C. No act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;
- D. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and
- E. The insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Security Interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 10.5. Fidelity Bonds: The Association shall obtain and maintain, to the extent reasonably available, fidelity bond insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The bond or insurance shall name the Association as obligee, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. If reasonably available, the bond or coverage shall be the sum of two (2) month's assessments for all Lots plus up to one hundred percent (100%) of the reserve funds as calculated from the current budget of the Association. The bond or coverage shall include a provision that calls for ten (10) day's written notice to the Association before the bond can be cancelled or substantially modified for any reason. The Association shall also require any independent contractor who manages the Association to obtain and maintain fidelity bond insurance coverage in the amount required by law or to the extent that it is reasonably available, unless they are covered under the Association's fidelity bond insurance coverage.

Section 10.6. Owner Policies: An insurance policy issued to the Association does not preclude Owners from obtaining insurance for their own benefit.



Section 10.7. Workers Compensation Insurance: The Board of Directors shall obtain and maintain Workers Compensation Insurance if required to meet the requirements of the laws of the State of Colorado.

Section 10.8. Directors' and Officers' Liability Insurance: The Board of Directors shall obtain and maintain directors' and officers' liability insurance, if reasonably available, covering all of the directors, officers, employees and committee members of the Association. This insurance will have limits determined by the Board of Directors.

Section 10.9. Other Insurance: The Association may carry other insurance which the Board of Directors considers appropriate to protect the Association. If any parcels of real property which the Association has an obligation to repair or reconstruct is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then the Board may obtain a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

- A. The maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or
- B. One hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

Section 10.10. Premiums: Insurance premiums for insurance carried by the Association shall be a Common Expense.

Section 10.11. Procedures: The Board of Directors may adopt written nondiscriminatory policies and procedures for claims adjustment and responsibility for deductibles. To the extent the Association settles claims for damages to real property owned by the Association, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. If more than one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

Section 10.12. General Provisions: All Association insurance shall be carried in blanket policy form naming the Association as insured, or naming its designee as trustee and attorney-in-fact for the Association. The policies shall contain:

- A. A standard noncontributory Security Interest Holder's clause in favor of each holder of a First Security Interest, and shall provide that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice is given to the insured.

B. 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. Upon request, 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 of First Security Interests.

Section 10.13. Insurance Proceeds: Any loss covered by the property insurance policy described in Section 10.2 above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any Security Interest Holder. The Association shall hold any insurance proceeds in trust for the Association, Owners and lienholders as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property, and the Owners, Association and lienholders 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 or restored. If hazard insurance proceeds are distributed to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act. The Association may designate a Trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses and other sources.

Section 10.14. Damage to Property: Any portion of the Common Interest Community for which insurance is required under Section 38-33.3-313 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed, shall be repaired or replaced by the Association in accordance with Section 38-33.3-313(9) of the Act.

ARTICLE XI  
EASEMENTS AND LICENSES

Section 11.1. Easements and Licenses: Easements or licenses to which the Lots and the Common Interest Community are presently subject are recited in Exhibit D and on the Plat. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article V of this Declaration.

Section 11.2. Easements for the Board of Directors: Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

Section 11.3. Declarant's and Builder's Easements: Anything to the contrary herein notwithstanding, the Declarant hereby reserves for itself, and for Builders, agents, employees, business invitees, successors or assigns, reasonable easements and rights-of-ways over all Lots for the sole purpose of constructing improvements to the Common Interest Community and making repairs pursuant to contracts of sale made with Purchasers of Lots, but only if access thereto is otherwise not reasonably available, including the right to erect temporary buildings to store any and all materials. Such

easements and rights-of-way, however, shall not unreasonably inhibit the use of Lots by Owners and Permitted Users. The Declarant and any Builder shall be fully responsible for any damage to Lots caused by its use of such easements and rights-of-way. Such reservations shall terminate at the option of the Declarant by its written notice to the Secretary of the Board of Directors, but in any event such reservations shall terminate without further act or deed not later than the completion of all of the Initial Improvements.

Section 11.4. Emergency Easements: A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon any part of the Common Interest Community in the performance of their duties.

Section 11.5. Easement for Encroachments: If any Lot or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve a Declarant or any other Person of liability for failure to adhere to the plans.

Section 11.6. Easements for Drainage and Utilities: Easements for the installation and maintenance of utilities, drainage facilities, Association, public or private improvements and access thereto are reserved as shown on the recorded plats and other documents affecting the Lots and any amendments to such plats and documents or as established by any other instrument of record. Declarant hereby reserves, to itself and to the Association, easements for drainage or drainage facilities as noted on the recorded Plats. 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 through channels or swales within such front, rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each front, rear and side yard drainage easement and at any time to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

Section 11.7. Easements Deemed Created: All conveyances of any Lot hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

## ARTICLE XII DURATION, ANNEXATION, AMENDMENTS AND MERGER

Section 12.1. Duration: This Declaration shall run with and bind the land perpetually, unless terminated as set forth in Article XIII below.

Section 12.2. Declarant Annexation and Amendment:

A. Annexation: Declarant may annex additional property described on Exhibit C attached and made a part hereof, to this Declaration, in whatever increments deemed desirable by Declarant, without consent of Owners but with the consent of any person or entity that owns said property if other than Declarant, as set forth in Section 5.1A above. Said right also includes the right to add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed pursuant to this sentence and not described in the attached Exhibits A and C, does not exceed ten percent (10%) of the total area described in the attached Exhibits A and C. This annexation right (1) shall run for a period of fifteen (15) years from the date this Declaration is recorded by the Clerk and Recorder of Arapahoe County, Colorado; and (2) shall be exercised by recording an Annexation Agreement and new plats in the office of the Clerk and Recorder of Arapahoe County, Colorado, describing therein the land being annexed; and all rights, duties and covenants of this Declaration shall be binding upon said annexed land from the moment an Annexation Agreement is recorded.

B. Amendment: Declarant declares and reserves the right to amend without the consent of Owners this Declaration, or the Plat, Articles of Incorporation or Bylaws, any time within fifteen (15) years from the date this Declaration is recorded, or before Declarant conveys the last Lot to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows:

- (1) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- (2) To comply with any requirements of the Act or amendments thereto, or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Security Interests.
- (3) To add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Common Interest Community pursuant to this sentence, and not described in the attached Exhibits A and C, does not exceed ten percent (10%) of the total area described in the attached Exhibits A and C (as amended).

Section 12.3. Owner Annexation and Amendment:

A. Annexation: Owners may annex additional real estate to this Declaration, by Amendment of this Declaration under the terms of Section 12.3(B) below.

B. Amendment: Owners may amend the covenants and restrictions of this Declaration at any time, as follows:

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- (1) By an instrument signed by not less than sixty-seven percent (67%) of the Owners of Lots recorded with the Clerk and Recorder of Arapahoe County, Colorado.
- (2) Any amendment shall be effective on the tenth (10th) day after it is properly recorded in the records of the Clerk and Recorder of Arapahoe County, Colorado.
- (3) Upon instruction from the Board of Directors, the President and Secretary of the Association may certify in a notarized affidavit attesting to their receipt and review of the necessary number of signatures and that the appropriate number of Owners executed the amendment, in lieu of recording each individual signature.
- (4) Where a Lot is owned by more than one (1) person, the execution of any amendment or revocation shall be valid if executed by any one (1) Owner. Where a Lot is owned by a general or limited partnership, or by a corporation, trust, limited liability company or other type of business entity, the entity may, through action by the proper rule making persons, designate a person to sign for the entity. Signatures need not be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person. The originals of all signatures shall be retained for a period of three (3) years from the date of recording.
- (5) No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one (1) year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven.
- (6) All signatures shall be irrevocable even upon death or conveyance of the Lot, except that if an amendment is not recorded within three (3) years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.
- (7) Amendments may be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

Section 12.4. Mergers: The Common Interest Community may be merged or consolidated with another Common Interest Community of the same form of ownership by complying with Section 38-33.3-221 of the Act, including, following approval of the same number of Owners as is required to terminate each community, an agreement providing for the merger or consolidation and specifying which community is the legal successor and the reallocation of the Allocated Interests.

Section 12.5. Recordation of Amendments: Each amendment to the Declaration must be recorded in accordance with Section 38-33.217(3) of the Act as it may be amended.

Section 12.6. Owner Consent: Except to the extent expressly permitted or required by other provisions of this Declaration, an amendment may not create or increase Special Declarant Rights, increase the number of Lots or boundaries of any Lot, change the Allocated Interests of a Lot or the uses to which a Lot is restricted, except by consent of sixty-seven percent (67%) of the Owners.

Section 12.7. Special Declarant Rights: Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 12.8. Expenses: All expenses associated with preparing and recording an amendment shall be allocated in accordance with Section 38-33.3-217(6) of the Act.

### ARTICLE XIII TERMINATION

Termination of the Common Interest Community may be accomplished only in accordance with Section 38-33.3-218 of the Act, upon agreement of Owners to which at least sixty-seven percent (67%) of the votes are allocated.

### ARTICLE XIV RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense Assessments, only by the affirmative vote of Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated, at a meeting called for that purpose.

### ARTICLE XV CONDEMNATION

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 38-33.3-107 of the Act.

### ARTICLE XVI MANDATORY DISPUTE RESOLUTION

Section 16.1 Statement of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and

they wish to proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.

Section 16.2 Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors, all Owners, design professionals, Builders including any of their subcontractors and suppliers, and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party"), agree to encourage the amicable resolution of disputes involving the Common Interest Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Article XVI and not to a court of law.

Section 16.3 Claims. Except as specifically excluded in this Section 16.3, all claims, disputes and other controversies arising out of or relating to the

- (a) interpretation, application or enforcement of this Declaration,
- (b) design or construction of improvements within the Common Interest Community or any alleged defect therein,
- (c) rights, obligations and duties of any Bound Party under this Declaration, and/or
- (d) breach thereof (all of which are hereinafter referred to as "Claim(s)")

shall be subject to and resolved in accordance with the terms and provisions of this Article XVI.

Unless Owners to which at least eighty percent (80%) of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Article XVI:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VII (Assessments);
- (b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Article VIII (Architectural Approval), or Article IX (Land Use and Other Restrictions);
- (c) any suit by an Owner to challenge the actions of Declarant, the Association, the Architectural Review Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of Article VIII (Architectural Approval);

- (d) any suit between or among Owners, which does not include Declarant or the Association as a party; and
- (e) any suit in which any indispensable party is not a Bound Party.

Section 16.4 Notice of Claim. Any Bound Party having a Claim ("Claimant") against any other bound Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the claim arises); and
- (c) the specific relief and/or proposed remedy sought.

Section 16.5 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose.

Section 16.6 Right to be Heard. Upon receipt of a Claim and prior to asserting the Claim commencing any arbitration or judicial or administrative proceeding which may fall within the scope of this Article XVI, the Respondent shall have the right to respond in an effort to resolve the Claim. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such Party in negotiations.

Section 16.7 Right to Inspect. If the Claim is asserted against Declarant and is based on a defect in the design or the construction of the Improvements within the Common Interest Community, subject to Owner's prior written approval, which shall not be unreasonably withheld, Declarant shall have the right to access the affected area for purposes of inspecting the condition complained of, and the correction thereof, including any necessary redesign. This shall include, but not be limited to, notice prior to conducting any investigative or restrictive testing. All Claimants shall meet with Declarant to discuss, in good faith, ways to resolve the Claim.

The Association shall have the same right to inspect for any claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the inspecting party shall be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party. The party exercising the rights contained herein ("Inspecting Party") shall use best efforts to avoid causing any



damage to, or interference with, any improvements on the property being inspected ("Property") and minimize any disruption or inconvenience to any person who occupies the Property; shall remove all debris located on the Property on a daily basis; and in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove equipment and materials from the Property and repair, replace and restore the Property to the condition of the Property as of the date of the inspection right. The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the use of its rights to accrue against or attach to the Property.

The repair, replacement and restoration work includes, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Property that were damaged, removed or destroyed by Inspecting Party.

The Inspecting Party shall indemnify, defend and hold harmless the owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney's fees, resulting from or in performance of this Agreement, or as a result of any Inspecting Party's breach of this Article.

Section 16.8 Mediation. If the Parties do not resolve the Claim through negotiations within thirty days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties, Claimant shall have sixty (60) additional days to submit the Claim to mediation under the auspices of an independent mediation service acceptable to all parties. 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 all Respondent(s) shall be released and discharged from any and all liability to Claimant on account of such Claim.

- (a) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.
- (b) If the Parties do not settle the Claim within sixty (60) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("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.
- (c) Within thirty (30) days after issuance of a Termination of Mediation, the Claimant shall make a final written Settlement Demand to the Respondent(s), and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fails to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

- (d) Each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.
- (e) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article XVI and any Party thereafter fails to abide by the terms of such agreement, then any other Affected Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article XVI. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

Section 16.9 Consensus for Association Arbitration or Litigation. Except as provided in this Article XVI, the Association shall not commence any arbitration or a judicial administrative proceeding unless Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree to such proceedings.

This Section 16.9 shall not apply, however, to:

- (a) actions brought by the Association or Declarant to enforce the terms of this Declaration (including, without limitation, the foreclosure of liens);
- (b) the imposition and collection of Assessments, fines, costs and attorney fees, or other specific amounts due under the Declaration; or
- (c) counterclaims brought by the Association in proceedings instituted against it.

Section 16.10 Arbitration. If the Parties do not reach a settlement of the Claim within thirty (30) days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have thirty (30) additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures contained in Exhibit E hereof and deliver an Arbitration Notice to all Respondent(s).

- (a) The parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Bound Party may have liability with respect thereto, all parties including any third parties agree that the third parties may be joined as additional parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the parties to resolve all rights and obligations of all interested parties at one time in one forum rather than in multiple proceedings.

- (b) If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claims shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.
- (c) The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue. The party seeking enforcement shall be entitled to all reasonable attorney's fees and costs incurred in the enforcement of the award.
- (d) The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.
- (e) The Association or the Owner shall notify the Declarant ( if the Declarant is a Respondent) prior to retaining any person or entity as an expert witness for purposes of any arbitration or authorized litigation.

Section 16.11 Binding Effect. This Article XVI and the obligation to arbitrate shall be specifically enforceable under the applicable laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

Section 16.12 Amendment. This Article XVI shall not be amended unless such amendment is approved by the same eighty percent (80%) of the votes of the Association as stated above, and for a period of eight years after the final Initial Improvements are completed, by obtaining the consent of Declarant.

ARTICLE XVII  
SECURITY INTEREST PROTECTION

Section 17.1. Rights of First Security Interest Holders: First Security Interest Holders shall have the following rights:

- A. Holders of First Security Interests shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may 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 First Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.
- B. Holders of First Security Interests will be entitled to cure any delinquency of the Owner of the Lot encumbered by the First Security Interest in the payment of Common

Expense Assessments. In such event, the first Security Interest Holder will be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 17.2. Title Taken by First Security Interest Holder: Any first Security Interest Holder who obtains title to a Lot pursuant to the remedies provided in the Security Interest documentation, including foreclosure or deed in lieu of foreclosure, will be liable for all Common Expense Assessments due and payable as of the date title to the Lot vests in the Security Interest Holder under the statutes of Colorado governing foreclosures. Except as provided in the Act, such Security Interest Holder will not be liable for any unpaid Common Expense Assessments, dues, and charges attributable to the Lot which occurred prior to the date such title vests in the Security Interest Holder.

#### ARTICLE XVIII MISCELLANEOUS

Section 18.1. Captions: The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

Section 18.2. Gender: The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 18.3. Waiver: No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 18.4. Invalidity: The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

Section 18.5. Severability: All provisions of the Documents of the Association are severable. Invalidation of any of the provisions of any such documents, 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 18.6. Registration of Mailing Address: Each Owner shall, and each Security Interest Holder, insurer or guarantor of a Security Interest may, register their mailing address with the Association, and except for assessment statements and other routing 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 either delivered to them or sent by first class mail, postage prepaid, addressed in the name of such person or entity 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 or the Association shall be sent by

registered or certified mail, postage prepaid, to the Association's Manager or Registered Agent. If a Security Interest Holder fails to register a mailing address with the Association, the Association shall have no obligation to provide notice of any matter to such Security Interest Holder.

Section 18.7. Enforcement: Subject to the provisions of Article XVI, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws, Architectural and Design Guidelines, or Rules of the Association, as amended, may be by any proceeding at law or in equity against any person or persons (including, without limitation, the Association) violating or attempting to violate any such provision. Subject to the provisions of Article XVI, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines and enforce other established penalties for the violation of any provision of any of the aforesaid documents. In any action instituted or maintained for enforcement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

Section 18.8. Indemnification: The Association shall indemnify every present and former Director, officer, committee member, agent or employee against loss, costs, and expense, including attorneys' fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such Director, officer, committee member, agent or employee of the Association, except for wanton or willful acts or omissions or if such person shall be finally adjudged to be liable for: any breach of the Director's duty of loyalty to the Association or its members; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; acts specified in Section 7-24-111, as now in effect or hereafter amended; or any transaction from which the Director derived an improper personal benefit. Any such indemnification may be limited to and paid out of the insurance proceeds provided by an insurer furnishing Directors and Officers liability coverage, Errors and Omissions coverage, or similar protection and any other insurance protecting the Association from liability because of the negligent acts of its servants, including insurance covering motor vehicles or public liability, property damage, medical and other similar coverage. In the event of an insurance settlement, the settlement shall be approved by the Board of Directors and paid for by the insurance carrier out of the insurance proceeds.

Section 18.9. Conflict with Act: If any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act 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 the Act, and any conflict with or violation of the Act 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).

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The Declarant has caused this Declaration to be executed this 15 day of May, 2001.

Sugarbush Homebuilding Co. LLC a Colorado limited liability company

By: [Signature] Manager/Member  
Title

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Adams )

The foregoing Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek was acknowledged before me this 15 day of May, 2001, by Gale W. Schrag, as Manager of Sugarbush Home Building Co. LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: July 8, 2003

[SEAL]

[Signature]  
Notary Public

MARY J. EVANSON  
NOTARY PUBLIC  
STATE OF COLORADO  
Commission Expires 7/8/2003







49-58

CONSENT TO  
DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS OF  
OVERLOOK AT CHERRY CREEK

David W. Rumbold and Teresa A. Rumbold being the legal owners of Lot 6, Block 1, Cherry Creek Overlook Subdivision Filing No. 1, Arapahoe County, Colorado, hereby consents to the recording and imposition of the covenants affecting the such property as contained in the above-stated Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek ("Declaration") which shall run with the land and be binding on all owners thereof, and the rights of said owners shall be subject thereto, so that the terms of the Declaration shall apply as though recorded prior to the time when said owners acquired title to the described property.

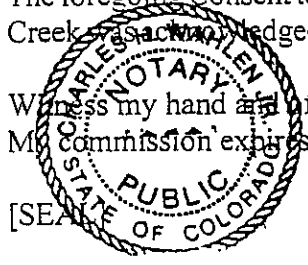
David W. Rumbold  
David W. Rumbold

Teresa A. Rumbold  
Teresa A. Rumbold

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek was acknowledged before me this 10<sup>th</sup> day of September, 2001, by David W. Rumbold.

Witness my hand and official seal.  
My commission expires: 1/22/2003



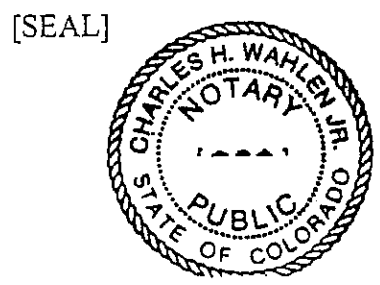
[Signature]  
Notary Public

4053 S. OLATHE CT.  
AURORA CO 80013

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek was acknowledged before me this 10<sup>th</sup> day of September, 2001, by Teresa A. Rumbold.

Witness my hand and official seal.  
My commission expires: 1/22/2003



[Signature]  
Notary Public

4053 S. OLATHE CT.  
AURORA CO 80013

CONSENT TO  
DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS OF  
OVERLOOK AT CHERRY CREEK

Kirk Wm. Hills and Melva M. Hills being the legal owners of Tract A, Cherry Creek Overlook Subdivision Filing No. 1, Arapahoe County, Colorado, hereby consent to the recording and imposition of the covenants affecting the such property as contained in the above-stated Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek ("Declaration") which shall run with the land and be binding on all owners thereof, and the rights of said owners shall be subject thereto, so that the terms of the Declaration shall apply as though recorded prior to the time when said owners acquired title to the described property.

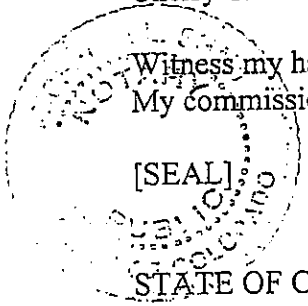
Kirk Wm. Hills  
Kirk Wm. Hills

Melva M. Hills  
Melva M. Hills

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek was acknowledged before me this 11<sup>th</sup> day of Sept., 2001, by Kirk Wm. Hills.

Witness my hand and official seal.  
My commission expires: 7/12/03



[SEAL]

Michelle L. Shaw  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek was acknowledged before me this 11<sup>th</sup> day of Sept., 2001, by Melva M. Hills.

Witness my hand and official seal.  
My commission expires: 7/12/03



[SEAL]

Michelle L. Shaw  
Notary Public



51-58

CONSENT TO  
DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS OF  
OVERLOOK AT CHERRY CREEK

and \_\_\_\_\_ being the legal owners of \_\_\_\_\_ Cherry Creek  
Overlook Subdivision Filing No. 1, Arapahoe County, Colorado, hereby consents to the recording and  
imposition of the covenants affecting the such property as contained in the above-stated Declaration  
of Covenants, Conditions and Restrictions of Overlook at Cherry Creek ("Declaration") which shall  
run with the land and be binding on all owners thereof, and the rights of said owners shall be subject  
thereto, so that the terms of the Declaration shall apply as though recorded prior to the time when said  
owners acquired title to the described property.

[Signature]  
\_\_\_\_\_

Manager  
\_\_\_\_\_

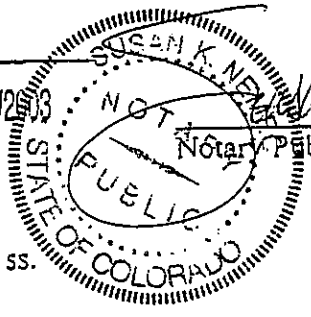
STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry  
Creek was acknowledged before me this 11th day of September, 2001, by:

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

[SEAL]

MY COMMISSION EXPIRES 11/8/2003



[Signature]  
\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry  
Creek was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by:

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

52-58

CONSENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
OVERLOOK AT CHERRY CREEK

Wells Fargo Bank Northwest, N.A., deed of trust beneficiary under a Deed of Trust recorded on June 13, 2001, under Reception No. B1094778, upon the subject Property, hereby consents to the recording and imposition of the covenants affecting the Property contained in the above-stated Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek ("Declaration") which shall run with the land and be binding on all owners thereof, and the rights of Grantee shall be subordinated thereto, so that the terms of the Declaration shall apply as though recorded prior to the said Deed of Trust, and the rights under said Deed of Trust are modified hereby.

Wells Fargo Bank Northwest, N.A.

By: Eric Kufeldt  
Vice President title

Attestation:

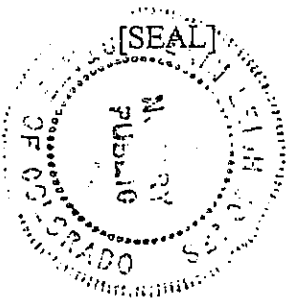
Ozlem O. Ertunc  
Title Lending Assistant

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF Denver         )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek was acknowledged before me this 11<sup>th</sup> day of September, 2001, by Eric Kufeldt as Vice President and Ozlem Ertunc as lending assistant of Wells Fargo Bank Northwest, N.A.

Witness my hand and official seal  
My commission expires: My Commission Expires 10/20/2004

Eric Leigh Jones  
Notary Public



53-58

CONSENT TO  
DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS OF  
OVERLOOK AT CHERRY CREEK

John Watson, deed of trust beneficiary under a Deed of Trust recorded on January 19, 2001 under Reception No. B1008329, Lot 7, Block 1, Cherry Creek Overlook Subdivision Filing No. 1, County of Arapahoe, State of Colorado, hereby consents to the recording and imposition of the covenants affecting the Property contained in the above-stated Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek ("Declaration") which shall run with the land and be binding on all owners thereof, and the rights of Grantee shall be subordinated thereto, so that the terms of the Declaration shall apply as though recorded prior to the said Deed of Trust, and the rights under said Deed of Trust are modified hereby.

  
John Watson

STATE OF Colorado )  
 ) ss.  
COUNTY OF Denver )

The foregoing Consent to Declaration of Covenants, Conditions and Restrictions of Overlook at Cherry Creek was acknowledged before me this 10<sup>th</sup> day of September, 2001, by John Watson.

Witness my hand and official seal.  
My commission expires: 5-30-04

[SEAL]

  
Notary Public

54-58

EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
OVERLOOK AT CHERRY CREEK

LEGAL DESCRIPTION OF  
OVERLOOK AT CHERRY CREEK COMMON INTEREST COMMUNITY

LEGAL DESCRIPTION

Tracts B and D,  
Cherry Creek Overlook Subdivision Filing No. 1,  
County of Arapahoe,  
State of Colorado  
according to the plat thereof recorded on August 17, 2000 in Book 182 at Page 154

and

A perpetual, non-exclusive easement over Tract A,  
Cherry Creek Overlook Subdivision Filing No. 1,  
County of Arapahoe,  
State of Colorado  
according to the plat thereof recorded on August 17, 2000 in Book 182 at Page 154

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EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
OVERLOOK AT CHERRY CREEK

DESCRIPTION OF COMMON ELEMENTS  
(INCLUDING IMPROVEMENTS)

Tracts B and D,  
Cherry Creek Overlook Subdivision Filing No. 1,  
County of Arapahoe,  
State of Colorado  
according to the plat thereof recorded on August 17, 2000 in Book 182 at Page 154

and

A perpetual, non-exclusive easement over Tract A,  
Cherry Creek Overlook Subdivision Filing No. 1,  
County of Arapahoe,  
State of Colorado  
according to the plat thereof recorded on August 17, 2000 in Book 182 at Page 154

and roads, curbs, gutters, sidewalks, entry monumentation, entry lights and entry gates; gate houses;  
mail kiosks; fencing, dumpster enclosures, common parking areas, and any other Improvements  
located on the above described tracts.

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EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
OVERLOOK AT CHERRY CREEK

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

Lots 1 through 48, and  
Cherry Creek Overlook Subdivision Filing No. 1,  
County of Arapahoe,  
State of Colorado  
according to the plat thereof recorded on August 17, 2000 in Book 182 at Page 154



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EXHIBIT D  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
OVERLOOK AT CHERRY CREEK

EASEMENTS AND LICENSES BURDENING AND SERVING THE  
OVERLOOK AT CHERRY CREEK COMMON INTEREST COMMUNITY

1. Well and water therefrom together with easements for maintenance of water lines from said well as granted in instrument recorded October 14, 1972 in Book 2064 at Page 190.
2. Easements and rights of way for roadways, waterlines, ingress and egress as described in instrument recorded January 29, 1958 in Book 1744 at Page 143.
3. Easement for ingress and egress purposes granted to Roger J. Burnell in instrument recorded June 27, 1967 in Book 1715 at Page 323, and subsequently deeded to Kirk Wm. Hills and Melva M. Hills in instrument recorded September 11, 1978 in Book 2846 at Page 736.
4. Easement and right of way for road purposed as described in instruments recorded February 5, 1975 in Book 2308 at Page 789, recorded May 27, 1975 in Book 2338 at Pages 175 and 180.
5. The effect of Ordinance No. 96-57 for annexing land to the City of Aurora recorded November 19, 1997 under Reception No. A7146720
6. Terms, conditions and provisions of Annexation Agreement recorded November 19, 1997 under Reception No. A7146719.
7. The effect of Preliminary Development Plan for Cherry Creek Overlook recorded November 19, 1997 under Reception No. A7146722.
8. The effect of General Development Plan Site Analysis for Cherry Creek Overlook recorded November 19, 1997 under Reception No. A7146721.
9. The effect of Air Rights Covenant recorded December 28, 1999 under Reception No. A9201909.
10. The effect of Cherry Creek Overlook Site Plan recorded July 12, 2000 under Reception No. B0085007.
11. Easements, rights of way, reservations, restrictions and licenses created by the plat of Cherry Creek Overlook Subdivision Filing No. 1 recorded on August 17, 2000 in Book 182, Page 54, Reception No. B0102475.

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**EXHIBIT E**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**OVERLOOK AT CHERRY CREEK**

**ARBITRATION PROCEDURES**

1. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the parties.
2. If the parties are unable to agree upon an arbitrator within thirty (30) days from the date of the Arbitration Notice, the presiding judge of the District Court in Arapahoe County shall appoint a qualified arbitrator upon application of a party.
3. No person shall serve as the arbitrator who may have any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator's Disclosure"). If any party objects to the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as provided in paragraph 2 above.
4. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in Arapahoe County, unless otherwise agreed by the parties.
5. Subject to the provisions of these procedures, the arbitration shall be conducted in accordance with rules and procedures determined by the arbitrator.
6. No formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement of the parties.
7. Unless directed by the arbitrator, there shall be no post-hearing briefs.
8. The arbitration award shall address each claim to be resolved in the arbitration, provide a summary of the reasons therefor and the relief granted, and be rendered promptly after the close of the hearing and no later than 14 days from the close of the hearing, unless otherwise agreed by the parties. The award shall be in writing and shall be signed by the arbitrator.
9. The arbitrator shall have the authority, in the exercise of sound discretion, and as may be required by Colorado law, to award the prevailing party such party's costs and expenses, including reasonable attorneys fees.