



RCPTN#

2004-0081192

PAGES - 103

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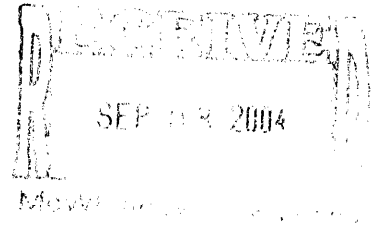
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**SECOND RESTATED AND AMENDED
MASTER DECLARATION
OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
CENTERRA**

**MCWHINNEY HOLDING COMPANY, LLLP
a Colorado Limited Liability Limited Partnership**

("Declarant")

After Recording, please return to:
CCOA, C/o McWhinney Enterprises
2725 Rocky Mountain Ave, Ste 200
Loveland, CO 80538

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LIST OF EXHIBITS

- Exhibit A** List of Supplemental Declarations and all Amendments thereto
- Exhibit B** Legal Descriptions of Property Previously Annexed and Pro Rata Share Allocated thereto
- Exhibit C** Future Parcels (Property currently identified as capable of being annexed to the terms of the Declaration)
- Exhibit D** Limited Project Common Areas, Benefited Lots and Allocated Percentage of Costs
- Exhibit E** Limited Lot Common Areas, Benefited Lots and Allocated Percentage of Costs
- Exhibit F** Description of Lots excluded from obligation to pay Common Assessments (and not included in computation of Pro Rata Share)
- Exhibit G** Bylaws of Centerra Commercial Owner's Association, Inc.

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SECOND RESTATED AND AMENDED
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
CENTERRA

This **SECOND RESTATED AND AMENDED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CENTERRA** (the "Declaration") is made and entered into as of the 17 day of August, 2004, by **MCWHINNEY HOLDING COMPANY, LLLP**, a Colorado limited liability limited partnership ("Declarant"), upon the following terms and conditions:

RECITALS:

A. McWhinney Holding Company, L.L.C., a Colorado limited liability company (the "LLC") is the "Declarant" under that certain First Amended and Restated Master Declaration of Covenants, Conditions and Restrictions dated December 20, 2001, and recorded December 28, 2001, at Reception No. 2001119890 of the Larimer County, Colorado records (the "Restated Declaration").

B. As of January 1, 2002, McWhinney Holding Company, LLLP, a Colorado limited liability limited partnership (the "Declarant") became the successor by conversion to the LLC, and is currently the "Declarant" under the Restated Declaration.

C. The Restated Declaration was supplemented by that certain First Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for a Part of Centerra dated December 31, 2002, and recorded January 16, 2003, at Reception No. 2003006359 of the Larimer County, Colorado records (the "First Supplement").

D. The Restated Declaration was also supplemented by that certain Second Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for a Part of Centerra dated June 18, 2003, and recorded June 18, 2003, at Reception No. 20030074434 of the Larimer County, Colorado records (the "Second Supplement").

E. The Restated Declaration was also supplemented by that certain Third Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for a Part of Centerra dated June 18, 2003, and recorded June 18, 2003, at Reception No. 20030074435 of the Larimer County, Colorado records (the "Third Supplement").

F. The Restated Declaration was supplemented by that certain Fourth Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and

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Restrictions for a Part of Centerra dated June 18, 2003, and recorded June 18, 2003, at Reception No. 20030074440 of the Larimer County, Colorado records (the "Fourth Supplement").

G. The legal descriptions for the Property previously annexed to the Restated Declaration are set forth on Exhibit B (collectively "Property").

H. Pursuant to Article XIII, Section B, Paragraph 3 of the Restated Declaration, as long as the Declarant is the owner of Lots on which is located ten percent (10%) or more of the total square footage of real property contained within the Property (as that term is defined in the Restated Declaration), the Declarant may amend or modify the provisions of the Restated Declaration without the consent of any other Owners or their mortgagees.

I. The Declarant is the owner of ten percent (10%) or more of the total square footage of real property contained within the Property and hereby elects to totally restate and amend in its entirety the Restated Declaration (save and except the First Supplement, Second Supplement, Third Supplement and Fourth Supplement, all of which shall remain in full force and effect).

J. In addition to the Property, Declarant owns or may acquire certain additional property adjacent to or in the vicinity of the Property, which it may wish to annex to this Declaration ("Future Parcels"). The descriptions of the Future Parcels which are currently identified by Declarant are set forth on Exhibit C. Additionally, Declarant reserves the right, for a period of 25 years following recordation of this Declaration, as hereafter provided, to amend the description of the Future Parcels, adding additional parcels thereto or deleting parcels therefrom, by execution of an Amendment hereto. Any such amendment to this Declaration will set forth the revised Exhibit C which will thereafter be deemed to be the description of the Future Parcels. The Property, together with the Future Parcels, as the same are identified from time to time, are sometimes collectively referred to herein as the "Project Property." Upon recordation of any Supplemental Declaration which by its terms annexes any Future Parcel, or portion thereof, to the provisions of this Declaration such Parcel shall automatically be deemed included within the meaning of the word "Property," and all references in this Declaration to Property shall automatically be deemed to mean and refer to the then real property subject to the terms hereof.

K. Declarant desires to restate the covenants, conditions, restrictions, and agreements set forth in the Restated Declaration (save and except the First Supplement, Second Supplement, Third Supplement and Fourth Supplement, all of which shall remain in full force and effect), to evidence the common and general plan for the Project Property, to protect and enhance the quality, value and desirability of the Project Property and to provide for the consistent development, maintenance, and improvement of all portions of the Project Property.

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L. From and after the date of recordation of this Declaration, the prior Restated Declaration (save and except the First Supplement which shall remain in full force and effect) will be deemed superceded and replaced in its entirety by this document.

M. Declarant desires that the Property be improved, held, used, and occupied, leased, sold, or conveyed subject to this Declaration.

N. Irrespective of Declarant's ownership of any portion of the Property, it is the intent and express declaration of Declarant that the covenants, conditions, restrictions, and easements set forth herein shall not merge into the ownership interest of Declarant but, to the contrary, shall survive, continue, and run with the land and shall inure to and pass with the Property, and will inure to the benefit of and bind all of Declarant's successors in interest.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth, Declarant declares and grants, as follows:

ARTICLE I

General

Section 1.01 Property. Declarant is the owner of a portion of the Property consisting of 10% or more of the Lots. This Declaration does not have a material adverse affect on the use of and operation of the businesses conducted on the Lots within the Property or impair the collateral of any mortgagee or Owner of such Lot or materially increase the monetary obligation of any Lot. Accordingly, pursuant to the terms of the Restated Declaration, specifically Article XIII, Section B3, thereof, Declarant has the right to amend the Restated Declaration without the consent or approval of any such Owners or Mortgagees and hereby exercises such right by restating and amending the Restated Declaration in its entirety. From and after the date of recordation hereof, the Restated Declaration (save and except the First Supplement, Second Supplement, Third Supplement and Fourth Supplement, all of which shall remain in full force and effect), shall be deemed superceded in its entirety by this Declaration. The Property shall be developed and used as a planned community known as "Centerra" for the purposes contemplated and permitted by this Declaration.

Section 1.02 Purpose of Declaration. Declarant desires to further a common and general plan for development of the Property and to protect and enhance the quality, value and desirability of all such Property. Declarant further hereby restates the purpose of the Master Association to maintain, care for and manage the Lots and Project Common Areas from time to time, and to perform certain functions for the benefit of the Members. The Master Association may also be delegated certain responsibilities and rights under Supplemental Declarations as hereafter provided. This Declaration shall also define certain duties, powers and rights of Owners.

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Section 1.03 Declaration. Declarant for itself, its successors and assigns, and for and on behalf of all existing Owners, hereby declares that the Property and any Future Parcel(s) which is annexed to this Declaration in the manner provided herein shall, from the date it so becomes annexed be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations and other provisions set forth herein for the Term. All of such provisions are deemed to be part of and in furtherance of a common and general plan of development and improvement of the Project Property, known as "Centerra," and all of which shall be deemed to run with the land to the fullest extent possible. This Declaration shall bind and inure to the benefit of all Property, the Master Association, and all persons who now have or may hereafter acquire any interest in any such property.

ARTICLE II

Definitions

As used herein, the following words or phrases shall have the following definitions:

Section 2.01 Annexed Property. "**Annexed Property**" shall mean any Future Parcel(s) or portion thereof, which is annexed to this Declaration by means of a Supplemental Declaration.

Section 2.02 Association. "**Association**" shall mean that nonprofit corporation known as Centerra Commercial Owner's Association, Inc., which has been incorporated by Declarant under the laws of the State of Colorado for the purpose of performing certain functions with respect to Common Areas and Common Area Easements, and includes as members all Owners. References herein to "Master Association" shall mean and refer to the Association unless the context requires otherwise.

Section 2.03 Association Properties. "**Association Properties**" shall mean all real and personal property including any Improvements, Project Common Areas, and Limited Project Common Areas, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care or maintenance thereof, held for the common use and enjoyment of certain of the Owners, or certain Owners, as the case may be, and for other purposes as may be permitted hereunder.

Section 2.04 Board of Directors. "**Board of Directors**" or "**Board**" shall mean and refer to the body responsible for administration and operation of the Association, selected in the manner set forth in the Bylaws and generally serving the same function as a "board of directors" under Colorado corporate law.

Section 2.05 Building Site. "**Building Site**" shall mean that portion of a Lot which is designated by Declarant on the Plat or other site plan for the Lot which has been approved by the Design Review Committee, as suitable for location of a building thereon, as the same may be modified or amended in accordance with the provisions hereof.

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Section 2.06 Bylaws. "**Bylaws**" shall mean to the Bylaws of the Association, attached hereto as Exhibit G and incorporated by reference, as they may be amended from time to time.

Section 2.07 City. "**City**" shall mean the City of Loveland, Colorado.

Section 2.08 Common Area. "**Common Area**" shall mean and include Project Common Areas, Lot Common Areas, Limited Lot Common Areas, and Limited Project Common Areas, as the context may require.

Section 2.09 Common Area Easements. "**Common Area Easements**" shall mean and include reciprocal nonexclusive or limited use easements granted pursuant to Article IV of this Declaration, any supplement hereto, or other recorded document executed by Declarant, over the Project Common Areas and Lot Common Areas, or any such areas which have already been so identified or created.

Section 2.10 Common Assessments. "**Common Assessments**" shall mean the amounts assessed for the purpose of covering the annual costs of operating the Association, costs associated with any portion of the Greeley Loveland Irrigation Canal which the Association incurs in connection with its contractual relations with the owner thereof, costs associated with owning, maintaining and operating the Association Properties, including Project Common Areas, and all other expenses incurred in connection with any authorized function of said Association which are to be paid by each Owner.

Section 2.11 Completed Structures. "**Completed Structures**" shall mean and include any building or other structure for which a certificate of occupancy has been issued by the City.

Section 2.12 Declarant. "**Declarant**" means McWhinney Holding Company, LLLP, a Colorado limited liability limited partnership and its grantees, successors or assigns, in accordance with Article III. The term "Declarant" as used herein includes all assignees and its successors, and assigns, and specifically any entity that results from reorganization or restructuring of the existing entity or the conversion thereof to another form of entity. For purposes of determining what Lots or Future Parcels are owned by Declarant, "Declarant" shall automatically be deemed to include "Affiliates" which means any and all partnerships, ventures, limited liability companies or other entities in which the Declarant owns, either directly or indirectly, a controlling interest.

Section 2.13 Declaration. "**Declaration**" means this Second Restated and Amended Master Declaration of Covenants, Conditions, and Restrictions for Centerra.

Section 2.14 Dedicated Easements. "**Dedicated Easements**" shall mean the utility and/or drainage easements granted through the Property to the appropriate governmental entity or public utility for providing utility service or drainage facilities to the Property.

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Section 2.15 Default Rate. "**Default Rate**" shall mean eighteen percent (18%) per annum, or such lesser amount as may be the legal maximum rate that may be imposed according to Colorado law for similar debts, from time to time.

Section 2.16 Design Review Committee. "**Design Review Committee**" shall mean that certain committee created pursuant to the terms of this Declaration for the purpose of reviewing all proposed plans for initial development, modification or revision of any Improvements on a Lot.

Section 2.17 Development Plan. "**Development Plan**" shall mean a development plan that has been approved by the City and is recorded with the Larimer County Clerk and Recorder, as to any portion of the Property.

Section 2.18 Drainage Easements. "**Drainage Easements**" shall mean the reciprocal, easements granted pursuant to Article IV of this Declaration, or which may be created and identified as such in a Supplemental Declaration or other recorded document executed by Declarant and the then Owner of a Lot.

Section 2.19 Future Parcels. "**Future Parcels**" shall mean and refer to the real property described on Exhibit C and any other real property adjacent to the Property or in its vicinity which the Declarant identifies as annexable to this Declaration, in any recorded document executed by it which refers to this Declaration, as hereafter provided. Future Parcels need not be owned by Declarant so long as the Owner thereof consents to the potential annexation of such real estate to this Declaration.

Section 2.20 Governing Documents. "**Governing Documents**" shall refer to this Declaration, any Supplemental Declaration, the Bylaws, the Articles of Incorporation, any rules and regulations and the Design Guidelines (as adopted pursuant to Article III), as each may be supplemented and amended from time to time.

Section 2.21 Guest. "**Guest**" shall mean and include any Person who by express or implied invitation from an Owner or Occupant has the right to enter on and use all or any portion of the Property.

Section 2.22 Improvements. "**Improvements**" shall mean and include, as the context requires but not be limited, to buildings, ditch improvements, drainage, retention and detention ponds or facilities, storm sewer and other collection facilities, streets, sidewalks, parking areas, trails, fences, walls, signs, landscaping, (excluding exterior art work and sculptures), and structures of any kind.

Section 2.23 Landscape Buffer Area. "**Landscape Buffer Area**" shall mean and refer to an area of land comprising a portion of the Lot Common Area which is located adjacent to and within forty feet (40') of a public right-of-way.

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Section 2.24 Limited Lot Common Areas. "**Limited Lot Common Areas**" shall mean and include any Lot Common Areas on a Lot the use or existence of which benefit another Lot and such benefit or use is so stated in the Supplemental Declaration annexing the Lot to be so benefited to this Declaration (or other document recorded by Declarant). Limited Lot Common Areas shall be deemed included within the definition of Lot Common Areas and shall be a subcategory thereof. All Limited Lot Common Areas will be maintained by the Association pursuant to the provisions hereof, the cost of such maintenance is to be included in the Lot Assessments to those Owners of Lots which have the right to use the Limited Lot Common Areas, as expressly provided in the Supplemental Declaration annexing such Lot to the terms of this Declaration. All existing Limited Lot Common Areas are identified or particularly described on Exhibit E hereto (or other recorded documents) along with the specific Lots which are entitled to the benefit thereof.

Section 2.25 Limited Project Common Areas. "**Limited Project Common Areas**" are any areas that would otherwise be included within the term Project Common Areas but are designated for the use by Owners, Occupants and Guests of more than one but fewer than all Lots. Such Areas shall be so identified on the Plat in which they are included and may also be specially dealt with in the Supplemental Declaration annexing the same to the terms of this Declaration, or other document recorded by Declarant. Any areas identified on a Plat (or other recorded document) as Common Areas or owned by the Association shall be deemed to be Project Common Areas unless expressly identified as Limited Project Common Areas with the Lots having the use or benefit of such Limited Project Areas specifically identified. Limited Project Common Areas shall be deemed included within the definition of Project Common Areas and shall be a subcategory thereof. All Limited Project Common Areas will be maintained by the Association pursuant to the provisions hereof, the cost of such maintenance is to be included in the Lot Assessments to those Owners of Lots which have the right to use the Limited Project Common Areas, as expressly provided in the Supplemental Declaration annexing such Lot to the terms of this Declaration. All existing Limited Project Common Areas are identified or particularly described on Exhibit D hereto (or other recorded documents) along with the specific Lots which are entitled to the benefit thereof.

Section 2.26 Lot. "**Lot**" shall mean any lot, tract, or other designated parcel shown on any subdivision or resubdivision plat that includes all or any part of the Property or, with respect to those parts of the Property that are not platted, any Parcel or tract. Each part of any Lot which is resubdivided pursuant to an exemption or resubdivision process, or is transferred as a result of a "non regulated land transfer," shall be included in the definition of Lot following each such division. Reference to a "Lot" in this Declaration shall be construed as meaning and referring to a Parcel if the particular plot of real property so referred to has not been subjected to a final plat, as the context so requires. In no event, however, shall any provision of this Declaration be construed as conferring rights on an Owner to construct Improvements or perform other work on any Lot or Parcel without such Owner's compliance with all applicable zoning, platting, subdivision, and other building requirements of the City.

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Section 2.27 Lot Assessments. "**Lot Assessments**" shall mean the amount assessed to an Owner for the purposes of covering: (i) the costs of operating, maintaining, repairing or replacing Lot Common Areas on its Lot; (ii) the percentage of costs associated with maintenance, repair and replacement of Limited Lot Common Areas benefiting such Lot according to the terms of the Supplemental Declaration annexing such Lot to the terms of this Declaration; and (iii) the percentage of costs associated with maintenance, repair and replacement of Limited Project Common Areas associated with such Lot according to the terms of the Supplemental Declaration annexing such Lot to the terms of this Declaration. All costs and expenses arising from or related to maintaining, repairing and replacing Limited Project Common Areas and Limited Lot Common Areas shall be assessed only to those Owners whose Lots benefit from such Limited Project Common Areas and Limited Lot Common Areas (equally or in such proportion as the Supplemental Declaration may so provide) or in such other manner as provided in the Supplemental Declaration for such Lot. If no specific reference is made in a Supplemental Declaration as to the proportion of expenses each identified benefited Lot would bear then such amounts shall be allocated equally among all identified Lots. Each Lot shall be deemed to receive 100% of the benefits from the Lot Common Areas located thereon, (and bear 100% of the Lot Assessments associated therewith) unless any Supplemental Declaration expressly provides to the contrary. A Lot shall be deemed to benefit from a Limited Project Common Area or a Limited Lot Common Area (not located on the Lot) only if expressly provided in the Supplemental Declaration annexing such Lot to the terms and provisions of this Declaration.

Section 2.28 Lot Common Area. "**Lot Common Area**" shall mean all portions of a Lot other than the portion thereof occupied by any building constructed thereon (or identified as a Building Site if no Completed Structure exists), including, without limitation, all open and landscaped areas, parking areas, sidewalks, curbs, parking islands. Limited Lot Common Areas shall be deemed a sub category of Lot Common Areas.

Section 2.29 Maintenance Standard. "**Maintenance Standard**" shall mean the standard of maintenance generally prevailing throughout the Centerra commercial development as established by the Governing Documents. Such standards shall be established initially by the Declarant through the Design Guidelines, Rules and Regulations and Board resolutions and may include both objective and subjective elements. The Maintenance Standard may evolve and change as development progresses and as the needs and desires within the Properties change. Any determination or interpretation regarding the Maintenance Standard, including, without limitation, whether the Maintenance Standard has been met in a particular situation, shall be made by the Board. The initial minimum standards shall be set forth in the Design Guidelines.

Section 2.30 Majority of Owners. "**Majority of Owners**" shall mean the Owners of Lots (including the Declarant) which represent 51% or more of the total square footage of real property within the Property.

Section 2.31 Maintenance Provider. "**Maintenance Provider**" shall mean the Association or other person or entity which is obligated (or has been allowed to conditionally

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assume such obligation as hereafter provided), to maintain any Common Areas or other Association Properties, pursuant to the terms of this Declaration.

Section 2.32 Occupant. "**Occupant**" shall mean and refer to any Person from time to time entitled to the use and occupancy of any portion of the Property under any lease, license or concession agreement or other similar agreement.

Section 2.33 Owner. "**Owner**" shall mean and refer to any Person from time to time entitled to the use and occupancy of any portion of the Property as record owner of fee simple title. Notwithstanding the foregoing, for purposes of computing the Pro Rata Share with respect to Lots hereafter annexed on which no Completed Structure exists, the Declarant shall not be deemed to be an Owner. For all other purposes, unless expressly set forth to the contrary, and specifically from and after the date a Completed Structure exists on any Lot owned by Declarant, the Declarant shall be deemed to be an Owner as to such Lot.

Section 2.34 Parcel. "**Parcel**" shall mean any unplatted portion of the Property designated by Declarant in a recorded document, including a deed of conveyance from Declarant (and legally described) as a separate and distinct parcel from other land for purposes of sale, use or otherwise.

Section 2.35 Parking Area. "**Parking Area**" shall mean any portion of a Lot or Project Common Area which the Owner thereof, or Association, as the case may be, from to time designates or otherwise sets aside for use of vehicular parking. The Association shall have the right at all times to perform and control the upkeep, maintenance and repair of all Parking Areas (unless provided to the contrary in the Supplemental Declaration annexing the Lot on which the same are located or other recorded document executed by Declarant). It is understood that a reciprocal, nonexclusive perpetual easement shall exist over all Parking Areas for the use and benefit of all Lots, or if such Parking Areas are identified as Limited Lot Common Areas, those Lots identified as benefiting therefrom.

Section 2.36 Period of Declarant Control. "**Period of Declarant Control**" shall mean that period of time in which the Declarant is entitled to appoint a majority of the members to the Board of Directors. The Period of Declarant Control will continue to run from the date of the recording of this Declaration and will end with the first to occur of the following: (i) 40 years from the date of recordation hereof; (ii) the date which is 15 years after the first to occur of the following: (a) the date there are no longer any Future Parcels identified in a recorded document referencing this Declaration; or (b) neither Declarant nor any of its Affiliates own any portion of the Property; or (iii) the date Declarant voluntarily relinquishes (or is deemed to have so relinquished) control of the Association as provided herein.

Section 2.37 Permittee. "**Permittee**" shall mean and include all Occupants and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees, subtenants and concessionaires, or any permitted user of the High Plains Environmental Center ("HPEC").

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Section 2.38 Person. "**Person**" shall mean and include individual natural persons, partnerships, firms, associations, corporations, trusts, limited liability companies, or any other form of business or government entity. The term Person shall not be construed as meaning or including the Association.

Section 2.39 Pro Rata Share. "**Pro Rata Share**" shall mean the proportional share of Common Assessments payable by an Owner, set forth as a percentage. The Pro Rata Share of a given Lot will be computed by dividing the total square footage of such Lot, as depicted on the Plat for such Lot, or the total square footage of a Parcel (excluding any public roadways thereon) as certified on the deed conveying such Parcel from Declarant to the first Owner thereof, as the case may be, by the total square footage of all Lots which have been annexed to the Property and which are subject to assessment pursuant to Article VII of this Declaration. The existing Pro Rata Share of each Lot which is currently subjected to this Declaration (including all Lots owned by Declarant) is set forth on Exhibit B hereto. Any annexation of additional real property into this Declaration subsequent to the date hereof (other than Property owned by Declarant on which no Completed Structure exists), shall proportionately reduce the respective Pro Rata Shares of each Lot governed by this Declaration by substituting the denominator of the fraction used for determining each Lot's Pro Rata Share with a number computed by adding the total square footage of all Lots within the Property then subject to assessment pursuant to Article VII of this Declaration. Following completion of a Completed Structure on any Lot owned by Declarant which had previously been annexed but not subject to assessment, the Pro Rata Shares of all Lots will be recomputed in accordance with the foregoing provisions to take into account the existence of such Completed Structure and the commencement of the obligation of such Lot to pay its Pro Rata Share. In the event that any Lot within the Property is resubdivided into two or more separate Lots, the Pro Rata Share for each such resubdivided Lot shall be recalculated by dividing the total square footage of each resubdivided Lot by the total square footage of all Lots within the Property owned by third parties or owned by Declarant on which a Completed Structure exists. Notwithstanding the foregoing, a Supplemental Declaration (or other recorded document which by its terms refers thereto and is signed by Declarant and the then Owner of such Lot) may provide for the exclusion of certain Lots for the purpose of computing the Pro Rata Share of obligations thereunder, and if it so states, such Lots will also be excluded from the obligation to pay Common Assessments (or a specified portion thereof) and the computations set forth herein. Exhibit F sets forth any such Lots which have heretofore been excluded from the obligation to pay their Pro Rata Share of Common Assessments.

Section 2.40 Project. "**Project**" shall mean the retail centers, hotel and motel(s), apartments, service stations, restaurants, free standing fast food facilities, office buildings and all other improvements now or hereafter constructed on the Property. In no event shall any residential projects be constructed on the Property. For purposes hereof, apartments or other multi-family dwelling units shall not be construed as a "residential project."

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Section 2.41 Project Common Areas. "**Project Common Areas**" shall mean all land, improvements, and other properties not within the boundaries of a Lot which are or have been designated on a Plat or other recorded document as such, and are set aside for use by any Owner, or Occupant for the purposes indicated. All Project Common Areas will be maintained by the Association pursuant to the provisions hereof, the cost of such maintenance is to be included in Common Assessments. Project Common Areas shall include the Reorganized Farmer's Ditch, which runs through a portion of the Property, all common drainage or storm water collection facilities and other ditches which are located on, traverse or otherwise benefit any portion of the Property, whether located within or off of the Property, all open space, Parking Areas not included within a Lot, incidental and interior roadways, perimeter sidewalks and walkways, curbs, parking islands and landscaped areas, easements, facilities and structures to be used by any Owner, Occupant or Guest, and all other areas outside the boundaries of a Lot unless the same are expressly identified as something other than Project Common Areas. Declarant shall have the right to designate which lands, improvements and other properties are Project Common Areas in an instrument duly recorded in the Clerk and Recorder's records of Larimer County, Colorado. The Association shall have the right to transfer all or any part of its ownership rights and/or the maintenance responsibilities with respect to any Project Common Area to any quasi-public authority established for such purpose. Project Common Areas may also be dedicated to the City, Larimer County, Colorado, a public or any quasi-public authority for use by the general public, including, without limitation, the High Plains Foundation, a supporting organization affiliated with the High Plains Environmental Center ("HPEC"). In connection with any such transfer, the Association shall have the right to exclude the transferred Parcel from any or all provisions of this Declaration, including, without limitation, the obligation to pay its Pro Rata Share.

Section 2.42 Project Property. "**Project Property**" shall mean and refer to the real property described on Exhibit B and any Future Parcel(s), or portion thereof, which may be annexed hereto by a Supplemental Declaration or otherwise in the manner provided in Article XVI.

Section 2.43 Property. "**Property**" shall mean and refer to the real property described on Exhibit B and any Future Parcel(s), or portion thereof, which has been annexed hereto by a Supplemental Declaration or otherwise in the manner provided in Article XVI. At such time as any Annexed Property becomes subject to this Declaration the term Property shall automatically be construed to mean and include all of the real property at that time which is covered by the terms of this Declaration.

Section 2.44 Site Plan. "**Site Plan**" shall mean any drawing with respect to all or any portion of the Property depicting thereon certain improvements contemplated or permitted by a Development Plan to be constructed on the Property.

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Section 2.45 Special Assessment. "**Special Assessment**" shall mean a charge against each Owner and its Lot representing its Pro Rata Share of the costs to the Association for the purpose of funding a major capital repair, maintenance, replacement or improvement to Project Common Areas or Limited Project Common Areas, pursuant to Article V below.

Section 2.46 Specific Assessment. "**Specific Assessment**" shall mean a charge against a specific Owner and its Lot for the purposes set forth in Section 7.03 of this Declaration.

Section 2.47 Supplemental Declaration. "**Supplemental Declaration**" shall mean a declaration recorded by Declarant, with respect to any Future Parcel, or portion thereof, which annexes such parcel to the terms of this Declaration. A Supplemental Declaration may establish additional covenants, conditions and restrictions applicable to such portion of real property, may contain exceptions, deletions or modifications from the covenants, conditions and restrictions contained in the Governing Documents applicable to such portion of real property, and may create Limited Project Common Areas or Limited Lot Common Areas. Any recorded document which establishes or creates Limited Common Areas shall be deemed to be a Supplemental Declaration for the purposes of this Declaration, whether or not it is labeled or identified as such. Without limiting the generality of the foregoing, a Supplemental Declaration may also provide that one or more Lots is to be excluded from the obligation to pay its Pro Rata Share of Common Assessments and/or Lot Assessments or other specified provisions hereof, for the reason(s) set forth therein. Such exclusion will in no event abrogate the obligation of the Owner of such Lot to otherwise comply in full with the other provisions of this Declaration. The existing Lot(s) which has been so excluded is set forth on recorded documents and/or Exhibit F hereto.

Section 2.48 Utility Easements. "**Utility Easements**" shall mean the reciprocal, nonexclusive easements granted pursuant to Article IV of this Declaration or which may be created and identified as such in a Supplemental Declaration or other recorded document executed by Declarant and the then Owner of a Lot.

ARTICLE III

Parties

Section 3.01 Parties.

A. At such time as any Person becomes an owner of any portion of the Property, such Person shall automatically become an "Owner" and shall be conclusively presumed to have taken title subject to and assumed all of the obligations, duties, and burdens set forth in this Declaration, to be entitled to all the rights and benefits of this Declaration, to have joined in any restrictions of use in this Declaration, and to have automatically granted and conveyed all easements described in this Declaration to all other Owners, their successors and assigns, immediately upon acceptance of delivery of a deed granting and conveying any portion of the Property, to such Owner. The presumption that all Owners have received all rights and benefits, joined in any

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exclusions and restrictions on use, and taken subject to and assumed all of the obligations, duties, and burdens created by this Declaration, or by any subsequently recorded amendment or annexation documents more particularly describing any such easements and appurtenances, shall be as conclusive as if such Owner had personally subscribed this Declaration and any amendments to it, and executed written easement agreements granting all easements created by this Declaration, immediately upon such Owner's receipt of a deed conveying any portion of an interest in the Property to such Owner.

B. Each Owner now or hereafter owning any portion of the Property shall be personally liable for the performance of all covenants, obligations and undertakings herein (unless specifically excluded therefrom as provided herein), which accrue during the period of such ownership, but such accrual of liability shall terminate upon conveyance by such Owner of its ownership interest in such land provided that:

1. The transferring Owner shall not be in default in the performance of any provision of this Declaration, and all amounts which may be due and owing under this Declaration shall have been paid by that Owner as required under this Declaration; and

2. The transferring Owner shall have given notice to the Association of the sale, transfer, conveyance or assignment, and shall have delivered with such notice a written assumption statement executed by the transferee stating:

- (a) the name and notice address of the transferee;
- (b) the legal description of the Lot(s) transferred; and
- (c) the transferee's acknowledgment that it is bound by this Declaration and agreeing to perform all obligations imposed under this Declaration with respect to the Lot(s) acquired.

C. Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien placed upon the transferred Lot(s) prior to receipt of the notice and statement.

Section 3.02 Declarant. Any and all of the rights, powers, and reservations of the Declarant herein contained may be assigned (in whole or in part) by the Declarant to any Person which has succeeded to Declarant's interest in the Property, or any portion thereof. Such assignee shall assume any or all of the duties of the Declarant hereunder. Such assignment and assumption shall be evidenced by a recorded document executed by both Declarant and the assignee. Upon any such Person evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume the Declarant's duties hereunder, have

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the same rights and powers, and be subject to the same obligations and duties as are given to and assumed by the Declarant herein. Upon such assignment, and to the extent thereof, the Declarant shall be relieved from all liabilities, obligations, and duties hereunder after the date of such assignment. Declarant shall have the right to maintain its position as Declarant hereunder during the Period of Declarant Control. At the end of the Period of Declarant Control, ("Cessation of Control Date"), Declarant may file a statement with the Association setting forth and confirming the Cessation of Control Date. Following the Cessation of Control Date, which may be evidenced by a recorded document executed by the President of the Association setting forth the facts supporting such Cessation of Control, Declarant shall be deemed to have relinquished its position as Declarant and the provisions set forth in Section 3.02(B) below shall apply.

A. If at any time the Declarant ceases to exist and has not made an assignment, then the Declarant shall be deemed to have relinquished its duties hereunder, and the provisions hereof relating or referring to the Declarant shall cease to be of any further force and effect.

B. If at any time during the Period of Declarant Control, Declarant relinquishes its rights in writing, (or is deemed to have relinquished its rights) then a successor Declarant may be appointed by a vote of the Majority of Owners. Alternatively, at such time, a Majority of Owners shall have the right to determine that the Declarant's rights shall be exercised by the Association rather than selecting a successor Declarant. Nothing in this Section 3.02(B) shall be deemed to limit Declarant's right to assign the rights, duties, powers, and reservations of Declarant as set forth in this Section 3.02(B) prior to the Cessation of Control Date.

C. Declarant shall have the right at any time during the Period of Declarant Control to exercise any and all rights, duties and powers granted herein to the Association. Such right, duty or power shall be automatic, without any need for formal action being taken to evidence the same. Accordingly, all references herein to Association shall, to the extent appropriate be construed to mean and refer equally to Declarant during the Period of Declarant Control. Following the Cessation of Control Date, all references herein (or in any Supplemental Declaration) to Declarant shall mean and refer to the Association, acting by and through its duly elected officers and directors. Further, Declarant shall have all rights of an Owner hereunder, but, until such time as a Completed Structure is located on any Lot it owns which is subsequently annexed hereto, shall have no duty or obligation to pay any Common Assessments or Lot Assessments attributable to any such Lot unless otherwise provided in Article VII of this Declaration.

D. Notwithstanding anything set forth herein to the contrary, Declarant hereby reserves the right during the Period of Declarant Control to place and operate such temporary and permanent structures, signage and advertising devices on the Property as it deems necessary or appropriate for the purpose of conducting sales activities.

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ARTICLE IV

Easements

Section 4.01 Reciprocal Easement for Ingress, Egress, Interior Travel, Parking and Drainage.

A. Each Owner hereby grants and conveys to each other Owner for such other Owner's respective use, and for the use of the respective Permittees in the regular and ordinary course of said other Owner's business, in common with all others entitled to use the same, perpetual, non-exclusive easements over the Lot Common Area of its respective Lot which is designated and/or improved as a pedestrian walkway or path, driveway, entryway, parking lot, or other area suitable for vehicular or pedestrian movement and as to Declarant, the Project Common Area which is so improved or designated, for the following:

1. For ingress to and egress from all Lots by way of those certain access points and interior vehicular travel lanes as shown on a Site Plan or on any individual site plan for a Lot that may be approved by the City at the time a building permit is issued for improvements to be constructed on said Lot;

2. For the entrance of motor vehicles, bicycles, and pedestrians onto the Parking Areas and across Parking Areas, and for pedestrian access over and across all Lot Common Areas on and over those portions thereof designated and improved as pedestrian paths, trails, or sidewalks;

3. For the passage of vehicles on and through such respective portions of such Lot or other Common Area as are, or are to be, set aside, maintained and authorized as Parking Area to enable or facilitate access to and from one Lot to another Lot;

4. For the parking of motor vehicles, on the portion of the Lot Common Area designated as a Parking Area, unless the same is designated as a Limited Lot Common Area pursuant to a Supplemental Declaration, or other recorded document executed by Declarant and the then Owner of the affected Lot, for use by fewer than all the Lots; and

5. For the doing of such other things as are authorized or required to be done on said Lot or other Common Areas pursuant to this Declaration.

B. In addition to the Easements set forth above, it is understood that certain portions of the Lot Common Area on any particular Lot within the Property may be identified as Limited Lot Common Areas. Such currently existing areas, including, but not limited to those forth on Exhibit E and any such areas identified in the future as to

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Future Parcels shall be so identified on the Supplemental Declaration annexing such Future Parcel to the terms of this Declaration, or other recorded document executed by Declarant and the then Owner of the affected Lot. The provisions hereof shall apply with respect to maintenance and costs thereof associated with all such Limited Lot Common Areas. To the extent Limited Lot Common Areas currently exist, or are hereafter created, those Lots which are identified as having the benefit of and right to use the same (in a manner different from all Lots) shall be deemed to have a non-exclusive perpetual easement with respect to such use.

C. The easements set forth above are Common Area Easements and, unless expressly provided to the contrary, are for the benefit of and are appurtenant to all portions of the Property. Common Areas Easements may be located on Project Common Areas or Lot Common Areas. To the extent a Common Area Easement is created for the benefit of Owners of less than all of the Property it shall be deemed to be a Limited Project Common Area (as so identified on a document creating such easement or as set forth on Exhibit D hereto) or a Limited Lot Common Area (as so identified on a document creating such easement or as set forth on Exhibit E hereto).

D. No fence or other barrier which would in any way prevent or obstruct the use of the Common Area Easements (including, without limitation, those that would interfere with the passage of vehicles across Lot or other Common Areas, for the purposes herein permitted), shall be erected or permitted within or across Lot or other Common Areas, except such barricades as are reasonably necessary in connection with the construction, reconstruction or repair and maintenance of improvements. All such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Lot or other Common Areas, and shall be diligently prosecuted to completion. The erection or construction of limited curbing, curb stops, and other forms of traffic controls within the Property which are installed to promote the proper use of the traffic flow pattern designed for the Property shall be permitted. It is, however, understood and agreed that the fact that a portion of a Lot may at one time be paved and used as Parking Area shall not prohibit subsequent construction of a building on such area, provided that all governmental parking requirements for the Lot involved are also complied with.

E. Each Owner further reserves the right to temporarily close off a portion of the Lot Common Area on such Owner's Parcel, and the Association as to all other Common Area, for such reasonable period of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Lot or other Common Areas, as herein provided, such Owner, if other than the Association, shall give written notice to the Association of its intention to do so not later than fifteen (15) days prior thereto, and the Association shall give not less than five (5) days' notice to all Owners of such closing or of a closing contemplated by it. All such closings shall be coordinated with the other Owners so that no unreasonable interference in the operation of the Property shall occur.

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F. Without limiting the ability of any Owner to pass on some or all of its Pro Rata Share of Common Assessments to an Occupant, except for those expenses associated with Limited Lot Common Areas, no Owner or Permittee shall be charged for the right to use the Common Area Easements located on the Property, unless the Parties approve such action. Each Owner shall use its best efforts to cause the Occupants of its Parcel, and the employees of such Occupants to park their vehicles only in the area specifically designated on said Owner's Parcel for such Occupant parking and such Owner shall use its best efforts to prevent such Owner's Occupants from parking their vehicles on any other Owner's Parcel. Nothing in this subparagraph shall prohibit the Association from adopting rules and regulations regarding parking of any Permittees. No Owner shall have any liability to any other Owner based on excessive use of parking facilities by a Permittee. Notwithstanding the foregoing however, as part of a comprehensive plan to provide adequate parking for all vehicles anticipated to require such areas, Association may, as part of the rules it adopts regarding parking, provide for the imposition of monetary fines or penalties for such excessive use, which, if not timely paid by the Owner of the Lot so assessed shall constitute a lien thereon in the manner hereafter provided for nonpayment of Lot Assessments.

Section 4.02 Reciprocal Easements for Utilities.

A. Declarant or the Owners have established, for the benefit of the Property, certain Dedicated Easements for providing utility service to the Property, which have already been dedicated to the appropriate governmental entity or public utility or appear on Plats and are identified thereon as easements dedicated for use of such entities or utilities, or which may be created by separate written document executed by the Association as to Project Common Areas, Declarant as to Parcels owned by it, or the Declarant and an Owner as to Lots owned by third parties (the "Dedicated Easements"). Each Owner hereby grants and conveys to each other Owner a nonexclusive perpetual Utility Easement in, to, over, and under the Lot Common Area on its respective Lot, and the Association so grants and conveys Utility Easements in, to, over and under the Project Common Areas, for the installation, maintenance, repair, and replacement of utilities (including, but not limited to, storm sewers and drains, drainage pipes, water and gas mains, telephone lines, cable facilities, electrical power lines, other pipes, ducts, conduits and facilities for utilities), to permit each Owner to connect to the Dedicated Easements, and for Declarant to locate such other utilities as are required for the operation of the Project Common Areas. Declarant shall give reasonable notice to the Owners, with a right of comment but not a right of approval, if Declarant is intending to modify a Dedicated Easement or Utility Easement through any Lot. Declarant will take into account said comments to the extent it will not materially increase the cost to Declarant and will not impede the intended purpose of the utility easement.

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B. All of such utility lines or systems within the Utility Easements shall be underground, except as may be necessary during periods of repair or temporary service. Any Owner installing utilities pursuant to the provisions of this Section 4.02 B shall pay all costs and expenses with respect thereto, shall obtain the approval of the Owner on whose Lot the work is going to occur, and shall cause all work in connection therewith to be completed, including general clean-up and surface restoration, as quickly as reasonably practicable. Such Owner may impose reasonable conditions upon such approval, including but not limited to, the posting of a performance and completion bond in an amount estimated to be one hundred fifty percent (150%) of the cost of such work (as such cost may be reasonably estimated by the Association).

C. Declarant reserves unto itself, without the necessity of obtaining the prior consent of any Owner, the right to place, locate, or relocate Dedicated Easements, Utility Easements, and any and all utility and other service lines under the surface of the Property as are reasonably necessary for the operation of the Project and for the development of the Property. Declarant shall exercise such reserved right in a manner determined by Declarant in its reasonable judgment as minimizing the adverse impact of utilization of such right upon the operations of all Owners.

D. The Utility Easements are solely for the benefit of the Owners, Declarant, and the Association, unless any such easement and the applicable utility facilities have been dedicated to and accepted by a governmental or quasi governmental entity.

Section 4.03 Reciprocal Easements for Drainage.

A. Declarant or the Owners have established, (or may in the future establish) for the benefit of the Property, certain Drainage Easements for the purpose of constructing storm drainage conveyance and detention facilities, including, but not limited to, inlet, outlet, and overflow structures, pipes, channels, swales, detention ponds and erosion control facilities ("Drainage Facility") thereon. Certain Drainage Easements, which have already been dedicated in a recorded document or which appear on Plats and are identified thereon as easements dedicated for such use ("Drainage Easements"). Each Owner hereby grants and conveys to each other Owner for such other Owner's respective use in the regular and ordinary course of said other Owner's business, in common with all others entitled to use the same, perpetual, non-exclusive Drainage Easement over the Lot Common Area on its respective Lot and the Association so grants and conveys Drainage Easements in, to, and over the Project Common Areas, for the installation, maintenance, repair and replacement of a Drainage Facility.

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B. Any Owner installing a Drainage Facility pursuant to the provisions of this Section 4.03 shall pay all costs and expenses with respect thereto, shall obtain the approval of the Owner on whose Lot the work is going to occur, and shall cause all work in connection therewith to be completed, including general clean-up and surface restoration, as quickly as reasonably practicable. Such Owner may impose reasonable conditions upon such approval, including but not limited to, the posting of a performance and completion bond in an amount estimated to be one hundred fifty percent (150%) of the cost of such work. In addition to the approval of such Owner, the plans for any Drainage Facility shall be submitted to and approved by the Design Review Committee as provided for herein with respect to Improvements. Such review and approval shall include, among other things, confirmation that the same is consistent with the drainage plans and all grading plans for the Property, and, to the extent no Completed Structure has been approved for construction on the affected Lot at the time approval is sought that the location of the proposed Drainage Facility is designed to minimize the effect and impact on such Lot, and will, in no event, be located on the Building Site. The determination of the Association shall be conclusive on the location of a Drainage Facility.

C. In no event may any fence or other barrier be constructed placed or permitted within or across any Lot Common Area which would in any way impede or obstruct storm drainage flows within the designated storm drainage conveyance and detention facilities. Notwithstanding the foregoing, in no event shall the foregoing easement be construed as entitling an Owner to construct a Drainage Facility that would materially alter or disturb any existing Improvements or improvements for which plans had theretofore been submitted to the Design Review Committee. Any damage, repair or restoration necessitated by the construction by an Owner of a Drainage Facility shall be promptly and immediately completed by such Owner, at its sole cost. Failure to do so shall entitle the Association to treat the same as a default by such Owner hereunder.

D. Failure of an Owner to properly install, operate, maintain, repair and replace any Drainage Facility constructed by it shall constitute a default hereunder. If a Drainage Facility is intended to and is constructed to provide drainage for more than one Lot, the costs and expenses associated therewith shall be deemed to be associated with Limited Lot Common Areas and shall be allocated and payable accordingly. If at the time any Drainage Facility is constructed no Completed Structure exists on the Lot(s) intended to be benefited thereby, the costs of the initial construction shall be borne solely by the benefited Lot(s) on which a Completed Structure exists, and thereafter when a Completed Structure exists on such other benefited Lot(s), the Owner(s) thereof shall be obligated to reimburse the constructing Owner a pro rata share of such construction costs and from said date forward a pro rata share of all other costs associated with the operation, maintenance and repair and replacement of the Drainage Facility (all in accordance with the pro rata allocation established by the Supplemental Declaration or other recorded document pursuant to which the benefited Lot(s) are so identified).

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Section 4.04 Encroachments. If: (a) construction, reconstruction or repair activities which have been approved by the Design Review Committee; or (b) shifting, settlement or other movements of any portion of Design Review Committee-approved Improvements, or (c) construction, reconstruction or repair activities by the Declarant during the Period of Declarant Control, results either in the Project Common Areas encroaching on a Lot or in a Lot encroaching on the Project Common Areas or on another Lot, and unless otherwise directed by the Design Review Committee, a valid easement not to exceed twelve (12) inches in width shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

Section 4.05 Easements for Lakes and Pond Maintenance and Flood Water.

A. The Declarant reserves for itself and its successors, assigns and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams and wetlands located within the Common Areas to (i) install, keep, maintain and replace pumps and related equipment; (ii) construct, maintain and repair any bulkhead, levee, wall, dam or other structure retaining water, and (iii) remove trash and other debris therefrom and fulfill their maintenance responsibilities, if any, as provided in this Declaration. The Declarant may elect, in its sole discretion, to transfer from time to time its rights and easements provided in this Section to the Association as to some or all of such lakes, ponds, streams and wetlands by one or more written instruments; provided, however, that such rights shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration. The Declarant, the Association and their designees shall have an access easement over and across any of the Property abutting or containing any portion of any of the lakes, ponds, streams or wetlands to the extent reasonably necessary to exercise their rights under this Section 4.05(A).

B. There is further reserved herein for the benefit of Declarant, the Association and their designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Areas and Lots (but not the Completed Structures thereon) adjacent to or within fifty (50) feet of lake beds, ponds, wetlands and streams within the Property, in order to (i) temporarily flood and back water upon and maintain water over such portions of the Property, (ii) fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds, streams and wetlands within the Common Areas, (iii) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams and wetlands and (iv) enter upon and across such portions of the Property for the purpose of exercising its rights under this Section 4.05 B. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage from flooding due to heavy rainfall or other natural disasters.

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C. The Declarant's and/or the Association's easement rights reserved or granted herein shall at all times be subject to the easement rights and the maintenance obligations of the City with respect to the lakes, ponds, streams and wetlands located within the Common Areas. Nothing herein shall be construed to impose an obligation upon the Declarant or the Association to perform any maintenance of the lakes, ponds, streams and wetlands except as may be expressly assumed in writing.

Section 4.06 Easements to Serve Additional Property. The Declarant and its duly authorized agents, representatives and employees, as well as its successors, assigns, licensees and mortgagees, shall have and hereby reserve an easement over the Common Areas for the purposes of enjoyment, use, access and development of any Future Parcels subject to annexation under Article XVI of this Declaration, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction of roads and for connecting and installing utilities on the additional property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic and construction activities connected with development of the additional property. Declarant further agrees that if the easement is exercised for permanent access to the additional property and such additional property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the additional property.

Section 4.07 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, and to inspect for the purpose of ensuring compliance with the Governing Documents. Except in an emergency situation, entry into any portion of the Completed Structure not generally open to the public shall only be during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter upon a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner or Occupant fails or refuses to cure the condition within a reasonable time after requested by the Board. The easement granted hereunder shall not create an obligation or duty on the part of Declarant or the Association to provide for the safety or security within the Property.

Section 4.08 Easements for Special Events. Declarant hereby reserves for itself, its successors, assigns and designees, a perpetual, non-exclusive easement over the Common Areas for the purpose of sponsoring or conducting educational, cultural, artistic, musical and entertainment activities and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants and Guests of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement. The Association shall also take no action which would interfere with or otherwise attempt to restrict the exercise of this easement.

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Section 4.09 Easement over Project Common Areas. Declarant hereby reserves for itself, its successors, assigns and designees, a perpetual, non-exclusive easement over the Project Common Areas for ingress, egress, access, use and enjoyment and for such other purposes as Declarant, in its sole discretion determines appropriate, together with the right to grant additional easements to such Persons and for such purposes as Declarant deems appropriate in its sole discretion.

ARTICLE V

Maintenance

Section 5.01 Association Maintenance.

A. Subject to its right to be reimbursed for all costs associated with upkeep, maintenance, repair, replacement, insurance, administrative costs and reserves of (a) Association Properties, including Project Common Areas and any and all Improvements located thereon or within public rights-of-way or public utility easements within or abutting the Properties, except to the extent that such Improvements are maintained by the City; (b) any areas it has agreed to maintain pursuant to separate agreement with the Greeley Loveland Irrigation Canal; (c) all Lot Common Areas, including Landscape Buffer Areas, except as hereafter provided to the contrary; and (d) any other property which the Association has agreed to maintain but does not own, including, without limitation, private property, publicly owned property and other property dedicated to public use, if the Board determines that such maintenance is beneficial to the Property, the Association (or a Maintenance Provider) shall cause to be maintained and kept all Association Properties, Lot Common Areas and any other property which the Association has agreed to maintain, in a first class manner, good condition and state of repair, in compliance with all laws, rules and regulations, orders and ordinances of governmental agencies exercising jurisdiction thereover, and such other Maintenance Standards as may be adopted by the Association from time to time for the purpose of maintaining and repairing all maintenance areas in a clean, safe, wholesome, attractive and slightly condition and in good repair. All costs and expenses associated with such maintenance, repair, and replacement shall be deemed part of the Common Assessments or Lot Assessments, as the case may be (to be allocated among Owners and paid in the manner hereafter provided). The Association shall be responsible for maintaining a separate accounting of all such costs and expenses as they relate to Association Properties and Lot Common Areas to enable it to compute the Common Assessments and Lot Assessments payable by each Owner as hereafter provided. Any or all of the obligations set forth herein may be delegated by the Association to a Maintenance Provider. However, despite such delegation, the Association shall remain ultimately responsible for performance of such work and shall retain the right to make the assessments called for herein and collect the same. Such right of making and collection of assessments may also

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be delegated. All such expense shall include, but not be limited to the following items as they relate to all Common Areas:

1. The cost of maintaining all paved surfaces of the Parking Areas, including any drive through lanes and all improvements associated therewith, in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, snow removal, sweeping, restriping, repairing and resurfacing (using surfacing material of a quality equal or superior to the original surfacing material);

2. The cost of removal of all paper, debris, filth, refuse, ice and/or snow, and of sweeping of all areas utilized for the Common Area Easements to the extent necessary to keep said areas in a clean and orderly condition, including snow removal and parking lot cleaning of any drive-through lanes;

3. The cost of placing, keeping in repair and replacing any appropriate traffic pattern directional signs, markers, striping, and lines, repairing, maintaining and replacing all improvements within any Parking Area;

4. The cost of maintaining any common signage for the Property;

5. The cost of operating, keeping in repair and replacing, when necessary, such Parking Area lighting facilities as may be reasonably required;

6. The cost of Common Area Easement utility maintenance, the costs of electrical power for the Parking Area lights in accordance with standards and schedules established by the Association from time to time, and to the extent not metered in connection with any Improvements on a Lot, the cost of operation and provision of utilities to Lot Common Areas;

7. The cost of mowing, fertilizing, grooming, irrigating, replacing, repairing automatic sprinkler systems or water lines in the Common Areas, and otherwise maintaining and replacing the landscaping upon the Common Areas; and

8. The cost to maintain any other property which the Association has agreed to maintain but does not own, including, without limitation, private property, publicly owned property and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Maintenance Standard.

9. The cost of maintaining a policy of, or the prorated cost of a blanket policy for, comprehensive public liability insurance covering the operations of the Project Common Areas and those Lot Common Areas, which are not sufficiently covered, in the Association's reasonable commercial judgment, by individual contractors.

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10. Cleaning, maintaining, and repairing of all sidewalks (including those situated on the perimeter or outside the boundaries of the Common Areas);

11. The cost of such other maintenance, repair, replacement, and provision of other services as are required to permit the Common Areas to function in a first-class manner.

12. An administrative fee not to exceed the amount of fifteen percent (15%) of the Operating Expenses for management services in attending to such maintenance, repair, cleaning and the accounting and collection duties associated therewith. Affiliates of Declarant may be engaged to perform any or all of the above services for the Association at a cost not to exceed that which would be charged for similar services performed by unrelated third parties, all of such costs to be included in the Aggregate Assessments (as hereafter defined).

13. A reasonable reserve for replacement of any Improvements the Association is obligated to make hereunder, which may be included within the Aggregate Assessments annually or based on such other period as the Association may determine from time to time. Upon its acquisition of a Lot an Owner may be required to deposit an amount determined by the Association for the purpose of initially funding said reserve.

14. The cost incurred to bring a Lot into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner, Occupants or Guests of the Lot.

Notwithstanding the foregoing, the City shall have the option of providing the maintenance of Lot 1 Block 1, Sixth Subdivision, (the Park Site and the Visitor Center Site). If the City chooses to exercise such option, it must exercise such option by written notice to the Association, and in such event, (i) it shall not be required to pay Aggregate Assessments, and (ii) it shall maintain said Sites, including the Improvements and landscaping thereon, in accordance with the Maintenance Standard. Failure to do so shall entitle the Association to resume said maintenance obligation.

Section 5.02 Maintenance of Lot Common Area by Owner.

A. Notwithstanding any provision in this Article V to the contrary, and except as may otherwise be provided in a Supplemental Declaration, the Owner of a Lot shall have the right, at its sole cost and expense, to perform all maintenance, repair and replacement of all Lot Common Areas on its Lot (excluding Landscape Buffer Areas which shall be the Association's sole responsibility to maintain), including all Improvements thereon on such Owner's Lot (with the exception of any Limited Lot Common Areas on its Lot), provided that such Lot Common Areas shall be maintained and kept in strict compliance with the Maintenance Standard. Such responsibility shall include, but is not limited to, the following:

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- (a) maintaining, repairing, and replacing all buildings and improvements;
- (b) removing all litter, trash, refuse and waste from the Owner's Lot on a regular basis;
- (c) complying with all government health and police requirements;
- (d) repairing of exterior damage to improvements and signage; and
- (e) repainting or staining of improvements and signage, as appropriate;
- (f) lawn mowing and fertilizing on a regular basis;
- (g) watering of landscaped areas;
- (h) keeping exterior lighting and maintenance facilities in proper working order;
- (i) implementing and maintaining erosion-sedimentation control measures;
- (j) repairing and replacing roofs as necessary to maintain a neat, uniform appearance over the surface of the roof;
- (k) keeping lawn and garden areas alive, free of weeds, and attractive;
- (l) keeping parking areas, driveways, curbs, gutters and roads in good repair and free of potholes, excessive cracks and weeds; and
- (m) removing snow and ice from sidewalks, driveways and roads.

Without limiting the generality of the foregoing, the paint on all buildings shall be maintained so as to present a well-painted appearance and chipped, peeling or badly faded paint shall be replaced or reapplied. In no event shall an Owner use any Lot for storage of materials and equipment except for normal commercial requirements or incident to construction of improvements thereon as herein permitted or allow the accumulation of garbage, trash or rubbish of any kind thereon.

B. In the event the Owner of a Lot desires to maintain the portions of the Lot Common Area authorized to be maintained by an Owner with respect to its Lot in accordance with the provisions of Section 5.02A of this Declaration and this paragraph ("Self-Maintenance"), such Owner shall first apply to the Association for authorization

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for such Self-Maintenance, which authorization may not be unreasonably withheld. As a condition to such authorization, the Association may require the Owner to place a maintenance deposit with the Association, in an amount established by the Board from time to time. The Association may, without waiving any other remedy provided by this Declaration or by law, draw upon the maintenance deposit or withhold the release of the maintenance deposit as necessary to cover, among other things (i) the cost or anticipated cost to repair damage to the Common Areas caused by the Owner, his contractors, subcontractors, agents or employees, or (ii) the cost or anticipated cost to perform the care, maintenance or repairs required to be performed by an Owner pursuant to this Declaration and any rules promulgated thereunder. If any part of the maintenance deposit is applied by the Association, the Owner shall, immediately upon demand, deposit with the Association a sum equal to the amount so applied in order to restore the maintenance deposit to its original amount. Such authorization shall be deemed a continuing authorization until the earlier of (i) transfer of ownership of the Lot to a new Owner or (ii) revocation of authorization for Self-Maintenance as a result of the failure to comply with the provisions of this paragraph and/or the Maintenance Standard. The Association shall release the maintenance deposit to the Owner, less any funds expended or reserved by the Association pursuant to this Section, within thirty (30) days of termination of the Self-Maintenance authorization. Prior to revocation of an Owner's right of Self-Maintenance of the Lot Common Area on such Owner's Lot, the Association shall give to such Owner written notice thereof and an opportunity to correct the violation. The time period for the correction of such violation shall be as established by the Association after consideration of the nature of the violation and the potential harm to other Lots and/or Owners. In the event the violation is not corrected within the time period set forth in the notice, the Association may, after notice and an opportunity to be heard by the Owner of such Lot, revoke the right of Self-Maintenance for such period of time as it deems appropriate but in no event more than two (2) years at any one (1) time. After the period of revocation has expired, the Owner may again reapply for the right to undertake Self-Maintenance of the Lot Common Area on such Owner's Lot. During any period of time in which an Owner shall engage in Self-Maintenance of the Lot Common Area on such Owner's Lot, such Owner shall not be responsible for that portion of the Lot Assessments accruing during such time period which would otherwise be attributable to the Lot Common Area on its Lot (other than any portion thereof attributable to Limited Lot Common Areas or the Landscape Buffer Areas for which the Association shall remain responsible). If an Owner does not elect to engage in Self-Maintenance or if an Owner's right of Self-Maintenance has been revoked by the Association, the Lot Assessment shall again be assessed to the Owner and its Lot for the cost of operating, maintaining, repairing or replacing Lot Common Areas in accordance with the terms of this Declaration. The election by an Owner to perform Self-Maintenance (and agreement thereto by the Association) shall not relieve an Owner from its obligation to pay Common Assessments and any amount of Lot Assessments attributable to Limited Lot Common Areas on its Lot or other Lots, in accordance with the provisions of this Declaration. Nothing contained herein shall be deemed to alter, amend or modify the rights, duties and obligations of the Association or

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other Maintenance Provider during any period of time in which the Owner of a Lot has not received written authorization from the Association to engage in Self-Maintenance of its Lot. Further, nothing contained herein shall be deemed to grant an Owner the right to perform Self Maintenance on any Limited Lot Common Area located on its Lot.

C. Except for Lot Common Areas which are to be maintained by the Association (subject to the right of Self Maintenance as set forth above with respect to any such areas that are not Limited Lot Common Areas) maintenance, repair and upkeep of each Lot shall be the responsibility of the Owner thereof. Failure of an Owner to properly care for and maintain its Lot in violation of the provisions hereof, shall permit the Association, to enter the Lot, after reasonable notice and failure of the Owner thereof to respond and take corrective action are required by such notice, and cure the violation or cause compliance with this provision and to levy and collect a Specific Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement not generally accessible to the general public without the consent of the Owner thereof unless a clear emergency exists.

ARTICLE VI

Rights and Obligations of the Association

Section 6.01 Powers and Duties. The affairs of the Association shall be conducted by its Board. The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association without a vote of the membership unless otherwise provided by the Governing Documents. In the event or if for any reason the Board is deemed not authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting. The Board shall have the following rights, powers and duties, in addition to any other rights, powers and duties set forth elsewhere in the Governing Documents or under Colorado law:

A. Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under Association Properties.

B. Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate or transfer any Association Properties or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate.

C. Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money not to exceed \$500,000.00, and, with the approval of

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the Majority of the Owners and the Declarant during the Period of Declarant Control, if such borrowing exceeds \$500,000.00, to borrow such amounts or to encumber Association Properties as security for such borrowing.

D. Power to Employ Managers. The Association shall have the power to retain and pay for the services of a Manager or Managers to undertake any of the management or administrative function for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to any such Manager. Any fees or charges paid to such Manager shall be deemed to be part of the Common Assessments. Such Manager may be an affiliate of Declarant so long as all other provisions hereof apply equally to such affiliate, and the amounts paid to such affiliate do not exceed those which would be paid to unaffiliated third parties performing similar services. Any contract or agreement with any such Manager shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

E. Requested Services. The Association shall have the right to provide a service requested by more than one or more Owners (but not deemed desirable by the Association for all Lots), at its sole option. If it so elects to provide the requested service to the Owners requesting the same, the cost thereof shall be borne solely by the requesting Owners as a Specific Assessment under Section 7.03.A and in accordance with their Pro Rata share.

F. Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

G. Establish Reserves. The Association shall have the right at any time, or from time to time to establish reserves which will be funded by the Owners in accordance with their respective Pro Rata Shares, for the purpose of creating a fund sufficient to enable it to perform any major repair or replacement work which it is obligated to perform hereunder. If such reserve is so established, each Owner shall pay as part of the Common Assessments its Pro Rata Share of the periodic amount required to be paid into said reserve.

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H. Power to Enter into Covenants to Share Costs. The Association shall have the right to enter into agreements or covenants with neighboring landowners, including municipalities, for the right to use recreational or water amenities and/or to share in the costs to maintain streets, roadways, medians, landscaping, trails, parks, lakes and wetlands and entryways located within or outside the Property.

I. Power to Sponsor Events. The right of the Declarant and/or the Association to hold and sponsor, whether alone or in conjunction with municipal departments or other non-profit groups and entities, events and activities within the Common Areas which are not necessarily limited only to Owners or Occupants, but which may also include selected invitees and/or the general public (for which the Board may, in its discretion, charge a user fee equal to or greater than any fee charged to Owners or Occupants), such as (but not necessarily limited to) recreational events, sports festivals and tournaments, concerts, conferences, picnics, national and/or state holiday commemorations, educational and cultural presentations and other similar events which the Board reasonably believes will be of direct or indirect benefit to the Association and/or an appreciable number of its Members.

J. Site Plan Modification/Expansion. Nothing in this Declaration shall preclude the Association or Declarant from modifying any Site Plan, subject to the approval of the required governmental authorities, including but not limited to the purpose of expanding the square footage of Improvements permitted to be constructed on the Lots owned by Declarant, provided that such modification does not have a material and adverse impact on any Lot not owned by Declarant, and does not violate any then-existing zoning, land use, or parking requirements of the City or County in which the Property is located or any other governmental entity having jurisdiction.

K. Marketing Program. The Association shall have the power to adopt and implement a marketing program for the advertisement and promotion of the Property for the general benefit of its Members, the expense of which shall be a part of the Common Expenses of the Association.

L. General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, including without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration or the Articles of Incorporation and Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation and Bylaws. The Association may

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exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably necessary to effectuate any such right or privilege.

Section 6.02 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property subject to such restrictions as are set forth in the Governing Documents. The Declarant may convey to the Association improved or unimproved real estate located within the Properties, personal property and leasehold or other property interests; provided, the Declarant shall not convey any real estate to the Association as Common Area which the Declarant knows to contain hazardous substances which would require remediation or create environmental liability for the property owner under state or federal law. The Association shall be obligated to accept, and thereafter maintain, any property conveyed or dedicated to it by the Declarant.

Section 6.03 Indemnification. The Association shall indemnify every officer, director and committee member of the Association against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon any such officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, to the fullest extent permitted by Colorado law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 6.04 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer or more secure than they otherwise might be. HOWEVER, NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY OFFICER, DIRECTOR OR PARTNER OF THE FOREGOING SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, AND NEITHER THE ASSOCIATION, THE DECLARANT NOR ANY OFFICER, DIRECTOR OR PARTNER OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR FOR ANY OTHER REASON. ALL OWNERS AND OCCUPANTS OF

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ANY LOT, AND ALL TENANTS, OCCUPANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, DESIGN REVIEW COMMITTEE, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT, THE DESIGN REVIEW COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, OCCUPANTS, GUESTS AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, TO COMPLETED STRUCTURES AND THEIR CONTENTS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, THE DESIGN REVIEW COMMITTEE, DECLARANT OR ANY SUCCESSOR DECLARANT, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT OR ANY TENANT, GUEST OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Section 6.05 Construction Activities. All Owners are hereby placed on notice that Declarant, any affiliate of Declarant, and/or their agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other development activities within or in proximity to the Property. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, easement or other interest, and by using any portion of the Property, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow any person under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant, any affiliate of Declarant, and all of their agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses and damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the activities described in subsection 6.05(b) above, and (d) any purchase or use of any portion of the Property has been and will be made with full knowledge of the foregoing.

Section 6.06 Rules and Regulations. The Association may make and enforce reasonable rules and regulations governing the collection of assessments (including the

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application of payments received from Owners) and the use and operation of the Property (including the use, occupancy, leasing or sale, maintenance, repair, modification and appearance of Lots), which rules and regulations shall be consistent with the rights and duties established by the Governing Documents. Such rules and regulations shall be binding upon all Owners, Occupants, and Guests until and unless overruled, canceled or modified in a regular or special meeting of the Association by a Majority of the Owners, and by the vote of the Declarant so long as such membership shall exist.

ALL OWNERS AND OCCUPANTS OF LOTS ARE GIVEN NOTICE THAT USE OF THEIR LOTS IS LIMITED BY THE RULES AS THEY MAY BE AMENDED, EXPANDED AND OTHERWISE MODIFIED HEREUNDER. EACH OWNER, BY ACCEPTANCE OF A DEED OR ENTERING INTO A RECORDED CONTRACT OF SALE, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF ITS PROPERTY MAY BE AFFECTED BY THIS PROVISION AND THAT THE RULES MAY CHANGE FROM TIME TO TIME.

ARTICLE VII

Association Finances

Section 7.01 Assessment, Commencement Date, Allocation and Payment of Common Assessments and Lot Assessments.

A. Each Owner, covenants and agrees to pay to the Association, monthly (or periodically in such other manner as the Association may, from time to time determine, but no more frequently than monthly), a sum equal to: (a) its Pro Rata Share of the Common Assessments; (b) the Lot Assessments attributable to its Lot ("Aggregate Assessments"); and (c) Specific Assessments, as described below. The Common Assessments, Aggregate Assessments and Specific Assessments shall be collectively referred to as the "Assessments". The obligation to pay the Aggregate Assessments shall commence as to all Owners other than Declarant, on the date title to a Lot is transferred by Declarant to such Owner ("Assessment Commencement Date"). Declarant's obligation to pay its Pro Rata Share of Assessments for any Lots it currently owns and which were annexed to the Property as of December 28, 2001, shall continue. In no event, however, shall Declarant have any obligation to pay any Assessments as to any Lots annexed to this Declaration after December 28, 2001, the ownership of which is still retained by Declarant, unless a Completed Structure exists thereon, in which event, as of such date the Completed Structure exists, the obligation to pay Assessments shall commence.

B. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No

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diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority.

C. Common Assessments and Lot Assessments shall each have the meanings as set forth in the Definition section above. Annually the Association shall prepare a budget estimating the amount of the Aggregate Assessments payable by each Owner, and setting forth any Special Assessments which may be due and payable for the forthcoming year as hereafter provided. A copy of the Budget, estimated Aggregate Assessments, and Special Assessments, if any, shall be provided to each Owner on or about December 1 of each year ("Assessment Notice"). Commencing January 1 of the following year, one-twelfth (1/12th) of the estimated Aggregate Assessments (together with the monthly portion of any Special Assessment identified as payable in installments in the Assessment Notice) shall be paid by each Owner monthly. Failure of the Board to fix the amount of any Aggregate Assessment or to deliver or mail to each Owner a copy of the Budget shall not be deemed a waiver, modification, or a release of any Owner from its assessment obligation and each Owner shall continue to pay Aggregate Assessments on the same basis as due for the last year for which an assessment was determined, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfall or shall credit any excess in accordance with Section 7.01.E of this Declaration. To the extent the Association determines that any portion of the Association Properties are or have become Limited Project Common Areas which benefit only a portion of the Property, (or having previously been designated as Limited Project Common Areas, the benefit and use thereof now extends to a greater number of Lots or all Lots), it shall so provide in a recorded document that all costs and expenses associated with the maintenance, repair and replacement thereof shall be allocated (or reallocated) solely to the benefited Lots and such amounts shall be included within the Lot Assessments attributable to said Lots in proportion to the benefit so received (or all Lots if the previously Limited Project Common Area becomes a Project Common Area benefiting all Lots).

D. The monthly installments of Aggregate Assessments shall be due and payable not later than the 1st day of each month. Any amounts remaining unpaid on the 10th of any month shall accrue interest at the Default Rate until paid. The amount of any Special Assessment which is not paid in installments at the same time as the Aggregate Assessments or reconciliation between actual Aggregate Assessments and the estimates on which payments were made for the prior year (as hereafter set forth), shall be due and payable on the date set forth in the notice setting forth the amount due. If any such amount is not paid in full on the date set forth in the notice, the delinquent amount shall commence to bear interest at the Default Rate on the 10th day following such due date until paid in full. Any failure to pay any part of the Aggregate Assessments or Special

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Assessments shall entitle the Association to a lien against the Lot of the defaulting Owner as hereafter provided.

E. Within 120 days after the end of each calendar year, the Association shall prepare and furnish to each of the Parties a reconciliation setting forth the actual Common and Lot Assessments incurred, for the prior calendar year. Such reconciliation shall also set forth the amount of adjustment, if any, arising from a difference between the actual Common Assessment and Lot Assessment, respectively, compared to the estimates on which the payments were determined and paid. In the event that either or both of the actual Common and Lot Assessments exceeded the estimate that was utilized, the reconciliation shall invoice the Owner for the necessary adjustment to the Owner's obligation and the Owner shall pay same within 30 days. In the event that the actual Common Assessment and/or the Lot Assessment was less than the estimate utilized, then the reconciliation shall set forth the amount of overpayment made by each Owner and such amount shall be deducted from the next due installment(s) of such Owner's Aggregate Assessments. Further, if at any time during the year the Association is required to incur an unanticipated expense, or determines that any amounts expended by it are to be deemed Special Assessments as provided herein, Declarant shall be entitled to establish a Special Assessment and each Owner's obligation thereof and each such Owner responsible therefor shall be billed immediately and said amount shall be due and payable not later than the date set forth in such notice, which shall in no event be earlier than thirty (30) days following receipt of such billing.

Section 7.02 Special Assessments. In addition to Aggregate Assessments, the Association, subject to the provisions hereof, and upon approval of Owners representing at least 67% of the total votes in the Association, may levy Special Assessments against the entire membership according to each Owner's Pro Rata Share for the purpose of raising funds, not otherwise provided under the then current budget to construct, reconstruct, repair or replace any capital improvements on Association Property or any Lot Common Area, provided, however, if the proposed Special Assessment is attributable to Limited Lot Common Areas or Limited Project Common Areas, then only those Owners which would benefit from such Special Assessment shall be subject to the Special Assessment and only these benefited Owners shall have the right to approve or reject the same, in the same percentage as provided above. Any Special Assessments attributable to Limited Project Common Areas or Limited Lot Common Areas, shall be levied only against such benefited Owners (and in such proportion) which are otherwise chargeable for Assessments with respect to such Common Areas. Upon establishment of a Special Assessment, the Association shall advise the Owners, specifying the amount and purpose of such Special Assessment, those against whom it is being levied, the manner in which and the dates on which it is payable. Special Assessments may be payable in a lump sum or in monthly installments as set forth in such notice, in the sole determination of the Association.\

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Section 7.03 Specific Assessments.

A. Special Services. The Association may assess expenses of the Association, including overhead and administrative costs, against Lots receiving benefits, items or services not provided to all Lots within the Property that are incurred upon request of one or more Lot Owners pursuant to Section 6.01(E). Specific Assessments may be levied in advance of the provision of the requested service.

B. Costs to Cure Non-compliance. The Association may levy a Specific Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Governing Documents. Such Specific Assessment may be levied upon the vote of the Board after notice to the Owner and an opportunity to cure the violation.

C. Fines; Damage to Properties. The Association may levy a Specific Assessment against any Lot if (i) the conduct of such Owner, its Occupant or Guest was in violation of the provisions of the Governing Documents, and such violation resulted in a monetary fine being imposed against the Lot of such Owner, in which case the fine shall constitute the Specific Assessment; or (ii) the conduct of such Owner, its Occupant or Guest resulted in damage to any portion of the Property which is the maintenance responsibility of the Association, in which case the costs incurred in repairing such damage and any applicable insurance deductible shall constitute the Specific Assessment.

D. General. The Association may levy a Specific Assessment against any Lot for any cost or expense incurred by the Association which the Governing Documents authorize to be levied against an Owner and its Lot.

Section 7.04 Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Aggregate Assessments and Special Assessments:

- (a) All Project Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility including, without limitation, public rights-of-way, if any.

In addition, the Board may exempt from payment of assessments any property devoted to church, school or not-for-profit organization or similar civic purposes.

Notwithstanding the foregoing, all property made subject to this Declaration, including property, if any, exempt from the obligation to pay assessments, shall be subject to all provisions of this Declaration.

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ARTICLE VIII

Design Review Committee and Approval of Plan

Section 8.01 Prior Approval of Construction. Prior to commencement of construction of any Improvements on any portion of the Property, including any renovation or alteration to any existing Improvements, or any staking, clearing, excavation, grading and other site work, or any planting or removal of landscaping materials, plans and specifications ("Plans and Specifications") therefor shall be submitted to the Design Review Committee. Construction of any such Improvements may not commence unless and until the Design Review Committee has approved such Plans and Specifications in writing in the manner set forth in this Article VIII. All Improvements shall be constructed strictly in compliance with all applicable requirements of the City, the Design Guidelines in effect from time to time, copies of which may be obtained from the Design Review Committee.

Section 8.02 Design Review Committee. A Design Review Committee (the "Design Review Committee") has heretofore been established pursuant to this Article VIII. The purpose of the Design Review Committee shall be to maintain a style and nature of building design that is in harmony with the physical setting and characteristics of Centerra and surrounding development. The Design Review Committee shall consist of no fewer than three (3) members (the "Design Review Committee Members"), all of whom shall be appointed by Declarant and all of whom shall serve at the pleasure of the Declarant. In the event of death, resignation or removal of a Design Review Committee Member, Declarant shall have full authority to designate and appoint a successor. Upon the Cessation of Control Date, the Board of Directors of the Association shall thereupon appoint the Design Review Committee Members, all of whom shall serve at the pleasure of the Board. In the event of death, resignation or removal of a Design Review Committee Member appointed by the board, the Board shall have full authority to designate and appoint a successor. The Design Review Committee Members need not be Owners or Members of the Association or employees or agents of an Owner, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board.

The Design Review Committee shall adopt reasonable rules and regulations, fix the time and place of its meetings, appoint a chairman and secretary, and keep minutes of the meetings which shall be open for inspection by any Owner subject to reasonable advance notice to the Design Review Committee. The Design Review Committee may from time to time, by resolution adopted in writing designate one or more of its members or a managing agent to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of waivers or variances pursuant to this Article VIII. In the absence of such designation, the vote of the majority of a quorum of present and voting Design Review Committee Members at the meeting, or the written consent of a majority of all of the members of the Design Review Committee taken without a meeting, shall constitute an act of the Design Review Committee.

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Section 8.03 Design Guidelines.

A. The Association and the Design Review Committee have issued certain development standards and criteria in a development manual, as the same may be amended from time to time, known as the "Centerra Design Guidelines" ("Design Guidelines"). The Design Guidelines relate to the standards, requirements, recommendations or limitations, review process procedures, and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to a Lot (including all landscaping and signage thereon). The Design Guidelines will be applied and enforced in a uniform and non-discriminatory manner, subject to the design Review Committee's right to grant variances as hereinafter provided. The Design Guidelines may waive the requirement for approval of certain Improvements or exempt certain Improvements from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

B. Declarant shall have the sole and full authority to amend the Design Guidelines as long as it owns any portion of the Project Property unless Declarant assigns such right to the Board at an earlier time. Thereafter, the Board shall have the authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall be prospective only and shall not apply or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; Declarant or the Board, as appropriate, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Property to another depending upon location and unique characteristics.

C. All Improvements, of any type, kind or nature, whatsoever, shall be subject to the review process set forth in the Design Guidelines.

D. The Design Review Committee, with the approval of the Board, may require and impose a fee to accompany each application for review and for each approval and/or require a deposit upon initial submittal of the Plans and Specifications to the Design Review Committee for approval. All applicable fees and deposits shall be set forth in the Design Guidelines.

Section 8.04 Approval of Plans.

A. No Improvements shall be constructed, erected, placed, altered, maintained, or permitted on any Lot, nor shall any construction or excavation whatsoever be commenced nor any materials, equipment, or construction vehicles be placed on any Lot until Plans and Specifications with respect thereto, in manner and form satisfactory to

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the Design Review Committee, has been submitted to and approved in writing by the Design Review Committee. In all events except as otherwise provided herein, all structures must be located within a Building Site. In no event shall an Owner have the right to construct any Improvements on any Common Area appurtenant to its Lot without the Association and Design Review Committee's prior written approval and otherwise complying with the terms and provisions hereof.

B. The Design Review Committee may require such detail in the Plans and Specifications submitted for its review and such other information as it deems proper, all as set forth in the Design Guidelines. Until receipt by the Design Review Committee of all required or requested Plans and Specifications and other information, the Design Review Committee may postpone review of any material submitted for approval. Any modification or change to an approved set of Plans and Specifications must again be submitted to the Design Review Committee for its inspection and approval.

C. Approval by the Design Review Committee may be conditioned upon compliance with stated changes or conditions and shall be based on, among other things, conformity and harmony of exterior design, colors, and materials with neighboring structures; visual and environmental impact; ecological compatibility; relation of the proposed Improvements to the natural topography; relation of grade and finished ground elevation of the structure to that of neighboring structures and natural features of the Property; conformity of the plans and specifications to regulatory documents adopted by the City; and conformity of the Site Plan and the Plans and Specifications to the purpose, general plan, and intent of this Declaration.

D. If the Design Review Committee fails either to approve, approve with conditions, or to disapprove the Plans and Specifications within forty-five (45) days after the next scheduled meeting following such complete submittal, it shall be conclusively presumed that the Plans and Specifications have been approved; provided, however, that the aforesaid presumption shall not be deemed to be a waiver of the applicable provisions of this Declaration or be deemed to be the prior written approval of the Design Review Committee under any specific provisions hereof or any approval thereof by the Design Review Committee. Any disapproval shall set forth the reason or reasons for such disapproval. The Design Review Committee shall notify the Owner in writing upon receipt of all required Plans and Specifications. If a submittal is not complete the time for approval shall be measured from the date of the meeting immediately following receipt of a completed submittal.

E. If construction under approved Plans and Specifications does not commence within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the plans and specifications for reconsideration prior to commencement of any construction.

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F. If the Design Review Committee disapproves any part of the Plans and Specifications submitted (or approves the same subject to conditions), the Owner shall revise its Plans and Specifications to incorporate such changes and shall deliver the required number of complete sets of revised Plans and Specifications (reflecting responses to all items) to the Design Review Committee and the Design Review Committee shall have thirty (30) days in which to review such revised Plans and Specifications to determine Owner's compliance with the Design Review Committee's request for changes. If the Design Review Committee fails to advise Owner in writing of whether or not such revised Plans and Specifications are in compliance with suggested changes within the thirty (30) day period, then the Design Review Committee's approval shall be conclusively presumed to have been granted, subject to the conditions provided for herein which are applicable to such assumption.

G. An Owner shall secure the approval of the Design Review Committee to any change or revision in approved Plans and Specifications in the manner provided in this Article for approval of Plans and Specifications. The Design Review Committee shall endeavor to review such changes or revisions within a shorter period of time than the thirty (30) day period provided above, but shall not be required to do so.

H. If the Design Review Committee disapproves any part of the Plans and Specifications submitted (or approves the same subject to conditions), the Owner may, within ten (10) days after the Design Review Committee's disapproval, make a written request for a hearing before the Board of Directors to reconsider the Plans and Specifications. If the Owner timely requests a hearing under this Section, the hearing shall be held in executive session of the Board of Directors, affording the Owner a reasonable opportunity to be heard. The Board of Directors shall notify the Owner in writing of its decision within ten (10) days after the hearing. The decision of the Board of Directors shall be final and binding upon the Owner.

I. Following completion of the Improvements, at its discretion the Design Review Committee may schedule a walk through with the Owner (or its representative) to confirm compliance with the Plans as approved. Any discrepancies, omissions or incomplete work noted on such walk through shall be promptly and immediately remedied. Failure to immediately remedy such identified items shall constitute a default by the Owner hereunder.

J. Upon written request of any Owner, the Design Review Committee may waive any of the requirements for obtaining approval of Plans and Specifications upon good cause shown. Any waiver issued by the Design Review Committee pursuant to this Section must be in writing.

Section 8.05 No Waiver of Future Approvals. The Design Review Committee's approval of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Design Review Committee, shall not be

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deemed to constitute a waiver of any right to withhold approval or consent as to any similar Plans or Specifications or other matters subsequently or additionally submitted for approval.

Section 8.06 Variances. The Committee may authorize variances from compliance with the Design Guidelines and any required procedures when extraordinary circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations so require, or when architectural merit warrants such variance. No Owner shall have any right to obtain a variance. Such variances shall not, however, (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration; or (iii) estop the Design Review Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not constitute hardships.

Section 8.07 No Liability/Indemnity.

A. Neither the directors nor the officers of the Association, nor the Design Review Committee Members, shall be personally liable to the Owners, anyone submitting Plans and Specifications, Declarant, or the Association for any mistake of judgment, negligence or nonfeasance or for any other acts or omissions of any nature whatsoever as such directors, officers or Design Review Committee Members, arising out of or in connection with the performance of any of its rights, duties or obligations hereunder, including, without limitation, the approval or disapproval or failure to approve any Plans and Specifications, or the granting or denial of an Owner's request for a variance. Plans and specifications are not reviewed or approved for engineering or structural design or technical quality of materials, and by approving such Plans and Specifications neither the Design Review Committee, nor the members thereof, nor the Association or the Declarant assume liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Approval of Improvements by the Design Review Committee shall not be deemed to constitute compliance with the requirements of any local building codes or other governmental requirements, or to constitute a representation that all Improvements are of comparable quality, value, or size, or of similar design. Neither the Declarant, the Association, the Board, the Design Review Committee, nor any member of any of the foregoing shall be held liable for soil conditions, drainage problems or other general site work, nor for defects in any Plans and Specifications submitted, revised or approved hereunder, nor for any structural or other defects in work done according to approved plans, nor from any injury, damages, or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot. It shall be the responsibility of the Owner or Owner's agent submitting Plans and Specifications to the Design Review Committee to comply therewith. Approval in writing of all Plans and Specifications and amendments thereto must be obtained from the Design Review Committee prior to the issuance of any building permits.

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B. The Association shall indemnify and hold harmless the directors and officers of the Association, the Design Review Committee members, and their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or acts of such directors, officers and Design Review Committee members on behalf of the Owners or the Association or arising out of their status as directors, officers of the Association, or Design Review Committee members, unless such contract, act or omission constitutes willful misconduct relating to an action other than the approval, disapproval or failure to approve Plans and Specifications. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer or Design Review Committee member may be involved by virtue of being or having been such director, officer, or Design Review Committee member; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for such willful misconduct in the performance of his duties as such director, officer or Design Review Committee member; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in any manner determined by the Declarant or the Association, there is no reasonable ground for such person adjudged liable for willful misconduct in the performance of his duties, as such director, officer or Design Review Committee member. Every Owner or agent who shall submit Plans and Specifications to the Design Review Committee for approval hereby agrees, by submission of such Plans and Specifications, that he will not bring any action or suit against the Declarant, the Association or the Design Review Committee to recover any such damages.

Section 8.08 Contractor Performance. Neither the Association, the Design Review Committee or the Declarant, nor any affiliate of Declarant, are a co-venturer, partner, agent, employer, stockholder or affiliate of any kind of or with any contractor engaged to construct, in whole or in part, any Completed Structure, nor is any such contractor an agent of Declarant or an affiliate of Declarant. Therefore, the Association, Design Review Committee, the Declarant and affiliates of Declarant shall not be responsible for, or guarantors of, performance by any such contractor of all or any of its obligations to any Owner pursuant to any contracts for the sale or construction of a Completed Structure or otherwise. Neither the Association, the Design Review Committee, or the Declarant nor any affiliates of Declarant has made, or have made, any warranty or representation with respect to performance by any such contractor under any contract or otherwise.

Such Owner acknowledges and agrees that neither the Association, the Design Review Committee, or the Declarant nor any affiliate of Declarant share any liability or obligation to Owner, related to or arising out of any contract with a contractor or otherwise, by reason of any failure by a contractor fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a contractor,

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relied upon any representations or recommendations, oral or written, of the Association, the Design Review Committee, the Declarant or any affiliate of Declarant or any salesperson with regard to the structural integrity or soundness of approved construction or modifications, for ensuring the effectiveness of any drainage plans, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Design Review Committee, the Declarant, or any affiliate of Declarant, nor any salesperson shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Lot, nor for any defect in any structure constructed from approved Plans and Specifications.

Section 8.09 Enforcement.

A. Any work performed in violation of this Article or the Design Guidelines shall be deemed nonconforming. Upon written request from the Board, any Declarant or the Design Review Committee, an Owner shall, at its own cost and expense, cure such nonconforming work or remove such structure or improvement and restore the Lot to substantially the same condition as existed before the nonconforming work. Should an Owner fail to remove or restore as required hereunder, the Declarant, the Association or the designees of either of them, shall have the right to enter the Lot and remove or cure the violation, and such entry and abatement shall not be considered a trespass. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a Specific Assessment pursuant to Section 7.03.

B. In the event that any Person fails to commence and diligently pursue to completion all approved work, any Declarant or the Association shall be authorized, after providing notice and an opportunity to cure to the Owner, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment pursuant to Section 7.03.

C. In addition to the foregoing, the Association and any Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Design Review Committee.

D. The Declarant and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the Governing Documents from continuing to perform or performing any further activities in the Property. Neither the Declarant, the Association, nor their officers, directors or agents shall be held liable to any person for exercising the rights granted by this paragraph.

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ARTICLE IX

Operation and Use Restrictions

Section 9.01 Uses.

During the term of this Declaration, the Property shall only be used for purposes consistent with the most recently approved general development plan for the Property, which includes, without limitation, commercial, hotel, motel, restaurant, fast food facilities, service stations, health care facilities, parks, visitor center, offices, and/or wholesale and retail sales and services and appurtenant uses, or other similar or consistent uses as may be approved by the Design Review Committee, from time to time. No portion of the Property is to be used for condominiums or any residential purposes which would fall under the coverage of the Colorado Common Interest Ownership Act (“CIOA”). Notwithstanding anything set forth herein to the contrary, the Design Review Committee may, with the written consent of Declarant, so long as Declarant owns any Future Parcels, authorize any other use of the Future Parcels which is not otherwise precluded by law. Approvals and disapprovals by the Design Review Committee and by Declarant of specific uses not otherwise permitted herein shall be based on an analysis of the anticipated effect of such operations or uses on other Sites within the Annexed Property and other real property within the vicinity of the Annexed Property, but shall be in the sole discretion of the Design Review Committee and Declarant. Further, if Declarant places any additional restrictions on use in a Supplemental Declaration or in a deed or lease from Declarant to an Owner, such restriction which is more restrictive in use shall supercede any restriction contained herein. Any such deed restriction may be amended or modified by a written agreement of the Declarant and the owner of said Site. Declarant shall have the right to designate the use and operation of the Project Common Areas. Notwithstanding the foregoing, no use, effect or operation will be made, conducted or permitted on or with respect to all or any part of the Property which use, effect or operation is obnoxious to a first-class multi-use development, including the following:

- (a) any public or private nuisance;
- (b) any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (c) any noxious or offensive odor;
- (d) any noxious, toxic, caustic or corrosive fuel or gas, except reasonable amounts thereof contained in safe and lawful containers as necessary for, or incidental to, activities permitted hereunder;
- (e) any dust, dirt or ash in excessive quantities;

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- (f) any uses other than specifically enumerated above or consistent, in the opinion of the Design Review Committee, therewith;
- (g) any dumpings, disposal, incineration or reduction of garbage or refuse;
- (h) any adult bookstore which sells or maintains pornographic material as a significant part of its inventory (which shall mean 5% or more of gross sales derived therefrom);
- (i) any removal or extraction of minerals, oil, gas or other subsurface substances, or any drilling or other work related to such removal or extraction, other than as necessary and normal excavation in connection with construction of improvements and other than slant or other methods of drilling designed to leave the surface of the Parcels undisturbed;
- (j) any distilling, refining, or smelting activities, except brew buds and similar micro-breweries;
- (k) Except as provided elsewhere herein and subject to compliance with the applicable provisions hereof, the prohibitions set forth in subparagraphs (a)-(e), and (g) above shall not apply to any incidental consequences of work of construction, improvement or maintenance of any part of the Property.

Section 9.02 No Further Subdivision. No Owner, may further subdivide any Lot unless such Owner complies with all applicable laws, rules, regulations and orders of all governmental authorities with jurisdiction and unless such Owner obtains the prior approval of the Design Review Committee. In applying for such approval, the Owner must provide copies of all maps, plats and other documentation required to be submitted to any governmental authority to obtain such approval. Such approval shall be granted or denied based upon a determination by the Design Review Committee as to the effect on the interests of the other Owners of such subdivision. The foregoing shall in no event preclude Declarant from further subdividing any Lot or Parcel which it owns or creating any easements or other partial interests without the approval of the Design Review Committee so long as the subdivision or conveyance is in accordance with this Declaration. However, a Lot, including improvements, may be transferred or sold to more than one person to be held as tenants-in-common or joint tenants without the approval of the Design Review Committee. Further such approval is not required for the granting of any mortgage, deed of trust or lease on a Lot or for the transfer of title by way of a deed in lieu of foreclosure thereof.

Section 9.03 Employee Parking. Employees of an Owner shall be permitted to park vehicles only on those parts of Parking Areas which are designated by the Association for employee parking, regardless of the fact that such areas are within a privately owned Lot. Each

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Owner shall make all reasonable efforts to assure that all employees comply with this requirement.

Section 9.04 Hazardous Substances.

A. Each Owner shall comply with all obligations imposed by applicable law, rules, regulations, or requirements of any governmental authority upon the generation and storage of Hazardous Substances, to prohibit any generation, storage, or disposal of Hazardous Substances on the Property except as permitted by law, to deliver promptly to Declarant and Association true and complete copies of all notices received from any governmental authority with respect to the generation, storage or disposal of Hazardous Substances, and to promptly notify Declarant of any spills or accidents involving a Hazardous Substance. "Hazardous Substances" shall mean (i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (ii) "PCBs" as defined in 40 C.F.R. 761, *et seq.*, or analogous regulations promulgated under the Toxic Substances Control Act, as amended, (iii) "asbestos" as defined in 29 C.F.R. 1910.1001, *et seq.*, or analogous regulations promulgated under the Occupational Safety and Health Act of 1970, as amended, (iv) oil and petroleum based products, (v) radioactive material or waste, (vi) biological and other medical products and waste material, (vii) "hazardous wastes" as defined in Resource Conservation and Recovery Act, as amended and all regulations promulgated thereunder and (viii) hazardous air pollutants as defined in the Clean Air Act, 42 U.S.C. §7401 *et seq.* and all regulations promulgated thereunder; as such acts may be amended from time to time, and as such terms may be expanded by additional legislation of a general nature.

B. Each Owner shall be responsible for, and shall promptly commence and complete, the remediation and clean up of any Hazardous Substances which it has caused to be generated, stored, spilled, or otherwise placed on any portion of the Property. Each Owner shall immediately notify the Association in writing of any act or omission by an Owner or its agent or subcontractor which may result in any remediation or clean up of Hazardous Substances as provided in the foregoing sentence. Further, each Owner shall provide the Association with copies of all reports, analysis and writings of any kind or nature relating to the foregoing.

Section 9.05 General Restrictions Applicable to Property. All Property shall be held, used and enjoyed subject to the limitations and restrictions set forth herein, and subject to the exemptions of Declarant set forth in this Declaration. Nothing shall be done or kept on the Property which will increase the rate of insurance on any Project Common Area or other Association Property, without the written approval of the Board, nor shall anything be done or kept on or at the Property which would result in the cancellation of insurance on any Project Common Area or other Association Property or which would be in violation of any law. The strict application of the limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must

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be in writing or be contained in written guidelines or rules promulgated in the Design Review Committee.

Section 9.06 Restrictions on Unsightly Articles. Unsightly articles shall not be permitted to remain on any Lot or other portion of the Property if visible from adjoining property or public or private roadways. This general statement is not limited by the specific references in the following sentence. Trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups), boats, tractors, buses, garden and maintenance equipment, and all other equipment, shall be kept at all times in an enclosed structure or otherwise fully screened from view, except when in use. Further, repair or maintenance work, other than minor emergency repairs, on all equipment and vehicles shall be done in an enclosed garage or other structure. Refuse, garbage and trash shall at all time be kept in covered containers within an enclosed structure or appropriately screened from view.

Section 9.07 Landscaping, Weed and Pest Control. The intent of this Declaration is to create a community which will harmonize with nearby natural communities and reduce the development of chemically dependent landscapes. Lot(s) shall be suitably landscaped with living ground covers, grass, shrubs and trees as soon as reasonably possible following construction of Improvements, in accordance with plans submitted to and approved by the Design Review Committee as set forth above. All ground covers, grass, shrubs and trees shall be kept and maintained in an attractive healthy, live and growing condition. All dead or diseased plant material shall be promptly removed and replaced with suitable replacement landscaping. The Design Guidelines may include a list of plant species restricted from use on the Property. All weed and other pest control activities shall be conducted in accordance with the Design Guidelines. Chemicals shall not be applied outdoors without the approval of the Design Review Committee or notice to neighboring Owners. No overspray, runoff or other discharge of chemicals to adjacent properties or Common Areas is permitted. Each Owner shall be responsible for appropriate pest control in accordance with the Design Guidelines.

Section 9.08 Lighting. Lots shall be lit in accordance with the Design Guidelines and approval of the Design Review Committee. Lighting shall be designed, installed, and operated to provide safe and adequate views without creating a nuisance or hazard to adjacent properties or Common Areas. Lighting for walkways generally shall be directed to the ground and shall be subject to the criteria and standards set forth in the in Design Guidelines. Any seasonal or decorative lights may be displayed between Thanksgiving and February 15 only.

Section 9.09 No Temporary Structures. Except for construction trailers used during active construction of Improvements on any Lot, no tent, shack, temporary structure or temporary building shall be placed upon any property within the Property except with the prior written consent of the Design Review Committee obtained in each instance. Location and placement of such construction trailers or structures shall be submitted to the Design Review Committee at such time as plans for any Improvements are submitted. Subject to reasonable standards uniformly enforced, no construction activities shall be considered to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicle or

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construction machinery, posting or signs as required by law or otherwise permitted by the Design Guidelines, or similar activities, so long as such construction is: (i) pursued to completion with reasonable diligence; (ii) in compliance with all applicable, federal, state and local laws and ordinances and any associated rules and regulations; and (iii) conforms to a Best Management Practices for construction in the area. In the event of any dispute, a temporary waiver of the applicable provision may be granted by the Design Review Committee for a reasonable limited period for such construction. All streets, driveways and other access ways shall be swept daily and kept clean and free of all dirt and debris. No construction activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use by any Owner of its Lot.

Section 9.10 Fencing. Declarant may construct certain entryways, fences, pillars or walls on any Project Common Area. No Owner shall modify, repair, replace, paint or otherwise obstruct any such entryways, fence, fence pillars or walls.

Section 9.11 Restrictions on Antennae, Pipes and Utility Lines. Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, satellite dish, aerial or other reception receiver device or other antennae of any type shall be erected or maintained on the Property without the prior written approval of the Design Review Committee. Notwithstanding the foregoing, neither the restrictions nor requirements of this Section shall apply to those antenna (which may include some satellite dishes and other devices) that are specifically covered by the Telecommunications Act of 1996, as amended, revised or replaced, from time to time. As to antennas which are specifically covered by any such Act, the Association or Design Review Committee shall have the right to adopt rules and regulations governing the types of antennas that are permissible hereunder, to the extent such rules and regulations are permitted by said Act, which rules shall establish reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance of same.

Section 9.12 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view except signs as may be approved in writing by the Design Review Committee. The Design Guidelines may contain provisions relating to such signage. A sign advertising a Lot for sale or for lease may be placed on such Lot for sale or for lease, provided, however, that standards relating to dimensions, color, style and location of such sign may be governed by the Design Guidelines. If, however Marketing Guidelines are established as hereafter provided, they may contain additional criteria and standards relating to such signage which will also be applicable, and the provisions set forth below regarding approval by the Design Review Committee will be applicable. No flashing or moving signs shall be permitted on any Lot if the same would be visible from the outside of a structure.

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Section 9.13 Maintenance of Drainage. There shall be no interference with the established drainage pattern over any portion of the Property except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any portion of the Property is completed and shall include any established drainage pattern shown on any plans approved by the Design Review Committee. The established drainage pattern may include the drainage pattern from Project Common Areas or Association Properties over any Lot, from any Lot over the Project Common Areas, Association Properties, or from any Lot over another Lot.

Section 9.14 Restrictions on Water and Sewage Disposal Systems. No cesspool, septic tank or other sewage disposal system shall be installed on the Property without the prior written approval of the Design Review Committee. No individual water supply system shall be installed or maintained on the Property without the prior written approval of the Design Review Committee. Any sewage disposal or water supply system shall also be designed, located, constructed and equipped in accordance with all applicable recommendations, laws, rules and regulations of any governmental authority having jurisdiction thereover.

Section 9.15 Non-Potable Water System. Declarant or the Association may, in the future, develop a non-potable water irrigation system to provide water for landscaping irrigation purposes upon the Property. If such a system is developed and installed, each Owner shall be obligated to purchase such non-potable irrigation water from Declarant, the Association, or such other entity that may develop the same so long as the rate charged by such entity is comparable to, but in no event greater than, the rate which would be charged by the City for the purchase of potable water for landscaping irrigation purposes. The cost of creating and equipping such system may be amortized into the rates charged to the Owners, subject to the foregoing qualification.

Section 9.16 Specific Restrictions on Landscaping. No changes or additions to the landscaping located upon Lots 2 and 3, Block 1 of McWhinney Sixth Subdivision which may impact the view of signage located upon any portion of McWhinney Sixth Subdivision shall be made by the Owners of such Lots without the prior written consent of the Design Review Committee. Nothing contained within this paragraph shall be construed as limiting or modifying any other review and approval rights granted to the Design Review Committee pursuant to the terms and provisions of this Declaration.

Section 9.17 Utilities. Each Owner shall be responsible for the maintenance and repair of the utility lines and facilities which are solely for the purpose of serving such Owner's Lot, except as expressly provided in any Supplemental Declaration.

Section 9.18 Other Prohibited Uses. In addition to uses which are inconsistent with applicable zoning or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses and activities are prohibited within the Property without the prior written approval of the Board:

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- (a) trailer courts, mobile home parks and recreation vehicle campgrounds;
- (b) junk yards, scrap metal yards, sanitary landfills and recycling facilities;
- (c) lumberyards or sawmills;
- (d) flea markets, pawn shops and fire and bankruptcy sale operations;
- (e) truck terminals and truck stop-type facilities;
- (f) massage parlors and businesses primarily engaged in the sale, exhibition or delivering of obscene or pornographic materials or in the provision of entertainment featuring topless or nude performers;
- (g) any so-called "head shop"; and
- (h) businesses involving the outdoor boarding of pets or other animals.

Section 9.19 Compliance with Laws. Nothing shall be done or kept on any portion of the Property in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

Section 9.20 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Lot, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

Section 9.21 Taxes. Each Owner shall pay, or cause to be paid, prior to delinquency, all taxes and assessments upon its Lot, and the Improvements and personalty located on such Lot, provided that if the taxes or assessments, or any part thereof, may be paid in installments, the Owner may pay each such installment as and when the same becomes due and payable, and in any event, prior to the delinquency thereof. If any Owner fails to make any payment of such taxes or assessments, and any such failure results in the scheduling of a tax sale of any land or improvements within the Property, then any Owner may make such payment for the account of the said responsible Owner within 30 days prior to the sale, or redeem the land or improvements from said tax sale within the time allowed by law, in which case the responsible Owner shall reimburse the paying Owner for the amount of such payment, plus interest thereon, at the Default Rate from the date of such payment by the paying Owner until full reimbursement. The paying Owner shall have a lien upon the Parcel to which such taxes arose in the amount of such payment

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and any interest accrued thereon and all costs and legal fees incurred in connection therewith. Such lien may be enforced and foreclosed in the manner set forth hereinafter.

Section 9.22 Exemption of Declarant. Declarant intends to conform voluntarily to relevant provisions and restrictions of this Declaration during the Period of Declarant Control; however, neither Declarant, nor any of Declarant's activities shall be under the direct jurisdiction of the Design Review Committee except with respect to Declarant's construction activities on Lots which are not related to the construction and development of the Project Common Areas. Without in any way limiting the generality of the preceding sentence, this Declaration shall not limit the right of Declarant to conduct reasonable and responsible activities related to construction and development of the Project Common Areas. Declarant may: (i) excavate and grade; (ii) construct and alter drainage patterns and facilities; (iii) construct any and all other types of Improvements; (iv) maintain construction, sales and leasing offices and similar facilities; and (v) post signs incidental to construction, sales and lease, anywhere on the Project Common Area. However, no such activities shall be carried on in such a way as to create a health or environmental hazard or unreasonably interfere with the use and enjoyment by any Owner.

ARTICLE X

Insurance

Section 10.01 Association Insurance. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(a) Blanket "all-risk" property insurance for all insurable improvements on the Common Areas and on other portions of the Property to the extent that the Association has assumed responsibility for maintenance thereof in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of the insured property under current building codes and ordinances;

(b) Commercial general liability insurance on the Common Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, such policy shall have a limit of at least \$3,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage;

(c) Workers' compensation insurance and employers liability insurance, if necessary, to the extent required by law;

(d) Director's and officer's liability coverage;

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(e) Such additional insurance as the Board, in its business judgment, determines advisable.

The insurance coverage under this Section 10.01 shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Assessments included in the assessments made by the Association.

Section 10.02 Liability Insurance; Indemnification for Liabilities. Each Owner, with respect to its Lot and also with respect to the operations thereon, shall, at all times during the term of this Declaration, obtain and maintain in full force and effect general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Lot and the Improvements thereon, and covering public liability for bodily injury and property damage, and, if the Owner owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of such vehicles. Such liability insurance, for other than motor vehicle liability shall: (a) have limits of not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence; (b) insure the Owner, its officers, directors, partners, members and board members as named; (c) include the Association, Declarant, and Maintenance Provider, if any, as additional insured, but only for claims and liabilities arising in connection with their exercise of their rights and duties hereunder insofar as they relate to the Lot; and (d) cover claims of one or more insured parties against other insured properties and parties. Declarant or the Association may from time to time increase the limits set forth in this subparagraph, by written notice to all parties so that adequate and commercially reasonable limits are always carried by each Owner.

Section 10.03 Casualty Insurance. Each Owner shall at all times during the term of this Declaration, obtain and keep in full force and effect property insurance on all insurable Improvements on its Lot (including all improvements on Lot Common Areas) and personal property owned by the Owner or that may be owned by such Owner in the future, for broad form covered causes of loss, including casualty, fire, and extended coverage with respect to all insurable Improvements and personal property owned by the Owner, including, if available, and if deemed appropriate, coverage for flood, earthquake and war risk. Such insurance shall be for the full insurable replacement cost of the insured property, less reasonable deductibles, at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundation and other items normally excluded from property policies.

Section 10.04 Policy Requirements. All policies of insurance hereunder shall:

- (a) be primary insurance which does not call upon any other insurance affected or procured pursuant hereto for defense, contribution or payment;

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(b) provide that the insurer waives its right of subrogation under the policy against the Association, other Owners, and any other Person claiming by, through or under an Owner;

(c) provide that no act or omission of any Person which is an additional insured, unless acting outside the scope of his authority, will void the policy or be a condition to recovery thereunder;

(d) be non-accessible and contain language to the effect that payment thereunder shall be made by the issuer, notwithstanding any act or negligence of the insured; and

(e) contain agreements by the issuer that such policies shall not be canceled without at least 30 days' prior written notice to the other Parties.

Section 10.05 Common Insurance. Any two or more Owners hereunder may discharge all or any part of their obligations to maintain insurance as set forth herein by maintaining a policy or policies in common with each other.

Section 10.06 Evidence of Insurance . Within 15 days following request by any Owner or the Association, the requested Owner shall provide to the requesting Owner (or Association) evidence of its compliance with the requirements of insurance hereunder, which evidence shall include a current and valid certificate of insurance or original policy of insurance, and if either of the same are expressly contingent upon payment of premiums, then the requested Owner shall provide proof of such payment. In no event shall the Association have any liability or responsibility if it fails to make such request and confirm an Owner's compliance with its obligations hereunder.

Section 10.07 Changes in Policy Types or Amounts of Coverage. In addition to the change in limits, which Declarant or the Association shall have the right to modify itself from time to time, as provided above, the types of coverage required hereunder may be changed from time to time by Declarant or the Association in the same manner, so long as such requirements remain commercially reasonable and consistent with insurance required for similarly placed Owners in comparable projects in Colorado.

Section 10.08 Damage or Destruction.

A. Common Areas. In the event of damage to or destruction of any part of the improvements to the Common Areas or other property insured by the Association, the Association shall repair or replace the same from the insurance proceeds available unless a Majority of Owners, and the Declarant, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or

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replacement not covered by the insurance proceeds, in addition to any other assessments made against such Owner. If it is determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition consistent with the Maintenance Standard.

B. Destruction of Building. In the event that any building constructed on a Lot has burned and is thereafter abandoned for at least thirty (30) days, the owner of the Lot shall cause the burned building to be removed and the Lot cleared, the expense of such removal and clearing to be paid by the Owner. In the event the Owner does not comply with this provision, then the Association may, after ten (10) days written notice to the Owner, cause such burned building to be removed and the Lot cleared and charge the cost thereof to the Owner. In such event, the Association shall not be liable in trespass or for damages, expenses, costs or otherwise to the Owner for such removal and clearing. The Association shall have no obligation to procure insurance to protect against fire or other casualty to any of the structures and each Owner is encouraged to procure and maintain such insurance coverage as is deemed prudent or desirable by such Owner.

ARTICLE XI

Membership and Voting Rights

Section 11.01 Incorporation. The Association has been incorporated and is known as the "Centerra Commercial Owners Association, Inc."

Section 11.02 Function. The Association, subject to the rights of the Owners set forth in this Declaration and the election of and authorization for Self-Maintenance, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Maintenance Standard. The Association shall also be the primary entity responsible for enforcement of this Declaration, including the architectural control provisions of Article VIII of this Declaration, and such rules regulating use of the Property as the Board may adopt pursuant to this Declaration. The Association shall perform its functions in accordance with the Governing Documents and Colorado law.

Section 11.03 Membership. Every Owner shall be a member ("Member") of the Association. Membership shall be appurtenant to and may not be separate from the ownership of a Lot. The Declarant shall also be a Member. An Owner may assign its rights as a Member, but not its obligations, to any Permittee legally entitled to occupy and use any part or portion of a Lot. The membership rights of an Owner which is not a natural person may be exercised by any

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officer, director, partner, manager, or trustee, or by the individual designated from time to time by the Owner in writing provided to the Secretary of the Association.

Section 11.04 Voting Rights. The Association shall have two (2) classes of voting membership unless and until the Class B Member no longer exists; thereafter there shall be only one (1) class of member. Except as otherwise provided in the Governing Documents, approval of any matter shall require a Majority of Owners (or greater) in each Class:

(a) Class A: Class A Members shall be all of the Owners (other than Declarant prior to the Cessation of Control Date). Class A members shall be entitled to one (1) vote for each 100 square feet of real property within such Owner's Lot. Votes may be cast in person or by written proxy filed with the Secretary of the Association in accordance with the Bylaws.

(b) Class B: Declarant shall be the sole Class B member and shall be entitled to five (5) votes for each 100 square feet of real property within any Lot(s) owned by Declarant. The Class B Member shall also be entitled to appoint a majority of the members of the Board during the Period of Declarant Control, in the manner specified in the Bylaws. The Class B Member shall have a right to disapprove any action of the Board and/or committees as provided in the Bylaws. The Class B membership shall cease and terminate upon the Cessation of Control Date, at which time Declarant shall be entitled to a Class A vote for any Lot which it then owns.

ARTICLE XII

Enforcement

Section 12.01 Enforcement of Covenants.

A. These conditions, covenants, reservations, and restrictions may be enforced as provided herein by the Association acting by and through its Board of Directors, or by the Declarant acting for itself, and as trustee on behalf of all Owners. Each Owner by acquiring an interest in the Property shall appoint irrevocably the Association as its attorney-in-fact for such purposes; provided, however, that if an Owner notifies the Association or Declarant of a claimed violation of these conditions, covenants, restrictions, and reservations and the Association and/or Declarant fails to act within thirty (30) days after receipt of such notification, then, and in that event only, a Owner may separately, at his own cost and expense, enforce the conditions, covenants, restrictions, and reservations herein contained. The Declarant shall have the right to take any action authorized and reserved under this Article to the Association if the Board of Directors (or its President on behalf of said Board) requests the Declarant to so act. In such event the Declarant shall be entitled to all the same protections as would otherwise accrue and inure to the benefit of the Association.

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B. Violation of any condition, covenant, restriction, or reservation herein contained or contained in the Governing Documents shall give to the Association the right to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove at the expense of the violating Owner (“Defaulting Owner”) any structure, thing, or condition that may be or exists thereon contrary to the intent and meaning of the provisions of the Governing Documents, or to prosecute a proceeding at law or in equity against the Defaulting Owner, Occupants, or other Persons who have violated or are attempting to violate any of the conditions, covenants, restrictions, and reservations contained in the Governing Documents to enjoin or prevent them from doing so, to cause said violation to be remedied, or to recover damages for said violation. Such expense, when and if incurred, may be assessed against the Defaulting Owner and its Lot as a Specific Assessment in accordance with Article 7.03 of this Declaration.

C. Each Owner, by acquiring title to any portion of the Property, hereby agrees to indemnify, defend and hold every other Owner, the Association and its officers and Board of Directors, any other Owner owning or occupying any portion of the Property, and the Declarant harmless from and against any loss, cost, damage or expense which all or any of them may incur as a result of indemnitor’s breach or violation of any condition, covenant, restriction or reservation herein contained. Such indemnity shall include all costs and expenses, including reasonable attorney’s fee incurred by the Association its Board of Directors, officers, or any other Owner as a result of the actions or inactions of the Defaulting Owner.

D. Every violation of this Declaration or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefor by law or equity against a Defaulting Owner, Occupant or other Person shall be applicable against every such violation and may be exercised by the Association.

E. Within 10 days of billing therefor, the Defaulting Owner shall reimburse the Association (Declarant, or other Owner enforcing this Declaration) for any sum reasonably expended to enforce this Declaration and for fees, costs and legal expenses.

Section 12.02 Enforcement of Monetary Obligations.

A. Any amounts due to the Association for reimbursement for Aggregate Assessments or Special Assessments or amounts due to the Association, Declarant, or another Owner for reimbursement for the cost of enforcement of this Declaration, or any other amounts due to another Owner pursuant to this Declaration, shall be paid within the time limits set forth herein. Any amount not so paid shall accrue interest at the Default Rate from the date such amount should have been paid.

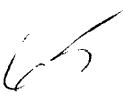
B. Failure to pay any amount required by this Declaration shall constitute a lien, in the unpaid amount together with interest, costs and expenses and reasonable

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attorney's fees, upon the property of the nonpaying Owner in the manner set forth below, in favor of the Association or Owner to whom the amount is owed.

C. Any right to a lien hereunder shall be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens and encumbrances thereafter encumbering the Parcel or portion thereof involved, except for general taxes and special assessment liens. Such lien shall not be superior to any first mortgage of record covering the Parcel. To evidence such lien, the entity or Owner entitled thereto shall cause to be prepared a written notice ("Lien Notice") setting forth: (i) the amount owing and a brief statement of the nature thereof; (ii) the legal description of the Parcel or portion thereof to be encumbered thereby; (iii) the name of the Owner or reputed Owner of the Parcel involved; and (iv) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be duly executed and acknowledged by the entity or Owner entitled thereto, and shall be recorded in the records of the Clerk and Recorder of the County of Larimer. A copy of such Lien Notice shall be mailed to the Owner or reputed Owner whose Parcel is so encumbered within 30 days after such recording. Any such lien may be enforced by judicial or non-judicial foreclosure in like manner as a mortgage on real property is judicially foreclosed under the laws of the State of Colorado. In any foreclosure, the non-prevailing Owner shall be required to pay the reasonable costs, expenses, attorney and expert witness fees of the prevailing Owner. In any foreclosure action in which judgment or foreclosure is entered, such costs, fees and expenses shall include those incurred in preparation of the Lien Notice, and all causes of the action therein joined arising out of the default resulting in such foreclosure, and the lien being foreclosed shall secure all of the same without the necessity of further demand. Any additional amounts owing under this Declaration which are unpaid and established in accordance with the provisions of this Article may be added as a claim in the foreclosure proceeding by an amendment of the complaint in foreclosure. The entity or Owner filing such Lien Notice shall have the right to bid on and purchase the Parcel or portion thereof or interest therein being foreclosed. The entity or Owner filing such Lien Notice shall, before commencement of the foreclosure action, notify any encumbrancer of the Parcel being foreclosed, if such encumbrancer has notified such the Association of the encumbrancer's name and address. Any encumbrancer holding a lien on the Parcel may, but shall not be required to, pay any unpaid amounts and, upon such payment, said encumbrancer shall have a lien on the Parcel for the amount paid of the same rank as the lien created by the Lien Notice.

Section 12.03 Remedies. This Declaration may be enforced against any Person violating or attempting or threatening to violate any provision of the same, which enforcement may occur by self-help, or by legal proceeding to restrain or enjoin any such violation or to compel specific performance of any obligation hereunder, or to recover damages for any breach or default hereof, or any other remedy available at law or in equity, or by any combination of any of the foregoing, all remedies in connection herewith, being cumulative and non-exclusive, except as otherwise provided by law. In addition, in the event of a violation of any of the provisions of this



Declaration, the Board of Directors may invoke one or more of the following remedies: (i) impose a fine upon the Defaulting Owner in a per diem amount determined by the Board for each day that the violation continues after written notice thereof is provided to the Defaulting Owner and the same has not been cured (commencing with the 10th day following such notice); (ii) cause the violation to be cured and charge the cost thereof to the Owner; and (iii) obtain injunctive relieve against the continuance of such violation. Without in any manner limiting the Association's right to take any action deemed necessary in an emergency, any enforcement by self-help shall be limited to violations of this Declaration which are minor in nature, and shall not be available for any major violations. Examples of minor violations would include matters such as a failure to store trash and garbage in adequate containers; any obnoxious odor; dust, dirt, or ash in excessive quantities; or dumpings of garbage or refuse. Examples of major violations would include matters such as breach of the provisions relating to Hazardous Substances, the construction, expansion or modification of any Improvement without the Design Review Committee's approval or the use of a Lot or Parcel for purposes in violation of the provisions hereof. The obligations set forth herein are to be performed continuously and periodically throughout the term hereof and, therefore, no action brought or judgment obtained for any breach or default hereunder, or any attempted or threatened breach or default shall limit or preclude any other action against the same, or any other default by reason of any other or subsequent breach or default or attempted or threatened breach or default, whether or not arising pursuant to the obligation being the subject of the former action. Suit to recover a money judgment for such unpaid amounts may be maintainable without foreclosing or waiving the lien securing same. In the event, however, that any monetary judgment is entered against the Defaulting Owner on such debt, said judgment may only be satisfied by proceeding against the Defaulting Owner's Lot, and said Owner shall have no liability for any deficiency or portion of said judgment not satisfied by the proceeds from said Lot. Notwithstanding the foregoing, such limitation of liability shall not apply to any debt or obligation arising as a result of the breach of any of the provisions hereof relating to Hazardous Substances. Any liability hereunder of a Owner prior to transfer of all or any portion of said Owner's Lot shall remain a liability of the affected property, notwithstanding such transfer.

Section 12.04 Attorneys' Fees and Expenses. In the event the Association, Declarant, or any Owner shall institute any action or proceeding against a Defaulting Owner relating to the provisions of this Declaration hereunder, or to collect any amounts owing hereunder, then in and in such event the unsuccessful litigant, in such action or proceeding, agrees to reimburse the successful litigant therein for the reasonable expenses of legal fees, expert witness fees and disbursements incurred therein by the successful litigant, including such costs and expenses incurred in connection with any such action or proceeding, and any appeals therefrom. In addition, if the Association or Declarant incurs any reasonable attorneys fees or expenses by reason of a breach or alleged violation of this Declaration, or for enforcement of any provision hereof, or to interpret or advise regarding such breach or enforcement, or otherwise regarding the enforcement of this Declaration, the Association or Declarant, as the case may be, shall be entitled to reimbursement from the Defaulting Owner or Occupant alleged to have violated or breached this Declaration, if such fees and expense result in such Defaulting Owner or Occupant ceasing any such breach or violation.

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ARTICLE XIII

Dispute Resolution

Section 13.01 Disputes between Owners. Matters of dispute or disagreement between Owners or Occupants with respect to interpretation or application of the provisions of the Governing Documents shall be determined by the Board of Directors. This determination (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners and Occupants.

Section 13.02 Dispute Resolution.

A. Right to Correct. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

B. Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any contractor, its officers, directors, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this Section 13.02 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 13.02(C) (collectively, the "Claims") to the mandatory procedures set forth in Section 13.02(D).

C. Claims. Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (i) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents; (ii) relating to the design or construction of improvements; or (iii) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of this Section 13.02.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be considered Claims and shall not be subject to the provisions of this Section 13.02:

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(a) any suit by the Association against any Bound Party to enforce the provisions of Article VII;

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article VIII or Article IX;

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

(d) any suit in which any indispensable party is not a Bound Party.

D. Mandatory Procedures.

1. Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually, as a "Party", or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(a) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(b) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) The proposed remedy; and

(d) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

2. Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as

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may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have two days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

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

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 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.

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

3. Binding Arbitration.

(a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute

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shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

ARTICLE XIV

Marketing Program

Section 14.01 Participation in Marketing Program. Each Owner acknowledges that the Property is an integral part of the Project and that the successful marketing of the Project, depends, in part, on the development of a master merchandising program for all Owners who may be engaged in any marketing or sales activities with respect to their Lots or any Improvements constructed thereon. Accordingly, each Owner agrees that with respect to any marketing activities undertaken by it, it shall at all times comply with all requirements of the master marketing program prepared by Declarant, if any, or by the Board as the same may be modified from time to time, and as it is promulgated in the Design Guidelines section relating thereto ("Marketing Guidelines"). It is the intention that the Marketing Guidelines, if adopted, would regulate the form, content, type, locations and timing of all forms of advertising for the Property and the Improvements, so that the same will accurately reflect the character and nature of the Project.

Section 14.02 Signs and Advertisements. No advertising signage may be placed on the Property without the prior written approval of the Design Review Committee. Such signage shall be in accordance with the Marketing Guidelines, or such other criteria as the Design Review Committee may adopt, from time to time. If any Owner desires to advertise its building or other Improvements constructed on the Property for lease or sale, it shall submit to the Design Review Committee for its review and approval all advertisements, public relations and collateral

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marketing material which such Owner intends to use in marketing its property. No such material which has been disapproved in writing may be used. Such review will be conducted in general accordance with the provisions outlined above for the Design Review Committee.

Section 14.03 Use of Centerra Logo. Declarant hereby licenses each Owner to make revocable, non-exclusive use of the approved "Centerra" logo and the mark associated therewith in Owner's advertising, public relations and collateral material provided such use is in conformance with the Marketing Guidelines and has been approved by the Design Review Committee as provided herein. In addition, Owner agrees that it shall only use such logos, trademarks, and service marks as supplied by Declarant and shall not market the Project under any name or identify other than Centerra, or such other name as may hereafter be adopted and approved by Declarant.

Section 14.04 No Liability. By approving any marketing, advertising, or merchandising material submitted to it, neither Declarant, nor the Design Review Committee shall have any liability for the accuracy of any representations or statements made therein. Each Owner specifically agrees that it shall indemnify the Design Review Committee and Declarant and hold them harmless from any and all liability arising from any such marketing, advertising or merchandising material.

ARTICLE XV

Duration, Amendment and Termination

Section 15.01 Duration. The terms, covenants, provisions and conditions of this Declaration shall be effective for a period of 75 years from the date of recordation hereof, and thereafter shall be automatically extended for successive 10 year periods unless terminated by the vote of a Majority of the Owners. Notwithstanding the foregoing, as to any provision hereof which is subject to the rule against perpetuities or any rule prohibiting unreasonable restraints on alienation, such provision shall continue in effect for a period of 21 years following the death of the survivor of the members of the Senate and House of Representatives of the State of Colorado in office on the date this Declaration is recorded and the now living children of said persons, or until this Declaration is terminated whichever first occurs. The termination of this Declaration shall be effective by the recording of a certificate executed by the President of the Association stating that it has been terminated by a vote of the Owners as provided herein.

Section 15.02 Amendment and Termination. This Declaration and any provision, covenant, condition, or restriction contained within it may be terminated, extended, modified, or amended as to the whole of the Property or any portion of it, with the consent of a Majority of Owners and with the consent of the Declarant so long as Declarant owns a Lot. No termination, extension, modification, or amendment will be effective until a written instrument setting forth its terms has been executed, acknowledged, and recorded in the Office of the Clerk and Recorder of the County in which the Property is located, and a copy of any such termination, extension, modification or amendment shall be delivered to all Owners concurrently with the recording.

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Any such termination, extension, modification or amendment must comply with the following limitations:

(a) No such amendment, modification, extension, or termination (collectively or individually referred to herein for ease of reference as an "Amendment") will affect the rights of any first mortgagee under a mortgage or the beneficiary under any deed of trust constituting a lien on any Lot at the time unless the mortgagee or beneficiary consent to such. Subject to the following sentence, neither will any Amendment be effective against such mortgagee or beneficiary subsequent to its securing title to its encumbered parcel by foreclosure, trustee's deed, or deed in lieu of foreclosure, unless the mortgagee or beneficiary have consented in writing. Notwithstanding the foregoing, such consent of the mortgagee shall not be required and the Amendment shall be fully enforceable against such mortgagee or any subsequent Owner of the Lot acquiring title by or through such mortgagee if: (x) (i) the Owner of the Lot consents if such consent is otherwise required pursuant to the terms of this Article; and (ii) the mortgagee's collateral is not impaired; or (y) the purpose of such amendment is to de-annex a Parcel that would otherwise have the effect of subjecting this Declaration to CIOA, as hereafter provided. If the Owner's consent is not required, then only (x)(ii) herein will be applicable.

(b) No lessee, licensee, or other person having a possessory interest, other than an Owner, will be required to join in the execution of or consent to any act of the parties taken subject to this section.

(c) So long as there is a Class B Member, the Declarant may amend or modify the provisions of this Declaration without the consent of any other Owners or their mortgagees, if such amendment or modification does not: (a) have a material and adverse affect on the use of and operation of the businesses conducted on the other Lots; or (b) impair the collateral of any such mortgagee or an Owner. If any Owner of any portion of the other Parcels has not commenced an action in a court of competent jurisdiction challenging an amendment or modification within forty-five (45) days after receiving notice of the same, the amendment or modification shall be presumed not to have a material or adverse effect.

(d) Notwithstanding anything to the contrary set forth in this Declaration, if at any time during the Term, the use of any portion of the Property is changed by the Owner thereof in such a way that Colorado law would require compliance of this Declaration with the CIOA (or any subsequent or substitute statute that has a similar application), the Association shall have the right, without the consent of the Owners or their mortgagees, by an amendment to this Declaration, to de-annex such portion of the Property from the terms and provisions of this Declaration, it being the express intent of Declarant and this Declaration, that CIOA shall in no event be applicable to this Declaration or the Project.

(e) Prior to the Cessation of Control Date, no amendment or modification shall be effective without the consent of Declarant.

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ARTICLE XVI

Annexation and Withdrawal

Section 16.01 Annexation. Declarant hereby reserves unto itself, for a period commencing with the date of recordation hereof and continuing for twenty-five (25) years thereafter, the right to annex into the Property governed by this Declaration and entitled to the rights, duties and benefits and subject to all of the burdens, duties, restrictions and obligations arising out of this Declaration all or any part of the Future Parcels, by one or more annexations, just as if such annexed portion or portions of the Future Parcels was originally included within the Property currently subject hereto. Such annexation, or multiple annexations, shall each be evidenced by a Supplemental Declaration adding such Parcel, recorded in the real property records of the Clerk and Recorder of the County where the Property is located. Upon each such annexation, wherever herein the word "Property" is used, it shall mean and refer to the real property described in this Declaration and the legal description of all of such portion of the remainder of the Future Parcel as is annexed. Upon such annexation, wherever the word "Parcel" or "Lot" is used herein, it shall also mean and refer to the Lots and/or Parcels included within the Annexed Property which may, at the option of Declarant, be treated as one or more separate additional Parcels or Lots. Thereafter, the Pro Rata Shares of the Parties shall be readjusted in the manner described herein. In addition to the foregoing right, Declarant reserves the right during said twenty five (25) year period, to amend the description of the Future Parcels described herein, to add or delete property therefrom. At such time as Declarant acquires an interest in any one or more parcels which it deems appropriate for possible annexation hereto or identifies the same, Declarant may record a notice of amended description which notice shall specifically reference this Declaration and the provisions of this Article and shall set forth the legal description(s) of any Future Parcel(s) which from and after the date of recordation of such notice shall be deemed to be part of the real property which may be annexed hereto in the manner provided herein.

Section 16.02 Withdrawal of Property. The Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Property pursuant to Section 16.01 for the purpose of removing certain portions of the Property; provided such withdrawal does not reduce the total number of square feet then subject to the Declaration by more than ten percent (10%). Such amendment shall not require the consent of any Person other than the owner of the withdrawn property. If the property is Common Area, the Board shall consent to such withdrawal. Any withdrawal which would have the effect of reducing the total square feet by more than 10% shall require compliance with the approval of a Majority of the Owners, and the Declarant for so long as Declarant owns a Lot.

ARTICLE XVII

Miscellaneous

Section 17.01 Estoppel Certificate . The Association and each Owner hereby severally covenants that within 20 days following written requests from time to time of an Owner (or the Association), it will issue to such requesting Owner, the Association, or to any prospective mortgagee of such requesting Owner, an estoppel certificate stating whether the entity or Owner to whom the request had been directed has actual knowledge of any violation of the Governing Documents by the requesting Owner under this Declaration, and if there are known violations by such Owner, specifying the nature thereof. Nothing contained herein shall be construed to require the Association to inspect a Lot which is the subject of a request for an estoppel certificate hereunder for violations or other conditions which may violate the Governing Documents. If any Owner shall request and receive from the Association an estoppel certificate, then the requesting Owner shall reimburse the Association or other Owner, as the case may be, upon demand, for the reasonable costs and expenses, incurred in connection with each certificate requested by the Owner. Statements in the estoppel certificate shall constitute and give rise to a waiver and estoppel of any claim or defense by the entity or Owner furnishing it to the extent such claim or defense is based upon facts contrary to those asserted in the statement which were known to the furnishing entity or Owner, and to the extent the claim is asserted against the Person to whom the certificate is addressed, and such Person, in reasonable reliance upon the certificate, has become a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement. However, such statement shall, in no event, subject the entity or Owner furnishing it to any liability whatsoever (except by preclusion of a defense), notwithstanding the negligent or otherwise inadvertent failure of such entity or Owner to disclose correct and/or relevant information.

Section 17.02 Notices. All notices, demands, statements and requests required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served, in any event, upon actual receipt, or whether received or not, five days following depositing same in the United States mails, addressed to a Owner, first-class postage prepaid, and registered or certified mail, return receipt requested, at the address set forth below, or at such other address as may be designated in accordance herewith. At such time as a Owner may transfer its Lot or portion thereof to a new Owner, the transferee shall send notice to the Association of the name and address to which notice to that new Owner, when such is required herein, shall be sent. Notice to Declarant, Association, and Design Review Committee, shall be addressed as follows, until each Owner is notified of a change in writing:

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If to Declarant:

MCWHINNEY HOLDING COMPANY, LLLP
2725 Rocky Mountain Ave., #200
Loveland, Colorado 80538
Attention: Kim Perry

If to the Association:

CENTERRA COMMERCIAL OWNERS ASSOCIATION, INC.
2725 Rocky Mountain Ave., #200
Loveland, Colorado 80538
Attention: Association Manager

If to the Design Review Committee:

CENTERRA DESIGN REVIEW COMMITTEE
2725 Rocky Mountain Ave., #200
Loveland, Colorado 80538
Attention: Design Review Committee Secretary

Section 17.03 Condemnation. Any award, whether the same be obtained by agreement prior to or during the time of any court action, or by judgment, verdict, or order resulting from or entered after any such court action, which results from a taking or damaging by condemnation of the Property, or any portion thereof, or of any rights or interests in the Property or any portion thereof, will be paid to the Owner owning such land so taken. Any other Owner which might have an easement or other property interest in land so taken shall release or waive such property interest with respect to such award. If any portion of the total award is made for a taking of any portion of any Owner's Lot which at the time of such taking was a Lot Common Area, then the portion of such award for the Lot Common Area (which will include the reciprocal easement interests of other parties) will be used to the extent necessary to:

(a) Replace Lot Common Area improvements, other than Parking Areas, so taken;

(b) Replace the Parking Area, so taken, on such Owner's Lot, to the extent required to bring the Parking Area to the minimum parking ratios required by governmental regulation, including the construction of a parking structure if it is possible to construct such a structure on such Owner's Lot and if the portion of such award is sufficient to construct such a structure without any other contribution from the Owner of the Lot. No such construction will be commenced until the Design Review Committee has approved the plans therefore in the manner provided herein.

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(c) Any portion of such award not necessary for items (a) and (b) above shall be the sole and separate property of the Owner of such Lot.

Section 17.04 Mechanics' Lien. Wherever under the terms of this Declaration any Owner is permitted to perform any work upon the Lot of another Owner, it is expressly understood and agreed that such Owner will not permit any mechanics', materialmen's, or other similar liens to stand against the Lot on which such labor or material has been furnished in connection with any work performed by any such Owner. Should any liens be filed and recorded against any Lot or any action commenced affecting title as a result of such work, the Owner causing such work to be performed shall cause any such lien to be removed of record within 10 days after notice of the existence of such lien. The Owner may bond and contest the validity of any such lien, but on final determination of the validity and the amount of such lien, the Owner will immediately pay any judgment rendered, with all proper costs and charges, and will have the lien released at such Owner's expense.

Section 17.05 Registration with the Association. No Person transferring title to a Lot shall be relieved of its obligations as an Owner hereunder until and unless:

- A. the transferring Owner has given written notice to the Association of the transfer, including the name(s) and mailing address(es) of the grantee(s), and has delivered copies of the current Declaration, Bylaws and Association rules to the grantee(s); and
- B. all monetary obligations to the Association have been satisfied.

Each and every Occupant and Owner shall have an affirmative duty and obligation to originally provide, and thereafter revise and update in writing to the Association, within fifteen (15) days after a material change has occurred, various items of information to the Association such as the full name, business address, mailing address and telephone numbers of each Owner and Occupant and such other information as may be reasonably requested from time to time by the Association. In the event any Owner and/or Occupant fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and/or Occupant shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing which costs and expenses may be assessed as a Specific Assessment against the Lot if unpaid.

Section 17.06 Binding Effect. This Declaration and all covenants, conditions, restrictions, and other provisions hereof, shall run with, and be appurtenant to the land affected, and all such terms shall inure to the benefit of and be binding upon the undersigned Owner and its respective successors and assigns who become owners of any portion of the Property.

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Section 17.07 Singular and Plural. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

Section 17.08 Counterparts. This Declaration may be executed in several counterparts, each of which shall be deemed an original.

Section 17.09 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners, Association and/or Declarant and their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Declaration is not intended, nor shall it be construed to create any third-Owner beneficiary rights to any person who is not a Owner hereto, unless expressly provided otherwise.

Section 17.10 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property, or of any tract or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties hereto that this Declaration shall be strictly limited to and for the purposes herein expressed, solely for the benefit of the Parties hereto.

Section 17.11 Severability. Invalidation of any of the provisions contained in this Declaration or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof, or the application thereof, to any other Person, and the same shall remain in full force and effect.

Section 17.12 Entire Declaration. This written Declaration and the exhibits hereto contain all the representations and the entire agreement between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Declaration and exhibits hereto.

Section 17.13 Captions. The captions preceding the text of each paragraph and subparagraph hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.

Section 17.14 No Merger. It is the intent of the Parties that the easements granted and declared by this Declaration shall be perpetual in duration. If any owner shall become the fee owner of any servient tenement burdened by any such easement, whether by operation or law or otherwise, the easement shall continue in full force and effect, despite any partial or complete merger of estates.

Section 17.15 Minimization of Damages. In all situations arising out of this Declaration, all Parties shall attempt to avoid and minimize the damages resulting from the conduct of any other Owner.

Section 17.16 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration. However, such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any such breach.

Section 17.17 Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado applicable to conducts made in and to be performed wholly within Colorado.

Section 17.18 Rules and Regulations. Each Owner may adopt reasonable rules and regulations and further covenants, conditions and/or restrictions and may grant to other Persons exclusive rights of use pertaining to the use of its Lot, provided the same do not violate this Declaration and any applicable Supplemental Declaration. As to the use and operation of the Common Area, Declarant may from time to time adopt reasonable rules and regulations pertaining to the use of the Common Area (including Lot Common Areas), including but not limited to rules regarding employee parking, provided such rules and regulations will generally apply equally to all Permittees and Occupants and shall not violate this Declaration.

Section 17.19 Waivers. No delay or omission by a Owner in exercising any right or power accruing upon any default, non-compliance, or failure of performance of any of the provisions of the Declaration shall constitute or give rise to a waiver of such event or any such subsequent or similar event. No express waiver of any default shall affect any other default or pertain to any other period of time, except as specified in such express waiver. The consent or approval by any Owner to or of any act or request by any other Owner shall not be deemed to waive or render unnecessary the consent or approval to any subsequent or similar acts or requests.

Section 17.20 Priority of First Mortgage Over Assessments. Each first mortgagee of a mortgage encumbering a Lot which obtains title to the Lot pursuant to the remedies contained in the mortgage, by judicial foreclosure, public trustee foreclosure or deed or assignment in lieu thereof, shall take title to the Lot free and clear of any claims for unpaid Lot Assessments, Common Assessments, Specific Assessments or Special Assessments which accrued prior to the time such holder acquires title to such Lot, other than allocation of any deficiency prorated among all Owners; provided however, the foregoing shall not release the foreclosed upon Owner of personal liability for all unpaid amounts so due and owing.

Section 17.21 Limitations on Liability. The Association, officers, Board of Directors, Design Review Committee, Declarant, and any member, agent or employee of the same shall not be liable to any Owner for any action or inaction if the action or inaction was under good faith without malice.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed effective as of the day and year first-above written.

"DECLARANT"

MCWHINNEY HOLDING COMPANY, LLLP,
a Colorado Limited Liability Limited Partnership

By: MHC GP, LLC a Colorado Limited Liability
Company, **General Partner**

By: McWhinney Real Estate Services, Inc.
a Colorado Corporation, **Manager**

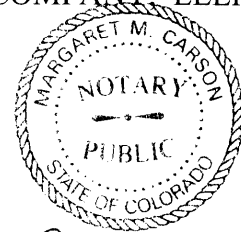
By: *Douglas L. Hill*
Douglas L. Hill, Chief Executive Officer

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 17 day of August, 2004, by Douglas L. Hill, Chief Executive Officer of MCWHINNEY REAL ESTATE SERVICES, INC., a Colorado Corporation, as **Manager** of MHC GP, LLC, a Colorado Limited Liability Company, **General Partner** in MCWHINNEY HOLDING COMPANY, LLLP, a Colorado Limited Liability Limited Partnership.

Witness my hand and official seal.

My Commission Expires: 03/23/2008



Margaret M. Carson
Notary Public
My Commission Expires 3/23/2008

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EXHIBIT A

List of Supplemental Declarations

(and all Amendments thereto)

Supplemental Declaration of Covenants, Conditions and Restrictions MCWHINNEY SECOND SUBDIVISION

Recorded August 29, 1995, in records of the Clerk and Recorder of Larimer County at Reception No. 95053427

AS AMENDED:

First Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions McWhinney Second Subdivision recorded in said records July 18, 1996, at **Reception No. 96052045**

Second Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions, McWhinney Second Subdivision recorded in said records June 7, 2000, at **Reception No. 200038093**

Supplemental Declaration of Covenants, Conditions and Restrictions for A PART OF MCWHINNEY FIFTEENTH SUBDIVISION

Recorded August 2, 2000, in records of the Clerk and Recorder of Larimer County at Reception No. 2000052388

Supplemental Declaration of Covenants, Conditions and Restrictions for GLOBAL TECHNOLOGY CENTER WEST

Recorded August 2, 2000, in records of the Clerk and Recorder of Larimer County at Reception No. 2000052389

Supplemental Declaration of Covenants, Conditions and Restrictions for LOT 1, BLOCK 1 MCWHINNEY NINTH SUBDIVISION AND LOTS 1 AND 2, BLOCK 1, MCWHINNEY TWELFTH SUBDIVISION

Recorded June 26, 2001, in records of the Clerk and Recorder of Larimer County at Reception No. 2001051362.

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Supplemental Declaration of Covenants, Conditions and Restrictions for OUTLOT H-RMV 1ST CITY OF LOVELAND.

Recorded October 20, 2000, in records of the Clerk and Recorder of Larimer County and Reception No. 2000072466.

Restated and Amended Master Declaration of Covenants, Conditions and Restrictions, McWhinney Holding Company, L.L.C. declarant.

Recorded December 28, 2001, records of the Clerk and Recorder of Larimer County and Reception No. 2001119890.

First Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for a part of Centerra.

Recorded January 16, 2003, records of the Clerk and Recorder of Larimer County and Reception No. 2003006359.

Second Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for a part of Centerra.

Recorded June 18, 2003, records of the Clerk and Recorder of Larimer County and Reception No. 20030074434.

Third Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for a part of Centerra.

Recorded June 18, 2003, records of the Clerk and Recorder of Larimer County and Reception No. 20030074435.

Fourth Supplemental Declaration to Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for a part of Centerra.

Recorded June 18, 2003, records of the Clerk and Recorder of Larimer County and Reception No. 20030074440.

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EXHIBIT B

Legal Descriptions of Property and Pro Rata Share Allocation

LEGAL DESCRIPTION						PRO RATA
LOT	BLOCK	SUBDIVISION		SQ FT	ACRES	RATIO
		MCWHINNEY				
1	1	14		43,639	1.002	0.47%
2	1	14		46,870	1.076	0.51%
2	1	3		83,530	1.918	0.91%
2	1	6	EXEMPT -City	0	0.000	0.00%
3	1	6	EXEMPT -City	0	0.000	0.00%
1	1	7		50,119	1.148	0.54%
2	1	7		44,779	1.028	0.49%
2	1	5		84,877	1.949	0.92%
3	1	5		86,860	1.994	0.94%
6	1	2		142,119	3.263	1.54%
1	2	2		94,242	2.163	1.02%
1	3	2		432,643	9.932	4.69%
1	1	9		123,399	2.833	1.34%
1	1	12		136,231	3.127	1.48%
2	1	12		156,897	3.602	1.70%
a portion of Tract E		11		435,599	10.000	4.72%
Tract A		11		496,994	11.409	5.38%
1	1	Rocky Mountain Village 11th	EXEMPT -City	0	0.000	0.00%
Tract A		Rocky Mountain Village 7th		565,829	12.990	6.13%
1	1	Rocky Mountain Village 9th		65,350	1.500	0.71%
N/E shore of equalizer lake				591,588	13.581	6.41%
Outlot C	1	RANGE VIEW 1ST	EXEMPT-HPF	0	0.000	0.00%
1	1	RANGE VIEW 1ST		654,127	15.017	7.09%
1	1	RANGE VIEW 2nd		134,849	3.096	1.46%
2	1	RANGE VIEW 2nd		108,090	2.481	1.17%
Tract D		MCWHINNEY 11th		591,675	13.583	6.41%
Parcel A-3		Twin Peaks Additioin		3,350,581	76.920	36%
Por of tract E		McWhinney 11th		709,854	16.296	8%
				<u>8,520,888</u>	<u>211.908</u>	<u>100.00%</u>

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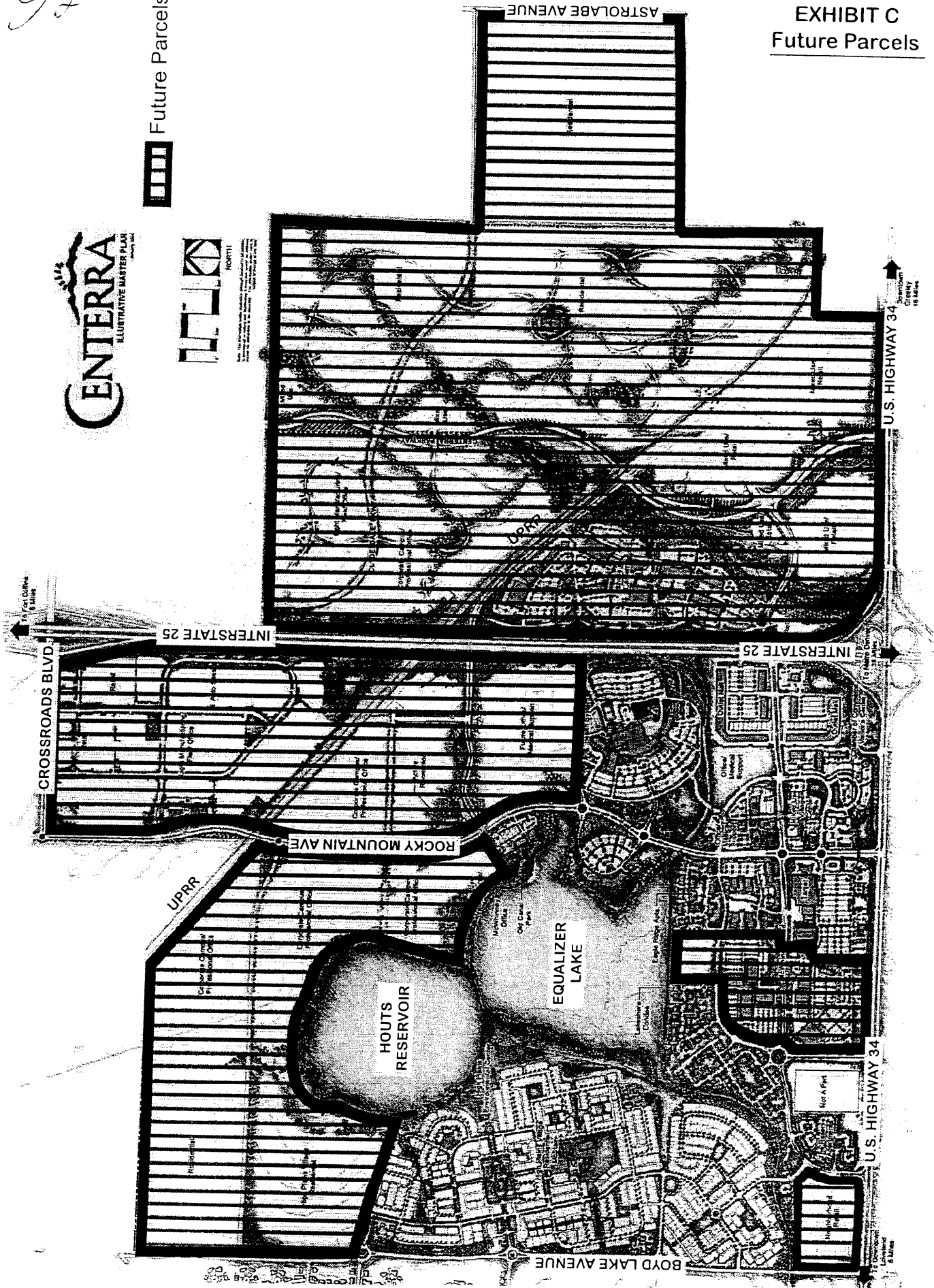
EXHIBIT C
Future Parcels



Future Parcels



NOT TO SCALE



U.S. HIGHWAY 34
To Downtown
To Greely
To 14th St

U.S. HIGHWAY 34

CROSSROADS BLVD

INTERSTATE 25

INTERSTATE 25

ROCKY MOUNTAIN AVE

BOYD LAKE AVENUE

ASTROLABE AVENUE

HOOTS
RESERVOIR

EQUALIZER
LAKE

UPRR

UPRR

1000000
500000
100000
50000
10000
5000
1000
500
100
50
10
5
1
0

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EXHIBIT D

Limited Project Common Areas,
Benefited Lots and Allocated Percentage of Costs

Anticipated for access, utility and drainage areas for future subdivisions

EF

EXHIBIT E

Limited Lot Common Areas,
Benefited Lots and Allocated Percentage of Costs

1) <u>Access and Utility Easement Agreement</u>		<u>Acreage</u>	<u>Prorata Ratio</u>
Lot 1 Block 1	McWhinney 14 th	1.002	25%
Lot 2 Block 1	McWhinney 3 rd	1.918	48%
Lot 2 Block 1	McWhinney 14 th	<u>1.076</u>	<u>27%</u>
		3.996	100%

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EXHIBIT F

**Description of Lots which are Excluded from the
Obligation to Pay Common Assessments**

LEGAL DESCRIPTION LOT	BLOCK	SUBDIVISION	ENTITY
2	1	McWhinney 6 th	City of Loveland
3	1	McWhinney 6 th	City of Loveland
1	1	Rocky Mountain Village 11 th	City of Loveland

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EXHIBIT G
BYLAWS
OF
CENTERRA COMMERCIAL OWNER'S ASSOCIATION, INC.

1. **GENERAL.**

1.1 **Purpose of Bylaws.** These Bylaws are adopted for the regulation and management of the affairs of Centerra Commercial Owner's Association, Inc. (the "Master Association"). The Master Association has been organized as a Colorado corporation under the Colorado Nonprofit Corporation Act to act as the Master Association under the Second Restated and Amended Master Declaration of Covenants, Conditions and Restrictions for Centerra ("Declaration"). The Declaration has been or will be executed by McWhinney Holding Company, LLLP, a Colorado limited liability limited partnership ("Declarant"). The Declaration relates to real property in Larimer County, Colorado, which is or will become subject to the Declaration ("Common Interest Community").

1.2 **Terms Defined in the Declaration.** Unless otherwise defined herein, terms used in these Bylaws which are defined in the Declaration shall have the same meaning and definition as in the Declaration.

1.3 **Controlling Laws and Instruments.** These Bylaws are controlled by and shall always be consistent with the provisions of the Colorado Nonprofit Corporation Act, the Declaration and the Articles of Incorporation of the Master Association filed with the Secretary of State of Colorado, as any of the foregoing may be amended from time to time.

2. **OFFICES.**

2.1 **Principal Office.** The Board of Directors, in its discretion, may fix and may change, from time to time, the location of the principal office of the Master Association provided that, until such time as suitable quarters can reasonably be obtained within the Property, the principal office of the corporation shall be located at 2725 Rocky Mountain Ave., Suite 200, Loveland, Colorado 80538.

2.2 **Registered Office and Agent.** The Colorado Nonprofit Corporation Act requires that the Master Association have and continuously maintain in the State of Colorado a registered office and a registered agent whose business office is identical with such registered office. The registered office need not be the same as the principal office of the Master Association. The initial registered office and the initial registered agent are specified in the Articles of Incorporation of the Master Association but may be changed by the Master Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law in the Office of the Secretary of State of Colorado.

3. **MEMBERS.**

3.1 **Members.** A "Member," as defined in the Declaration, is a Person, or if more than one, all Persons collectively, who constitute the Owner of a Lot.

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3.2 Memberships Appurtenant to Lots. Each Membership shall be appurtenant to the fee simple title to a Lot. The Person or Persons who constitute the Owner of fee simple title to a Lot shall automatically be the holder of the Membership appurtenant to that Lot and the Membership shall automatically pass with fee simple title to the Lot.

3.3 Voting Rights of Members. The Master Association shall have two (2) classes of voting membership unless and until the Class B Member no longer exists, thereafter there shall be only one (1) class of Members:

Class A: Class A Members shall be all of the Owners (other than Declarant prior to the termination of the Class B membership). Class A Members shall be entitled to one (1) vote for each 100 square feet of real property within such Owner's Lot. When more than one (1) person shall hold an ownership interest or interests in any Lot all such persons shall be Members, and the vote(s) provided for herein as a result of such joint ownership shall be exercised among themselves as they shall determine.

Class B: Declarant shall be the sole Class B Member and shall be entitled to five (5) votes for each 100 square feet of real property within any Lot(s) owned by Declarant. The Class B membership shall cease and terminate upon the Cessation of Control Date. Upon termination of the Class B membership, Declarant shall be a Class A Member for any Lot which it then owns.

For the purposes of determining the number of votes to be allocated to a Lot hereunder, the determination of the number of square feet of real property located within a Lot shall be based upon the total square footage contained within such Lot as depicted on the plat for such Lot. The Master Association shall maintain records which indicate the number of votes allocated to each Lot as provided hereunder. Unless expressly provided herein, all voting requirements stated herein shall be based upon the total number of Class A and Class B votes entitled to vote. For example, any provision herein requiring the vote of a majority of the Members shall mean the majority of the votes based upon the total number of Class A and Class B votes.

3.4 Voting by Joint Owners. If there is more than one person who constitutes the Owner of a Lot, each such Person shall be entitled to attend any meeting of Members, but the voting power attributable to the Lot shall not be increased. When more than one (1) person shall hold an ownership interest or interests in any Lot all such persons shall be Members, and the vote(s) provided for herein as a result of such joint ownership shall be exercised among themselves as they shall determine. If such co-Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall forfeit the vote or votes on the matter in question. If only one co-Owner attempts to exercise the votes for any Lot, such co-Owner shall be presumed to have the authority from all co-Owners of such Lot to do so. If more than one Person purports to exercise the voting rights with respect to any Lot on any matter in question, none of such votes shall be counted in tabulating the vote on such matter and such votes shall be deemed void.

3.5 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the result of any vote of Members, the Board of Directors of the Master Association shall act as arbitrators and the decision of a disinterested majority of the

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Board of Directors shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with the Colorado Uniform Arbitration Act of 1975, as the same may be amended; provided, however, that the Board of Directors shall have no authority or jurisdiction to determine matters relating to the entitlement of Declarant to vote or relating to the manner of exercise by Declarant of its voting rights. No dispute as to the entitlement of any Member to vote shall postpone or delay any vote for which a meeting of Members has been duly called pursuant to the provisions of these Bylaws and a quorum is present.

3.6 Suspension of Voting Rights. The Board of Directors may suspend, after Notice and Hearing, as hereinafter defined, the voting rights of a Member during any period of breach by such Member of any provision of the Governing Documents, and for a period of up to 10 days following the cure of any such breach by such Member; provided, however, such Notice and Hearing shall not be required where a Member has failed to pay any assessment levied in accordance with the provisions of the Declaration.

3.7 Determination of Member Voting Percentage. Notwithstanding anything to the contrary contained herein, only Members whose voting rights are in good standing (e.g., voting rights which have not been suspended as provided herein) shall be entitled to vote on Master Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a requisite percentage of Members of the Master Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has been met.

3.8 Transfer of Membership on Master Association Books. Transfers of Memberships shall be made on the books of the Master Association only upon presentation of evidence, satisfactory to the Master Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Master Association may treat the previous owner of the Membership as the owner of the Membership entitled to all rights in connection therewith, including the rights to vote and to receive notice.

3.9 Assignment of Voting Rights to Tenants and Mortgagees. A Member may assign his right to vote to a tenant occupying his Lot or to a Mortgagee of his Lot for the term of the lease or the Mortgage and any sale, transfer or conveyance of the Lot shall, unless otherwise provided in the document of sale, transfer or conveyance, be subject to any such assignment of voting rights to any tenant or Mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the Secretary of the Master Association.

4. MEETINGS OF MEMBERS.

4.1 Place of Members' Meetings. Meetings of Members shall be held at the principal office of the Master Association or at such other place, within or convenient to the Property, as may be fixed by the Board of Directors and specified in the notice of the meeting.

4.2 Annual Meetings of Members. Annual meetings of the Members shall be held in February of each year beginning in 1996 on such day and at such time of day as is fixed by the Board of Directors and specified in the notice or meeting; provided that the Board of Directors shall be entitled to change the month of the annual meeting at any time in its sole and absolute discretion. The annual meetings shall be held to transact such business as may properly come

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before the meeting.

4.3 Special Meetings of Members. Special meetings of the Members may be called by the Board of Directors of the Master Association, the president of the Master Association, the Declarant, or by Class A Members holding not less than 20% of the total votes of all Class A Members entitled to vote, including Class A votes of Declarant, or by Members holding not less than 20% of the total votes of all Members entitled to vote, including Class B votes of Declarant. No business shall be transacted at a special meeting of Members except as indicated in the notice thereof.

4.4 Record Date. For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose, the Board of Directors of the Master Association may fix, in advance, a date as the record date for any such determination of Members. The record date shall be not more than 50 days prior to the meeting of Members or the event requiring a determination of Members.

4.5 Notice of Members' Meetings. Written notice stating the place, day and hour for any meeting shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally, by mail, by facsimile, or by electronic transmission to the extent permitted under Colorado law, by or at the direction of the President or the Secretary of the Master Association or the officers or persons calling the meeting, to each Member entitled to vote at such meeting. The notice of an annual meeting shall identify any matter which it is known may come before the meeting including, but not limited to, the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Directors. The notice of a special meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Master Association, with postage thereon prepaid. Such notice may be posted in a conspicuous place in the Property, such as on a notice board outside the principal office of the Master Association, and such notice shall be deemed to be delivered to any Member upon such posting if such Member has not furnished an address for mailing of notice to the Master Association.

4.6 Proxies. A Member entitled to vote may vote in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Chairman of the meeting prior to the time the proxy is exercised. Any proxy may be revocable by attendance of a Member in person at a meeting or by revocation in writing filed with the Chairman of the meeting prior to the time the proxy is exercised. A proxy shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the Membership on the books of the Master Association. No proxy shall be valid: for more than 11 months after the date of its execution unless a different period is expressly provided in the proxy; and (b) unless the proxy contains the signature of a Member entitled to vote such interest. Any form of proxy furnished or solicited by the Master Association and any form of written ballot furnished by the Master Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of related matters which is known at the time the form of proxy or written ballot is prepared, may come before the meeting and shall provide,

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subject to reasonably specified conditions, that if a Member specifies a choice with respect to any such matter, the vote shall be cast in accordance therewith. Approval by written ballot pursuant to this Section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall:

- (a) Indicate the number of responses needed to meet the quorum requirements;
- (b) State the percentage of approvals necessary to approve each matter other than election of directors;
- (c) State the time by which a ballot must be received by the nonprofit corporation in order to be counted; and
- (d) Be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

4.7 Quorum at Members' Meetings. Except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the presence, in person or by proxy, of Members entitled to cast at least ten percent (10%) of the votes of all Members entitled to vote (including Class A and Class B votes) and, so long as the Class B membership exists, the presence of a duly appointed representative of the Class B Member, shall constitute a quorum at any meeting of such Members. Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum. If the required quorum is not present in person or by proxy at any such meeting of Members, another meeting may be called, subject to the notice requirements hereinabove specified, and the presence, in person or by proxy, of Members entitled to cast at least five percent (5%) of the votes of all Members (i.e. Class A Members and Class B Members), and, so long as the Class B membership exists, the presence of a duly appointed representative of the Class B Member, shall, except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, constitute a quorum at such meeting.

4.8 Adjournments of Members' Meetings. Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum shall be present in person or by proxy, without notice other than announcement at the meeting, for a total period or periods of not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

4.9 Vote Required at Members' Meetings. At any meeting, if a quorum is present, a

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majority of the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation or these Bylaws. As provided in Section 3.3 hereof, all voting requirements stated herein shall be based upon the total number of Class A and Class B votes entitled to vote on the matter being voted upon.

4.10. Order of Business. The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waive of notice; (c) reading of minutes of preceding meeting; and (d) the conducting of the business for which the meeting was called.

4.11 Chairman of Meetings. At any meeting of the Members, the Board of Directors shall select a Chairman and Secretary of the meeting.

4.12 Expenses of Meetings. The Master Association shall bear the expenses of all annual meetings of Members and of special meetings of Members.

4.13 Waiver of Notice. A waiver of notice of any meeting of Members, signed by a Member, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Member. Attendance of a Member at a meeting, either in person or by proxy, shall constitute waiver of notice of such meeting except when the Member attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

4.14 Action of Members Without a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

5. BOARD OF DIRECTORS.

5.1 General Powers and Duties of Board. The Board of Directors shall have the duty to manage and supervise the affairs of the Master Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board of Directors shall have the power to exercise or cause to be exercised for the Master Association, all of the powers, rights and authority of the Master Association, not reserved to Members, and provided in the Declaration, the Articles of Incorporation, these Bylaws, and/or the Colorado Nonprofit Corporation Act, as the same may be amended from time to time.

5.2 Special Powers and Duties of Board. Without limiting the foregoing statement or general powers and duties of the Board of Directors or the powers and duties of the Board of Directors as set forth in the Declaration, the Board of Directors of the Master Association shall be vested with and responsible for the following specific powers and duties:

(a) **Assessments.** The duty to fix and levy from time to time as it deems necessary Common Assessments, Specific Assessments and any other assessments upon the Members of the Master Association as provided in the Declaration; to determine and fix the due date for the payment of such assessments and the date upon which the same shall become

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delinquent; and to enforce the payment of such delinquent assessments as provided in the Declaration.

(b) Taxes. The duty to pay all taxes and assessments levied upon the Common Areas and all taxes and assessments payable by the Master Association. The Board of Directors shall also have the power to contest any such taxes or assessments in accordance with the provisions contained in the Declaration.

(c) Insurance. The duty to contract and pay premiums for fire and casualty and blanket liability and other insurance in accordance with the provisions of the Declaration.

(d) Common Areas. The duty and power to contract for and pay bills for maintenance, legal service, accounting service, gardening, common utilities and other materials, supplies and services relating to the Common Areas and tracts adjacent to such Common Areas and perimeter fencing located along the boundaries of the Property, and to employ personnel necessary for the care and operation of such Common Areas and tracts adjacent to such Common Areas, and to contract and pay for necessary Improvements on such Common Areas.

(e) Agents and Employees. The power to select, appoint, and remove all officers, agents and employees of the Master Association and to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these Bylaws; and to fix their compensation and to require from them security for faithful service as deemed advisable by the Board.

(f) Borrowing. The power, with the approval of Members representing at least eighty percent (80%) of the voting power of the Master Association (exclusive of the voting power of those Members not entitled to cast votes), to borrow money and to incur indebtedness for the purposes of the Master Association, and to cause to be executed and delivered therefor, in the Master Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

(g) Enforcement. The power to enforce the provisions of the Declaration, the Rules and Regulations, these Bylaws or other agreements of the Master Association.

(h) Delegation of Powers. The power to delegate its powers according to law.

(i) Easements. The power to grant easements where necessary for utilities and other facilities over the Common Areas to serve the Property as set forth in and limited by the Declaration and any Supplemental Declaration and to grant and convey such other easements as the Board of Directors deems prudent, except as limited by any Supplemental Declaration, including, but not limited to, easements which benefit property located outside the Property.

(j) Rules and Regulations. The power to adopt such Rules and Regulations as the Board may deem necessary for the management of the Property. Such Rules and Regulations may concern, without limitation, use of the Common Areas, signs, parking restrictions, collection and disposal of refuse, minimum standards of property maintenance consistent with the Declaration and the standards adopted by the Design Review Committee, and any other matters within the jurisdiction of the Master Association as provided in the Declaration;

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provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles and these Bylaws.

(k) Annexations. The power to annex additional real property to the Property as more fully provided in the Declaration.

5.3 Qualifications of Directors. A Director may be any natural person and need not be an Owner of a Lot within the Property. A Director may be reelected and there shall be no limit on the number of terms a Director may serve.

5.4 Number of Directors. The initial number of Directors of the Master Association shall be three. The number of Directors may be increased or decreased upon the affirmative vote of a majority of the Directors provided that the number of Directors shall not be decreased to less than three (3) and no decrease in number shall have the effect of shortening the term of any incumbent Director, and provided further that, following the Cessation of Control Date, any increase in the number of Directors to more than (5) Directors must be approved by the affirmative vote of a majority of the Members.

5.5 Appointment, Election and Term of Office. During the Period of Declarant Control, the Declarant shall appoint all of the members to the Board of Directors who shall serve at the pleasure of the Declarant. Within ninety (90) days following the Cessation of Control Date, or whenever the Declarant earlier determines, the President shall call an annual meeting of the Association at which the Class A Members and the Class B Member, if any, shall elect three (3) Directors. Two (2) Directors elected at this annual meeting shall be elected for a term of three (3) years each and one (1) Director shall be elected for a term of two (2) years. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of three (3) years.

5.6 Removal of Directors. At any meeting of Members, the notice of which indicates such purpose, any Director elected by the Class A Members may be removed, with or without cause, by vote of two-thirds (2/3) of the Members of the Master Association entitled to vote and a successor may be then and there elected to fill the vacancy thus created.

5.7 Resignation of Directors. Any Director may resign at any time by giving written notice to the President, the Secretary or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

5.8 Vacancies in Directors. Any vacancy occurring in the Board of Directors during the Period of Declarant Control shall be filled by the Declarant. Any vacancy occurring in the Board of Directors following the Cessation of Declarant Control shall, unless filled in accordance with Sections 5.5 and 5.6 or by election at a special meeting of Members, be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors may be present. Any Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A Directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members.

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5.9 **Executive Committee.** The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint an Executive Committee, which shall consist of at least two Directors and which, unless otherwise provided in such resolution, shall have and exercise all the authority of the Board of Directors except authority with respect to the matters specified in the Colorado Nonprofit Corporation Act as matters which such committee may not have and exercise the authority of the Board of Directors.

5.10 **Other Committees of Master Association.** The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more other committees, which may consist of or include Members who are not Directors. Any such committee shall have and exercise such authority as shall be specified in the resolution creating such Committee except such authority as can only be exercised by the Board of Directors.

5.11 **General Provisions Applicable to Committees.** The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law. The provisions of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of Directors shall be applicable to meetings of committees of the Board of Directors.

5.12 **Right to Disapprove Actions.** So long as the Class B membership exists, the Class B Member shall have a right to disapprove any action, policy or program of the Master Association, the Board and any committee which, in the judgment of the Class B Member, would tend to impair rights of the Class B Member under the Declaration or these Bylaws, or interfere with development, construction of any portion of the Property, or diminish the level of services being provided by the Master Association.

No such action, policy or program shall be valid, effective or implemented until and unless the following subsections have been met and the Class B Member has not exercised its right to disapprove:

(a) The Class B Member shall have been given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Master Association, the Board or any committee thereof. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies with the notice requirements for membership meetings under these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Class B Member shall have been given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy or program. The Class B Member, its representatives or agents, shall make its concerns, thoughts and suggestions known to the Board and/or the members of the subject committee. Class B Member may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the absence of a meeting, within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any

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action or counteraction on behalf of any committee, or the Board or the Master Association. The Class B Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

6. MEETINGS OF DIRECTORS.

6.1 **Place of Directors' Meetings.** Meetings of the Board of Directors shall be held at the principal office of the Master Association or at such other place, within or convenient to the Property, as may be fixed by the Board of Directors and specified in the notice of the meeting.

6.2 **Annual Meeting of Directors.** Annual meetings of the Board of Directors shall be held on the same date as, or within 10 days following, the annual meeting of Members. The business to be conducted at the annual meeting of Directors shall consist of the appointment of officers of the Master Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board of Directors is elected or if the time and place of the annual meeting of the Board of Directors is announced at the annual meeting of such Members.

6.3 **Other Regular Meetings of Directors.** The Board of Directors shall hold regular meetings at least quarterly and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meetings need be given after establishment of the times and places thereof by such resolution.

6.4 **Special Meetings of Directors.** Special meetings of the Board of Directors may be called by the President or any two members of the Board of Directors.

6.5 **Notice of Directors' Meetings.** In the case of all meetings of Directors for which notice is required, notice stating the place, day and hour of the meeting shall be delivered not less than three nor more than 50 days before the date of the meeting, by mail, telegraph, telephone, facsimile, electronically or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Directors. If mailed, such notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail addressed to the Director at his home or business address as either appears on the records of the Master Association, with postage thereon prepaid. If telegraphed, such notice shall be deemed delivered at 6:00 p.m. on the next calendar day after it is deposited in a telegraph office addressed to the Director at either such address, with all charges thereon prepaid. If by telephone, such notice shall be deemed to be delivered when given by telephone to the Director or to any person answering the phone who sounds competent and mature at his home or business phone number as either appears on the records of the Master Association. If given personally, such notice shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Master Association. If given via facsimile, such notice shall be deemed to be delivered at 5:00 p.m. on the next business day after it is sent to the Director at either such address. If given electronically, such notice shall be deemed to be delivered at 5:00 p.m. on the next business day after it is sent to the Director's electronic mail address. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of

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Directors need be specified in the notice or waiver of such meeting.

6.6 **Proxies.** A Director shall not be entitled to vote by proxy at any meeting of Directors.

6.7 **Quorum of Directors.** A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business.

6.8 **Adjournment of Director's Meetings.** Directors present at any meeting of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which may have been transacted at the meeting as originally called.

6.9 **Vote Required at Directors' Meeting.** At any meeting of Directors, if a quorum is present, a majority of the votes present in person and entitled to be cast in a matter shall be necessary for the adoption of the matter, unless a greater proportion is require by law, the Declaration, the Articles of Incorporation or these Bylaws.

6.10 **Order of Business.** The order of business at all meetings of Directors shall be as follows: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meetings; (d) reports of officers; (e) reports of committees; (f) unfinished business; and (g) new business.

6.11 **Waiver of Notice.** A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting except when the Directors attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.13 **Action of Directors Without a Meeting.** Any action required to be taken or which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a sufficient number of directors as would be necessary to take that action at a meeting at which all of the directors were present and voted, and such consent shall have the same force and effect as a unanimous vote.

7. **OFFICERS.**

7.1 **Officers, Employees and Agents.** The officers of the Master Association shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, assistant officers, employees and agents as may be deemed necessary by the Board of Directors. Officers need not be Directors. No person shall simultaneously hold more than one office except the offices of Secretary and Treasurer.

7.2 **Appointment and Term of Office of Officers.** The officers shall be appointed by the Board of Directors at the annual meeting of the Board of Directors and shall hold office, subject to the pleasure of the Board of Directors until the annual meeting of the Board of Directors or until their successors are appointed, whichever is later, unless the officer resigns, or is earlier removed.

7.3 **Removal of Officers.** Any officer, employee or agent may be removed by the Board of Directors, with or without cause, whenever in the Board's judgment the best interests of the Master Association will be served thereby. The removal of an officer, employee or agent shall be without prejudice to the contract rights, if any, of the officer, employee or agent so removed. Election or appointment of an officer, employee or agent shall not of itself create contract rights.

7.4 **Resignation of Officers.** Any officer may resign at any time by giving written notice to the President, to the Secretary or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

7.5 **Vacancies in Officers.** Any vacancy occurring in any position as an officer may be filled by the Board of Directors. An officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

7.6 **President.** The President shall be the principal executive officer of the Master Association and, subject to the control of the Board of Directors, shall direct, supervise, coordinate and have general control over the affairs of the Master Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board of Directors and of Members of the Master Association.

7.7 **Vice President.** The Vice President may act in place of the President in case of his or her death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Directors or by the President.

7.8 **Secretary.** The Secretary shall be the custodian of the records and the seal of the Master Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as require by law and that the books, reports and other documents and records of the Master Association are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board of Directors and of committees of the Board; shall keep at the principal office of the Master Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him or her by the Board of Directors or by the President. The Board may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of his or her death, absence or inability to act.

7.9 **Treasurer.** The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Master Association; shall deposit all such funds in the name of the Master Association in such depositories as shall be designated by the Board of Directors; shall keep correct and complete financial records and books of account and records of financial

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transactions and condition of the Master Association and shall submit such reports thereof as the Board of Directors may, from time, to time, require; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Directors or by the President. The Board may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his or her death, absence or inability to act.

8. INDEMNIFICATION OF OFFICIALS AND AGENTS.

8.1 **Certain Definitions.** A "Corporate Official" shall mean any Director, officer, committee member or Tribunal Member, as hereinafter defined, and any former Director, officer, committee member or Tribunal Member of the Master Association. A "Corporate Employee" shall mean any employee and any former employee of the Master Association. "Expenses" shall mean all costs and expenses, including attorneys' fees, liabilities, obligations, judgments and any amounts paid in reasonable settlement of a Proceeding. "Proceeding" shall mean any claim, action, suit or proceeding, whether threatened, pending or completed, and shall include appeals.

8.2 **Right of Indemnification.** The Master Association shall indemnify any Corporate Official and any Corporate Employee against any and all Expenses actually and necessarily incurred by or imposed upon him to the fullest extent provided by law. The right of indemnification shall not extend to any matter as to which such indemnification would not be lawful under the laws of the State of Colorado.

8.3 **Authority to Insure.** The Master Association may purchase and maintain liability insurance on behalf of any Corporate Official or Corporate Employee against any liability asserted against him and incurred by him as a Corporate Official or Corporate Employee or arising out of his status as such, including liabilities for which a Corporate Official or Corporate Employee might not be entitled to indemnification hereunder.

8.4 **Right to Impose Conditions to Indemnification.** The Master Association shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as may appear appropriate to the Board of Directors in each specific case and circumstances, including, but not limited to, any one or more of the following: (a) that any counsel representing the party to be indemnified in connection with the defense or settlement of any proceeding shall be counsel mutually agreeable to the party and to the Master Association; (b) that the Master Association shall have the right, at its option, to assume and control the defense or settlement of any Proceeding made, initiated, or threatened against the party to be indemnified; and (c) that the Master Association shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified party's right of recovery, and that the party to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Master Association.

8.5 **Other Rights and Remedies.** The indemnification provided by this Article shall be in addition to any other rights which a party may have or hereafter acquire under any law, provision of the Articles of Incorporation, any other or further provision of these Bylaws, vote of the Members or Board of Directors, agreement, or otherwise.

8.6 **Applicability; Effect.** The indemnification provided in this Article shall be

applicable to acts or omissions that occurred prior to the adoption of this Article, shall continue as to any party entitled to indemnification under this Article who has ceased to be a Director, officer, or employee of the Master Association. The repeal or amendment of this Article or of any Section or provision hereof that would have the effect of limiting, qualifying, or restricting any of the powers or rights of indemnification provided or permitted in this Article shall not, solely by reason of such repeal or amendment, eliminate, restrict, or otherwise affect the right or power of the Master Association to indemnify any person, or affect any rights of indemnification of such person, with respect to any acts or omissions that occurred prior to such repeal or amendment. All rights to indemnification under this Article shall be deemed to be provided by a contract between the Master Association and each party covered hereby.

9. MISCELLANEOUS.

9.1 **Amendment of Bylaws.** The Board of Directors shall not have the power to alter, amend or repeal these Bylaws or to adopt new Bylaws. The Class B Member shall have the right to unilaterally amend these Bylaws for any purpose during the Period of Declarant Control if such amendment does not have a material and adverse effect on the use of and operation of the businesses conducted on the Lots. The Members, at a meeting called for that purpose, shall have the power to alter, amend or repeal the Bylaws and to adopt new Bylaws by a majority of votes present at the meeting and entitled to vote hereunder, if a quorum is present. The Bylaws may contain any provision for the regulation or management of the affairs of the Master Association not inconsistent with law, the Declaration or the Articles of Incorporation. Notwithstanding anything to the contrary contained herein and to the extent permitted by the Act, prior to the termination of the Class B Membership, these Bylaws shall not be amended without Declarant's prior written consent and approval.

9.2 **Compensation of Officers, Directors and Members.** Directors and/or Officer shall have the right to receive compensation from the Master Association for serving as such Director or Officer to the extent approved by the Board. Directors and Officers shall be entitled to be reimbursed for any expenses incurred by them in the performance of their duties hereunder as may be approved by resolution of disinterested members of the Board of Directors.

9.3 **Books and Records.** The Master Association shall keep correct and complete books and records of account and shall keep, at its principal office in Colorado, a record of the names and addresses of its Members, including Declarant, and copies of the Declaration, the Articles of Incorporation and these Bylaws which may be purchased by any Member at reasonable cost. All books and records of the Master Association, including the Articles of Incorporation, Bylaws as amended and minutes of meetings of Members and Directors may be inspected by any Member, or his agent or attorney, and any first mortgagee of a Member for any proper purpose. The right of inspection shall be subject to any reasonable rules adopted by the Board of Directors requiring advance notice of inspection, specifying hours and days of the week during which inspection will be permitted and establishing reasonable fees for any copies to be made or furnished.

9.4 **Annual Report.** The Board of Directors shall cause to be prepared and distributed to each Member and to each first mortgagee who has filed a written request therefor, not later than 90 days after the close of each fiscal year of the Master Association, an annual report of the

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Master Association containing (a) an income statement reflecting income and expenditures of the Master Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Master Association where the books and records of the Master Association, including a list of names and addresses of current Members, may be found. The financial statements of the Master Association shall be reviewed by an independent public accountant and a report based upon such review shall be included in the annual report.

9.5 Statement of Account. Upon written request of an Owner of a Lot or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Master Association shall furnish a written statement of account setting forth the amount of any unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot, the Owner of the Lot and the amount of the assessments for the current fiscal period of the Master Association payable with respect to the Lot. Such statements shall be issued within fourteen (14) business days after receipt of such request by the Master Association and, with respect to the party to whom it is issued, shall be conclusive against the Master Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have then been levied.

9.6 Biennial Corporate Reports. The Master Association shall file with the Secretary of State of Colorado, within the time prescribed by law, biennial Corporate reports on the forms prescribed and furnished by the Secretary of State and containing the information required by law and shall pay the fee for such filing as prescribed by law.

9.7 Fiscal Year. The fiscal year of the Master Association shall begin on January 1 and end the succeeding December 31 except that the first fiscal year shall begin on the date of incorporation. The fiscal year may be changed by the Board of Directors without amending these Bylaws.

9.8 Seal. The Board of Directors may adopt a seal which shall have inscribed thereon the name of the Master Association and the words "SEAL" and "COLORADO".

9.9 Shares of Stock and Dividends Prohibited. The Master Association shall not have or issue shares of stock and no dividend shall be paid and no part of the income or profit of the Master Association shall be distributed to its Members, directors or officers. Notwithstanding the foregoing, the Master Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

9.10 Loans to Directors and Officers Prohibited. No loan shall be made by the Master Association to any Director or officer, and any Director or officer who assents to or participates in the making of any such loan shall be liable to the Master Association for the amount of such loan until the repayment thereof.

9.11 Limited Liability. As provided in the Articles of Incorporation and Declaration, the Master Association, the Board of Directors, the Design Review Committee, Declarant and any Member, agent or employee of any of the same, shall not be liable to any Person for any

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action or for any failure to act if the action taken or failure to act was in good faith and without malice.

9.12 **Minutes and Presumptions Thereunder.** Minutes or any similar record of the meetings of Members, or of the Board of Directors, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

9.13 **Checks, Drafts and Documents.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Master Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

9.14. **Execution of Documents.** The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Master Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Master Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

9.15. Conflicts . If there are conflicts between the provisions of Colorado law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of Colorado law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

10. **NOTICE AND HEARING PROCEDURE.**

10.1 Master Association's Enforcement Rights. In the event of an alleged violation by a Member ("Respondent") of the Declaration, these Bylaws or the Rules and Regulations, the Board of Directors shall have the right, after Notice and Hearing as hereinafter provided, and upon an affirmative vote of a majority of all Directors on the Board, to take any one or more of the following actions: (a) levy a Specific Assessment as provided in the Declaration; (b) suspend or condition the right of said Member and anyone claiming through such Member to the use and enjoyment of any recreational or other facilities operated or maintained by the Master Association (to the extent any such Person is otherwise entitled to such use); (c) suspend said Member's voting privileges as a Member, as provided in the Declaration; provided, however, that the Board shall be entitled to suspend a Member's voting right without Notice and Hearing in the event such Member fails to pay any assessment levied pursuant to the terms and provisions of the Declaration; (d) levy a fine against such Member in an amount determined by the Board, which fine shall constitute a Specific Assessment and a lien against the Member's Lot; or (e) Record a Notice of Noncompliance against the Lot of the Respondent. Any such suspension shall be for a period of not more than 30 days for any non-conforming infraction, but in the case of a continuing infraction (such as nonpayment of any Assessment after the same becomes delinquent) such suspension may be imposed for so long as the violation continues. The failure of the Board or the Design Review Committee to enforce the Rules and Regulations, these Bylaws or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided in the Declaration or these

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Bylaws shall be cumulative and not be deemed exclusive. However, any individual Member must exhaust all available internal remedies of the Master Association prescribed by these Bylaws and the Rules and Regulations, before that Member may resort to a court of law for relief with respect to any alleged violation by another Member of the Declaration, these Bylaws or the Rules and Regulations, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges nonpayment of Common Assessments, Special Assessments or Specific Assessments.

10.2 **Notice**. Prior to imposition of any sanction under the Governing Documents, the Board or its delegate shall serve the alleged violator with written notice by certified mail, return receipt requested, describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, including the amount of any fine or charge (iii) a period of not less than thirty (30) days from the violator's receipt of such notice within which the alleged violator may present a written request to a hearing committee appointed by the Board (the "Tribunal"), if any, or the Board, for a hearing; (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the violation is cured within a reasonable period of time or unless a request for a hearing is made within the thirty-day period; (v) a statement that the violator has the right to appeal the decision of the Tribunal, if any, to the Board of Directors by written notice to the Board of Directors; and (vi) a statement that attorney's fees and costs will be charged to the violator if the violation continues after the date stated in the notice. The Board or the Tribunal, if any, may suspend any proposed sanction if the violation is cured within the 30-day period, or if correction of the violation is commenced within the 30-day period and diligently pursued to completion. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

10.3 **Repeat Offender**. Notwithstanding anything to the contrary herein contained, in the event the violator was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months of the current violation, no additional opportunity to cure must be given to the violator.

10.4 **Hearing**. If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held before the Tribunal, if any, or the Board in executive session. The hearing shall be held no later than the 30th day after the date the Board of Directors receives the violator's request for a hearing. The Board or its delegate shall notify the violator of the date, time and place of the hearing no later than the 5th day before the date of the hearing. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

10.5 **Appeal**. Following a hearing before the Tribunal, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President or Secretary of the Association within thirty (30) days after the hearing date.

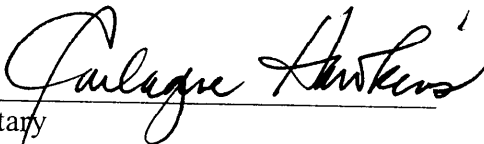
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CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Centerra Commercial Owner's Association, Inc., a Colorado non-profit corporation (the "Master Association"); and
2. The foregoing Bylaws, comprising 18 pages, constitute the Bylaws of the Master Association duly adopted by unanimous consent of the Members of the Association at a Special Meeting on July 30, 2004, and of the Board of Directors of the Master Association.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Master Association this 30th day of July, 2004.


Secretary

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