

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF
TODD CREEK RIVERSIDE

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TABLE OF CONTENTS

ARTICLE 1.	DEFINITIONS.....	2
Section 1.1.	Agencies.....	2
Section 1.2.	Allocated Interests.....	2
Section 1.3.	Annexable Area.	2
Section 1.4.	Association.....	2
Section 1.5.	Board of Directors or Board.	2
Section 1.6.	Builder.....	3
Section 1.7.	CCIOA.	3
Section 1.8.	Common Elements.	3
Section 1.9.	Community.	3
Section 1.10.	Declarant.	3
Section 1.11.	Declaration.	3
Section 1.12.	Design Review Committee or Committee.	4
Section 1.13.	Development Rights.	4
Section 1.14.	Governing Documents.	4
Section 1.15.	Improvements.	4
Section 1.16.	Lot.	4
Section 1.17.	Lots that May Be Included.....	5
Section 1.18.	Member.	5
Section 1.19.	Owner.	5
Section 1.20.	Period of Declarant Control.....	5
Section 1.21.	Permittees.....	5
Section 1.22.	Person.	5
Section 1.23.	Records.....	6
Section 1.24.	Security Interest.	6
Section 1.25.	Security Interest Holder.	6
Section 1.26.	Special Declarant Rights.....	6
Section 1.27.	Unbuilt Lots.	7
ARTICLE 2.	ASSOCIATION, AND MEMBER'S VOTING RIGHTS.....	7
Section 2.1.	Association.....	7
Section 2.2.	Board of Directors.....	7
Section 2.3.	Election of Part of the Board of Directors During the Period of Declarant Control.....	8
Section 2.4.	Authority of Declarant During Period of Declarant Control.	8
Section 2.5.	Termination of Period of Declarant Control.	8

Section 2.6.	Budget and Audit or Review.	8
Section 2.7.	Rules and Regulations and Policies and Procedures.....	9
Section 2.8.	Management Agreements and Other Contracts.	10
Section 2.9.	Authenticated Electronic Representation.	10
Section 2.10.	Compliance with Maintenance Manuals.....	10
Section 2.11.	Voting Rights.....	11
ARTICLE 3.	RESERVATIONS AND RIGHTS OF DECLARANT.....	11
Section 3.1.	General.....	11
Section 3.2.	Specific Additional Reservations and Rights.....	11
Section 3.3.	Declarant's and Builder's Use.....	11
Section 3.4.	Certain Amendments By the Declarant.....	12
Section 3.5.	Annexation.....	12
Section 3.6.	Withdrawal.....	14
Section 3.7.	Easement for Unannexed Property.....	14
Section 3.8.	Use of Common Elements by Declarant and Builders.	15
Section 3.9.	Termination and Expiration of Additional Reservations and Rights.	15
ARTICLE 4.	ASSESSMENTS	15
Section 4.1.	Personal Obligation for Assessments.....	15
Section 4.2.	Purpose of Assessments.....	16
Section 4.3.	Initial Annual Assessment.....	16
Section 4.4.	Rate of Annual and Special Assessments.....	16
Section 4.5.	Date of Commencement of Annual Assessments.....	17
Section 4.6.	Special Assessments.....	17
Section 4.7.	Notice and Quorum for Any Special Assessments.....	17
Section 4.8.	Assessments for Services that Benefit Less than All of the Lots.....	18
Section 4.9.	Association Funding By Declarant Not Required.....	18
Section 4.10.	Association Lien.....	18
Section 4.11.	Priority of Association Lien.....	19
Section 4.12.	Application of Payments; Effect of Non-Payment; Remedies of the Association.....	19
Section 4.13.	Surplus Funds.....	20
Section 4.14.	Working Capital Fund.....	20
Section 4.15.	Other Charges.....	20
Section 4.16.	Assessments for Misconduct.....	21
ARTICLE 5.	DESIGN REVIEW	21
Section 5.1.	Composition of Committee; Authority of Representative.....	21
Section 5.2.	Required Review and Approval; Reimbursement for Expenses.....	21
Section 5.3.	Procedures.....	22
Section 5.4.	Vote and Appeal.....	23
Section 5.5.	Prosecution of Work After Approval.....	23

Section 5.6.	Inspection of Work	23
Section 5.7.	Standards/Guidelines	23
Section 5.8.	Variance	24
Section 5.9.	Waivers; No Precedent	24
Section 5.10.	Liability	24
Section 5.11.	Declarant's and Builder's Exemption.....	25
ARTICLE 6.	INSURANCE.....	25
Section 6.1.	Insurance	25
Section 6.2.	General Provisions of Insurance Policies	25
Section 6.3.	Deductibles.....	26
Section 6.4.	Insurance to be Maintained by Owners	26
ARTICLE 7.	DAMAGE OR DESTRUCTION	26
Section 7.1.	Common Elements	26
Section 7.2.	Lots.....	27
ARTICLE 8.	MAINTENANCE	27
Section 8.1.	General	27
Section 8.2.	Changed or Added Improvements	28
Section 8.3.	Association's Right to Maintain, Repair and Replace.....	28
Section 8.4.	Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs	29
Section 8.5.	Acts or Omissions	29
ARTICLE 9.	EASEMENTS.....	30
Section 9.1.	Access Easement.....	30
Section 9.2.	Utilities Easement	30
Section 9.3.	Drainage Easement	32
Section 9.4.	Easements for Perimeter Fencing, Structural and Decorative Walls and Entry Monument(s)	32
ARTICLE 10.	RESTRICTIONS.....	33
Section 10.1.	Restrictions Imposed.....	33
Section 10.2.	Residential Use; Certain Permitted Business Activities	33
Section 10.3.	Animals	34
Section 10.4.	Temporary Structures; Unsightly Conditions.....	34
Section 10.5.	Miscellaneous Improvements	34
Section 10.6.	Vehicles.....	35
Section 10.7.	Nuisances	36
Section 10.8.	No Hazardous Activities; No Hazardous Materials or Chemicals	36
Section 10.9.	No Annoying Light, Sounds or Odors.....	36
Section 10.10.	Restrictions on Trash and Materials	36
Section 10.11.	Lots to Be Maintained.....	37

Section 10.12. Leases.....	37
Section 10.13. Restrictions on Mining and Drilling.....	37
Section 10.14. Oil and Gas Well Disclosure.....	38
ARTICLE 11. COMMON ELEMENTS.....	38
Section 11.1. Owners' Easement of Enjoyment.....	38
Section 11.2. Duty to Accept Property and Facilities Transferred by Declarant.....	39
ARTICLE 12. DISPUTE RESOLUTION.....	39
Section 12.1. Intent and Applicability of Article and Statutes of Limitation.....	39
Section 12.2. Definition of "Claim" Under this Article.....	40
Section 12.3. Exclusions from "Claim".....	40
Section 12.4. Liability for Certain Failures of Association.....	40
ARTICLE 13. GENERAL PROVISIONS.....	41
Section 13.1. Enforcement; Fines.....	41
Section 13.2. Severability.....	41
Section 13.3. Conflicts.....	42
Section 13.4. Minor Violations of Setback Restrictions.....	42
Section 13.5. Duration, Revocation, and Amendment.....	42
Section 13.6. Registration of Mailing Address.....	43
Section 13.7. HUD or VA Approval.....	43
Section 13.8. Limitation on Liability.....	43
Section 13.9. No Representations, Guaranties or Warranties.....	43
Section 13.10. Disclaimer Regarding Safety.....	44
Section 13.11. Development Within and Surrounding the Community.....	44
Section 13.12. Waiver.....	45
Section 13.13. Headings.....	45
Section 13.14. Gender.....	45
Section 13.15. Use of "Include," "Includes" and "Including".....	45
Section 13.16. Action.....	45
Section 13.17. Sole Discretion.....	45
Section 13.18. Run with Land; Binding Upon Successors.....	46

EXHIBIT A – Initial Lots

EXHIBIT B – Initial Common Elements

EXHIBIT C – Certain Title Exceptions

EXHIBIT D – Part of Annexable Area

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TODD CREEK RIVERSIDE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TODD CREEK RIVERSIDE ("**Declaration**"), is made and entered into the day and year hereinafter set forth, by BARTLEY/SHOOK LAND INVESTMENTS, INC. a Colorado corporation ("**Declarant**," as hereinafter more fully defined).

RECITALS

A Declarant is the owner of the real property situated in the County of Adams, State of Colorado, which is described on **Exhibit A** and **Exhibit B**, each of which is attached hereto and incorporated herein by this reference (collectively, the "**Community**," as hereinafter more fully defined).

B. Declarant desires to create a residential common interest planned community pursuant to the Colorado Common Interest Ownership Act, Sections 38-33.3-101 et seq., as amended ("**CCIOA**," as hereinafter more fully defined).

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

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

AFFIRMATION

NOW, THEREFORE, the Declarant hereby declares that one or more plats that include the property described on the attached **Exhibit A** and the attached **Exhibit B** have been recorded and that all of the property described on the attached **Exhibit A** and the attached **Exhibit B**, as supplemented and amended (including by all annexations to this Declaration), shall be held, sold, and conveyed subject to CCIOA, and subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

ARTICLE 1. DEFINITIONS

Section 1.1. *Agencies.*

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

Section 1.2. *Allocated Interests.*

"**Allocated Interests**" means a calculation that applies equally to all Lots (including Unbuilt Lots) that are subject to this Declaration. That is, the "**Allocated Interest**" for each such Lot (including Unbuilt Lots) shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots (including Unbuilt Lots) then within the Community. The Allocated Interest for each Lot (including Unbuilt Lots) changes with each annexation to this Declaration of one or more Lots.

Section 1.3. *Annexable Area.*

"**Annexable Area**" means the property described on **Exhibit D** attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as a Declarant may elect in its sole discretion in an amount not to exceed the maximum permitted pursuant to CCIOA. Unless and until the Annexable Area or any portion thereof is annexed to this Declaration, neither the Annexable Area nor any portion thereof shall be subject to this Declaration or any provision hereof, except the right of annexation that is provided for in Section 3.5 of this Declaration.

Section 1.4. *Association.*

"**Association**" means Todd Creek Riverside Homeowners Association, Inc., its successors and assigns, a community association as provided in CCIOA.

Section 1.5. *Board of Directors or Board.*

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

Section 1.6. *Builder*

"**Builder**" means any Person who: (a) acquires one or more platted lot(s) in the Community or the Annexable Area, for the purpose of constructing a residential structure on each such platted lot for sale, and/or rental, to the public or (b) acquires one or more platted lot(s) in the Community or the Annexable Area for sale to any Person fitting the description in Section 1.6(i) and/or acts as a general contractor in constructing a residential structure on a platted lot in the Community or the Annexable Area that is not owned by the general contractor; and who is designated as a Builder by a Declarant (including the right to withdraw such designation), with each such designation, or withdrawal of such designation, to be made by a written instrument signed by a Declarant and Recorded.

Section 1.7. *CCIOA.*

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

Section 1.8. *Common Elements.*

"**Common Elements**" means any property owned or leased by the Association, other than a Lot or publicly-dedicated property. The Common Elements at the time of recordation of this Declaration are described on the attached **Exhibit B**.

Section 1.9. *Community.*

"**Community**" means the real property and Improvements described on the attached **Exhibit A** and the attached **Exhibit B**, as supplemented and amended (including by all annexations to this Declaration). The Community is a planned community under CCIOA. The name of the Community is Todd Creek Riverside.

Section 1.10. *Declarant.*

"**Declarant**" means Bartley/Shook Land Investments, Inc. a Colorado corporation, as well as any other Person(s) acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of such Declarant's rights under this Declaration (which shall be the extent of such Declarant's rights to which such assignee succeeds).

Section 1.11. *Declaration.*

"**Declaration**" means this Declaration of Covenants, Conditions and Restrictions of Todd Creek Riverside, and any other Recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including maps and plats.

Section 1.12. *Design Review Committee or Committee.*

"**Design Review Committee**" or "**Committee**" means the committee appointed by the Declarant until automatic termination of the Special Declarant Rights and then appointed by the Board of Directors, all as provided in Section 5.1.1 of this Declaration. The Committee shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

Section 1.13. *Development Rights.*

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

- 1.13.1. add real estate to this Community;
- 1.13.2. create Lots and/or Common Elements;
- 1.13.3. subdivide and/or replat any Lot(s); and
- 1.13.4. withdraw real estate from this Community.

Section 1.14. *Governing Documents.*

"**Governing Documents**" means this Declaration, the Association Articles of Incorporation, the Association Bylaws, and any and all rules and regulations, policies and procedures, design guidelines, and other documents, of the Association and/or the Board of Directors, as well as all supplements, amendments and clarifications.

Section 1.15. *Improvements.*

"**Improvements**" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type and kind, and all landscaping features.

Section 1.16. *Lot.*

"**Lot**" means each platted lot that is specifically described on the attached **Exhibit A**, as well as each platted lot that may hereafter be annexed to this Declaration, with the exception of the Common Elements and any publicly dedicated property. Each Lot shall constitute a "**unit**" under CCIOA, and it shall not be necessary to use the term "**unit**" as a part of a legally sufficient description of a Lot.

Section 1.17. *Lots that May Be Included.*

"**Lots that May Be Included**" means One Hundred and Eighty (180) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including the Lots within the property described on the attached **Exhibit A** and those Lots which may be added if all of the Annexable Area were annexed to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in or constructed as part of the Community.

Section 1.18. *Member.*

"**Member**" means all Owners of a Lot collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under CCIOA, or their heirs, personal representatives, successors or assigns. The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership in the Association and there is only one (1) Member per Lot, even if the Lot is owned by multiple Owners.

Section 1.19. *Owner.*

"**Owner**" means each fee simple title holder of a Lot, including the Declarant, all Builders, and each other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one (1) Owner of a Lot.

Section 1.20. *Period of Declarant Control.*

"**Period of Declarant Control**" means a length of time that terminates on the first to occur of the following events: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant or a Builder; two (2) years after the last conveyance of a Lot by a Declarant or a Builder in the ordinary course of business; or two (2) years after any right to add new Lots to the Declaration was last exercised.

Section 1.21. *Permittees.*

"**Permittees**" shall mean and refer to any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors of an Owner.

Section 1.22. *Person.*

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

Section 1.23. *Records.*

"**Records**" means the official real property records of the County of Adams, Colorado; "**Recording**," "**to Record**" or "**to be Recorded**," means to file for recording in the Records; and "**of Record**" and "**Recorded**," means having been recorded in the Records.

Section 1.24. *Security Interest.*

"**Security Interest**" means an interest in real estate or personal property in the Community, or any portion thereof, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. With respect to notice of cancellation or substantial modification of certain insurance policies, as provided in Section 6.2 of this Declaration (General Provisions of Insurance Policies), "**Security Interest**" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is Recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of the county in which the property is located show the Administrator as having the record title to the Lot.

Section 1.25. *Security Interest Holder.*

"**Security Interest Holder**" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, with respect to notice of cancellation or substantial modification of certain insurance policies, as provided in Section 6.2 of this Declaration (General Provisions of Insurance Policies), the Administrator of Veteran's Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is Recorded or not and the land records in the office of the Clerk and Recorder of the county in which the property is located show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

Section 1.26. *Special Declarant Rights.*

"**Special Declarant Rights**" means the following rights, which rights are hereby reserved for the benefit of the Declarant, which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to designate an individual or entity as a Builder, to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community or sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or

within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any Period of Declarant Control.

Section 1.27. *Unbuilt Lots.*

"**Unbuilt Lots**" means those Lots that do not contain a residence on which a Certificate of Occupancy, or its equivalent, has been issued by the applicable governmental authority. "**Unbuilt Lots**" includes those Lots on which the residence on such Lot has been destroyed (for example, by fire). However, the "**Unbuilt Lots**" that are referenced in the preceding sentence shall become "**Lots**" (rather than "**Unbuilt Lots**") when such Lot (again) contains a residence on which a Certificate of Occupancy, or its equivalent, has been issued by the applicable governmental authority.

ARTICLE 2. ASSOCIATION, AND MEMBER'S VOTING RIGHTS

Section 2.1. *Association.*

The Association has been formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights created by law, as well as those set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Association.

Section 2.2. *Board of Directors.*

2.2.1. The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Bylaws. Subject to Sections 2.3 and 2.4 hereof, the Board of Directors shall be elected by the Members. Action by or on behalf of the Association may be taken by the Board of Directors without a vote of the Members, except as otherwise specifically provided at law, in this Declaration, the Articles of Incorporation or Bylaws of the Association.

2.2.2. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents or employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

Section 2.3. *Election of Part of the Board of Directors During the Period of Declarant Control.*

Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board of Directors. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board of Directors.

Section 2.4. *Authority of Declarant During Period of Declarant Control.*

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

Section 2.5. *Termination of Period of Declarant Control.*

After termination of the Period of Declarant Control, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall then elect the officers.

Section 2.6. *Budget and Audit or Review.*

2.6.1. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed

budget is vetoed, the periodic budget last proposed by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

2.6.2. At the sole discretion of the Board of Directors or as required pursuant to subsections 2.6.2.1 or 2.6.2.2 below, the Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified Person selected by the Board of Directors. Such Person need not be a certified public accountant except in the case of an audit. A Person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

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

- (i) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and
- (ii) An audit is requested by the Owners of at least one-third (1/3) of the Lots represented by the Association.

2.6.2.2. A review shall be required only when requested by the Owners of at least one-third (1/3) of the Lots represented by the Association.

2.6.2.3. Copies of an audit or review under this subsection 2.6.2 shall be made available upon request to any Owner beginning not later than thirty (30) days after its completion.

2.6.3. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 2.6 of this Declaration, Section 2.6 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

Section 2.7. *Rules and Regulations and Policies and Procedures.*

Rules and regulations and policies and procedures concerning and governing the Lots, Common Elements, and/or this Community, may be adopted, amended, repealed and/or enforced by the Board of Directors, and the Board of Directors may establish and enforce penalties for the

infraction thereof, including the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures. Such rules and regulations and policies and procedures include all documents of the Association, regardless of the names (or lack thereof). The rules and regulations and policies and procedures may include: procedural requirements; interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications; and covenants, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, including vehicles and animals. The Board of Directors has the authority to adopt, amend, promulgate, repeal and/or vary one or more rules and regulations or policies and procedures that are different for different types or prices of Lots, construction or homes. Any rules and regulations or policies and procedures that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration and all provisions hereof.

Section 2.8. *Management Agreements and Other Contracts.*

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant, shall have a maximum term of three (3) years, and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the Period of Declarant Control shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and if HUD or VA requires such approval).

Section 2.9. *Authenticated Electronic Representation.*

Notwithstanding anything to the contrary contained in any of the Governing Documents, to the extent not prohibited by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

Section 2.10. *Compliance with Maintenance Manuals.*

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

Section 2.11. *Voting Rights.*

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

ARTICLE 3. RESERVATIONS AND RIGHTS OF DECLARANT

Section 3.1. *General.*

The Declarant and, where expressly so stated, Builders, reserve and are granted the reservations and rights that are set forth in this Article (collectively, the “**Additional Reservations and Rights**”). The Additional Reservations and Rights are in addition to, and are not in substitution of, the rights and reservations that are set forth elsewhere in this Declaration. Further, the Additional Reservations and Rights take precedence over, and supersede, all other terms and provisions of this Declaration.

Section 3.2. *Specific Additional Reservations and Rights.*

The Declarant hereby reserves the following specific Additional Reservations and Rights, and grants to Builders those which are provided for in subsection 3.2.4 below:

3.2.1. The Special Declarant Rights.

3.2.2. The Development Rights.

3.2.3. The power and authority to appoint the Design Review Committee, and all of the powers and authority given to the “**Appointor**” in Section 5.1.1 of this Declaration.

3.2.4. Certain easements that are more fully provided for in Article 9 of this Declaration.

3.2.5. The right to merge the Association with one or more other common interest community associations, without the approval of any Member, any Builder, any Security Interest Holder, or any other Person.

Section 3.3. *Declarant's and Builder's Use.*

Declarant and the Builders, and their respective employees, agents, and contractors, hereby reserve, and are granted, a right and easement to perform, in the Community, development, construction, reconstruction, repair and warranty work. Without limiting the generality of the

foregoing, it shall be expressly permissible and proper for the Declarant and Builders, and their respective employees, agents, and contractors, to perform such activities, and to access and maintain upon portions of the Community such facilities, as any of them determines, specifically including maintaining signs, sales offices, management offices, construction offices, trailers, and model units, in such numbers, of such sizes, and at such locations as the Declarant or any Builder (with the prior, written consent of the Declarant) determines. Any real estate used as a sales office, management office, model unit, or for the location of a trailer used as a construction or sales office, shall be a Lot or Common Elements, as such property is designated in the document(s) annexing such property to this Declaration or in any other Recorded document(s). Nothing contained in this Declaration shall limit the rights of the Declarant, or require the Declarant, to obtain any approvals:

3.3.1. to excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Improvements;

3.3.2. to use any Improvements on any property as sales offices, management offices, model units and/or construction offices in connection with the development, construction or sale of any property; and/or

3.3.3. to obtain the approval of the Design Review Committee, the Board of Directors, or the Association, for any such activity.

Section 3.4. *Certain Amendments By the Declarant*

3.4.1. This Declaration, the Articles of Incorporation and/or Bylaws of the Association may be amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors.

3.4.2. This Declaration, the Articles of Incorporation and/or Bylaws of the Association may be amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets.

Section 3.5. *Annexation.*

3.5.1. The Declarant may annex to this Declaration the Annexable Area or any portion(s) thereof, without the consent of any Owner, any Builder, any Security Interest Holder, or any other Person; however, such annexation is subject to a determination by HUD or VA (if the Declarant has obtained or is seeking HUD or VA approval of the property being annexed, and if HUD or VA

require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each such annexation shall be effected, if at all, by Recording one or more Annexations of Additional Land, which document:

3.5.1.1. shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

3.5.1.2. shall identify the owner(s) of the Lots thereby created, if any;

3.5.1.3. shall assign an identifying number to each new Lot, if any;

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

3.5.1.5. shall, if the annexed property includes one (1) or more Lots, reallocate the Allocated Interests among the Lots; and

3.5.1.6. may include such other provisions as Declarant determines. Other provisions that may be included in an Annexation of Additional Land include covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in the preceding sentence may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

3.5.2. In addition to the rights contained in subsection 3.5.1 of this Declaration, Declarant, and each Builder, may annex to this Declaration the Annexable Area or any portion(s) thereof, by Recording one or more deeds by which any such property is conveyed by Declarant or a Builder. Each of such deeds shall be deemed to include the following provisions, whether or not such provisions are contained in each such deed: The Lot(s) and/or outlot(s) described in such deed shall be annexed to this Declaration; and the designation of such Lot(s) and/or outlot(s) shall be the identifying number and/or letter assigned to each such Lot(s) and/or outlot(s); and the Common Elements, if any, included in such deed shall be the outlot(s), if any, listed on each such deed; and the Allocated Interest appurtenant to any Lot so annexed shall be that fraction determined in accordance with Section 1.2 of this Declaration (Allocated Interests). Each annexation which is accomplished by Recording of one or more deeds in accordance with this subsection shall be deemed to be effective upon the date of Recording of each such deed. Notwithstanding the

foregoing, a deed which does not convey the Annexable Area, or any portion thereof, from Declarant or a Builder shall not be an "**annexing deed**" as provided in this subsection, nor shall a deed which otherwise complies with this subsection if the same states on its face that it is not an "**annexing deed**" and the same is initialed by the grantor of such deed.

3.5.3. Immediately upon the effective date of an annexation (which shall constitute the date of Recording of the annexing document unless otherwise stated therein), the property which is the subject of such annexing document shall, except as otherwise specifically stated therein, automatically be annexed and subjected to all provisions of this Declaration. The foregoing shall include, as to Lots, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members. Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

Section 3.6. *Withdrawal.*

Each Lot, and each outlot of Common Elements, that are owned by the Declarant, are subject to a right of withdrawal by the Declarant. However, the Declarant's right to withdraw each such Lot, and each such outlot of Common Elements, shall expire and terminate, as to each such Lot, and as to each such outlot of Common Elements, upon initial conveyance of such Lot, and upon initial conveyance of such outlot of Common Elements, by the Declarant to any Person other than the Declarant, or as provided in Section 3.9 of this Declaration, whichever occurs earlier.

Section 3.7. *Easement for Unannexed Property.*

The Declarant hereby reserves, and grants to each Builder, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement and right of way on, over, across and under the Common Elements, for access, ingress and egress and for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein, collectively the "**Annexable Area Easement**"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for access and for utilities services to those portions of the Annexable Area which have not been included, from time to time, in the Community pursuant to Section 3.5 of this Declaration (Annexation). Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after Recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

Section 3.8. *Use of Common Elements by Declarant and Builders.*

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

Section 3.9. *Termination and Expiration of Additional Reservations and Rights.*

Unless otherwise stated in the Section that provides for an Additional Reservation and Right, the Additional Reservations and Rights, and each of them, shall terminate and expire automatically either twenty-five (25) years after the date of Recording of this Declaration or at such time as neither the Declarant, nor any Builder, owns any portion of the property described on the attached **Exhibits A, B and D**, whichever occurs earlier. Further, all of the Additional Reservations and Rights may be exercised by Declarant or a Builder (as to Additional Reservations and Rights granted to Builders), with respect to any portion of the Community and Annexable Area now or hereafter owned by it. Declarant, and each Builder (as to Additional Reservations and Rights granted to Builders), may exercise any or all of its Additional Reservations and Rights in all or any portion of the Community at any time, and no assurances are made as to the boundaries or order of exercise of any such Additional Reservations and Rights.

ARTICLE 4. ASSESSMENTS

Section 4.1. *Personal Obligation for Assessments.*

Each Owner, including the Declarant and each Builder, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments, special assessments, and charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full, when due, without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot. Each assessment shall be the personal obligation of the Person(s) who was the Owner of such Lot at the time when such amount became due. The personal obligation for delinquent amounts (including assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2. *Purpose of Assessments.*

The assessments levied by the Association may be used for maintenance, repair and replacement of the Common Elements, as provided in this Declaration, to promote the recreation, health and welfare of the residents of the Community, to pay Association expenditures, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue, pursuant to any of the Governing Documents, or by law.

Section 4.3. *Initial Annual Assessment.*

Until the effective date of an Association budget (proposed by the Board of Directors and not vetoed by the Owners), as provided herein, the amount of the initial annual assessment against each Lot (except for the Unbuilt Lots, as provided in the next Section) is estimated to be Forty-Eight Dollars (\$48.00) per Lot per month, exclusive of any amounts due to any master association(s), any other community association(s), any district(s) and/or any other Person(s) or entity(s). However, the actual rate of the Association assessment against each Lot (except for the Unbuilt Lots, as provided in the next Section), if different than the estimated amount set forth in the preceding sentence, shall be based on such an Association budget .

Section 4.4. *Rate of Annual and Special Assessments.*

4.4.1. Annual and special assessments shall be sufficient to meet the expected needs of the Association and, except as provided below or elsewhere in this Declaration, shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual and special Association assessments against the Unbuilt Lots shall be set at a lower rate than the rate of annual Association assessments and special Association assessments against other Lots, because the Unbuilt Lots receive and benefit from fewer services funded by such Association assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Unbuilt Lots shall pay annual and special Association assessments at the rate of twenty-five percent (25%) of any annual or special Association assessment charged to Lots other than the Unbuilt Lots.

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

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

Annual assessments shall commence at such time as the Board of Directors may determine. After any annual assessment has been made by the Association, the initial annual assessments shall be determined as provided in Section 4.3 of this Declaration (Initial Annual Assessment); thereafter, the amount of the Association annual assessments shall be based on a budget proposed by the Board of Directors and not vetoed by the Owners as provided in this Declaration. A budget shall be so proposed by the Board of Directors no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors may determine; provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

Section 4.6. *Special Assessments.*

In addition to the annual assessments authorized in this Article, the Board of Directors may levy special assessment(s) against each Lot, with the approval of sixty-seven percent (67%) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (pursuant to Section 4.7 of this Declaration), for the purpose of defraying in whole or in part the cost of any construction, repair or replacement of a capital improvement upon any property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Improvements, or for the funding of any expense or deficit of the Association, including shortfalls in operating funds due to unexpected, unbudgeted, or unusual or unforeseen expenses incurred by the Association. Any such special assessment shall be set against each Lot in accordance with the Allocated Interests as set forth in this Declaration, except that the special Association assessments against Unbuilt Lots shall be set in accordance with Section 4.4.1 hereof. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 4.7 hereof.

Section 4.7. *Notice and Quorum for Any Special Assessments.*

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 hereof shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.8. *Assessments for Services that Benefit Less than All of the Lots.*

The Association may, at any time from time to time, provide services to less than all of the Lot(s). If such services are not funded by the Association's annual or special assessments, then the Owner(s) of the applicable Lot(s) shall pay to the Association the anticipated and/or actual costs, fees and expenses for such services and/or reimburse the Association for the same.

Section 4.9. *Association Funding By Declarant Not Required.*

The Declarant may, but shall not be required to, cover any costs of the Association by payment of any amount(s), which shall constitute loans from the Declarant to the Association, with such loan(s) to be repaid by the Association to the Declarant, without interest, as may be determined by such Declarant; provided, however, that any such loans which have not been repaid to the Declarant shall constitute advances against amounts then or thereafter due from the Declarant. If the Declarant elects to pay any amounts as provided in this subsection, the Declarant shall not, under any circumstances, be obligated to continue loans, payment or funding, of any amount(s), in the future.

Section 4.10. *Association Lien.*

4.10.1. The Association has a statutory lien on a Lot for assessments levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s), and including interest, late charges, attorneys' fees, penalties, and all other amounts that are provided for in this Declaration. The terms, provisions and policies for fines, including the amount(s), due date(s) and levying thereof, may be established by the Board of Directors, by resolution or other action. The amount of the lien shall include all those items set forth in this Section, from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installments.

4.10.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien is required. However, the Board of Directors or managing agent of the Association may prepare, and have Recorded, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is Recorded, the costs and expenses thereof shall be added to the amounts due for the Lot against which it is Recorded. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

Section 4.11. *Priority of Association Lien.*

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

4.11.1.1. Liens and encumbrances that were Recorded before the Declaration was Recorded;

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

4.11.1.3. Liens for real estate taxes and other governmental assessments or charges against the Lot; and

4.11.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.11.1.2 to the extent, if any, provided in CCIOA.

4.11.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts due to the Association.

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

Section 4.12. *Application of Payments; Effect of Non-Payment; Remedies of the Association.*

4.12.1. Payments received by the Association from or for Owners, shall be applied as determined by the Board of Directors.

4.12.2. Any amount not paid within fifteen (10) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set by the Board of Directors, and the Board of Directors may assess thereon late charge(s) in such amount(s), and with such frequency, as may be determined by the Board of Directors. The Association may bring an action at law against the Owner(s) personally obligated to pay the same and/or foreclose the lien against such

Owner's Lot. If a judgment or decree is obtained, including in a foreclosure action, such judgment or decree shall include reasonable attorney's fees, together with the costs of the action, and may include interest and late charges, as above provided. No Owner may be exempt from liability for payment of any assessment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.13. *Surplus Funds.*

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

Section 4.14. *Working Capital Fund.*

The Association shall require the first Owner (other than a Declarant or a Builder) of any Lot who purchases that Lot from a Declarant or a Builder, to make a non-refundable contribution to the Association in an amount equal to three (3) times the then current monthly installment of the annual assessment against Lots (regardless of whether or not annual assessments have commenced as provided in Section 4.5 of this Declaration (Date of Commencement of Annual Assessment)). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Builder of each Lot, and shall be maintained for the use and benefit of the Association, including to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due.

Section 4.15. *Other Charges.*

The Association may levy and assess charges, costs and fees for matters such as including the following, in such amounts(s) as the Board of Directors may determine, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; return check charges; charges for telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments.

Section 4.16. *Assessments for Misconduct.*

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

ARTICLE 5. DESIGN REVIEW

Section 5.1. *Composition of Committee; Authority of Representative.*

5.1.1. The Design Review Committee shall consist of three (3) or more persons. Until termination and expiration of the Additional Reservations and Rights, as provided in Section 3.9 of this Declaration, the Declarant has the right to appoint the Design Review Committee; subsequent to such date, the Design Review Committee shall be appointed by the Board of Directors. The power to "**appoint**" the Design Review Committee, as provided herein, shall include the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set by the appointor. The appointments of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Committee expires. The members of the Design Review Committee shall not be "**officers**" of the Association as a result of their membership on the Committee and thus, as a result of such membership on the Committee, shall not have any of the rights or duties attributable to officers of the Association.

5.1.2. The Committee may appoint a representative to act on its behalf. If the Committee does so, then the actions of such representative shall be the actions of the Committee, subject to the right of appeal as provided below. However, if such a representative is appointed by the Committee, then the Committee shall have full power over such representative, including the power to withdraw from such representative any of such representative's authority to act on behalf of the Committee and the power to remove or replace such representative.

Section 5.2. *Required Review and Approval; Reimbursement for Expenses.*

5.2.1. Except as provided in Sections 5.8 (Variance) and 5.11 of this Declaration (Declarant's and Builder's Exemption), no Improvements shall

be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Design Review Committee), shall have been first submitted to and approved by the Design Review Committee.

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

5.2.3. In its review of such plans, specifications and other materials and information, the Design Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred, or reasonably anticipated to be incurred, by the Committee, in the review and/or approval process. Such amounts, if any, shall be levied in addition to the assessments against the Lot for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien and subject to all other rights of the Association for the collection of assessments.

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

Section 5.3. *Procedures.*

The Design Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of the application or request and all plans, specifications and other materials and information which the Committee may require in conjunction with such application or request. If the Design Review Committee fails to decide any application or request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then such application or request for approval shall be deemed to have been denied by the Committee.

Section 5.4. *Vote and Appeal.*

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

Section 5.5. *Prosecution of Work After Approval.*

After approval of any proposed Improvement by the Design Review Committee, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or such lesser time as may be provided on the application for approval, or failure to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval issued by the Design Review Committee and a violation of this Article; provided, however, that the Design Review Committee may grant extension(s) of time for completion of any Improvement(s).

Section 5.6. *Inspection of Work.*

The Design Review Committee or its duly authorized representative, shall have the right to inspect any Improvement prior to, during or after completion, in order to determine whether or not the Improvement is being completed, or was completed, in compliance with the approval granted by the Committee. However, unless the Committee expressly states, in a written document, that an Improvement is being, or has been, completed in conformance with the Committee's approval therefor, no such conformance shall be implied from any inspection of the Improvement.

Section 5.7. *Standards/Guidelines.*

Except as provided in the last sentence of this subsection, the Design Review Committee, with the advice of the Board of Directors, has the authority to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, and rules and regulations to interpret and implement the provisions of this Declaration. Such architectural standards, guidelines, and rules and regulations, include all documents of the Association, regardless of the names (or lack thereof). Such provisions may include guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Committee, may state procedural requirements, may specify acceptable Improvement(s) that may be installed without the prior approval of the Committee, may include

architectural standards, design guidelines, covenants, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, and may include any provisions that are different for different types, sizes or prices of Lots, construction or dwelling units. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Declaration. After termination and expiration of the Additional Reservations and Rights, as provided in Section 3.9 of this Declaration, any architectural standards, guidelines, rules and regulations or any modifications to existing architectural standards, guidelines, rules and regulations proposed by the Design Review Committee, shall not be effective until the same has been approved by the Board of Directors.

Section 5.8. *Variance.*

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 10 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 5.9. *Waivers; No Precedent.*

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

Section 5.10. *Liability.*

Neither the Design Review Committee, nor any members or agents thereof, nor the Declarant, nor any employees or agents thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, neither the Design Review Committee, nor the Declarant, shall be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an Improvement by the Design Review Committee, or the Declarant, shall not be deemed an approval of any such matters. No Member or other Person shall be a third party

beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by, the Design Review Committee or the Declarant.

Section 5.11. *Declarant's and Builder's Exemption.*

5.11.1. Notwithstanding anything to the contrary, the Declarant shall be exempt from all provisions of this Article, except the requirements to obtain approval of the governmental entities with jurisdiction thereover as provided in Section 5.2.4 of this Declaration.

5.11.2. Notwithstanding anything to the contrary, each Builder who obtains written approval from Declarant of plans and specifications for construction of all Improvements on a Lot and who constructs all such Improvements in accordance with such approved plans and specifications, shall be exempt from all provisions of this Article, except the requirement to obtain approval of the governmental entities with jurisdiction thereover as provided in Section 5.2.4 of this Declaration.

ARTICLE 6. INSURANCE

Section 6.1. *Insurance.*

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including CCIOA. Such insurance shall include property insurance and commercial general liability insurance. In addition, the Association may maintain insurance on such other property and/or against such other risks as the Board of Directors may elect, including fidelity coverage, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors or officers on behalf of the Association, workers' compensation insurance, and such other insurance on such other property and/or against such other risks as the Board of Directors may elect.

Section 6.2. *General Provisions of Insurance Policies.*

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered, by either the insured or the insurance company, until at least thirty (30) days prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest on the Lot insured by such

insurance policy. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall also contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 6.3. *Deductibles.*

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

Section 6.4. *Insurance to be Maintained by Owners.*

Any insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the structure(s) and other Improvements located on Lots, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.

ARTICLE 7. DAMAGE OR DESTRUCTION

Section 7.1. *Common Elements.*

7.1.1. Any portion of the Community for which casualty insurance is carried by the Association under this Declaration and which is damaged or destroyed, must be repaired or replaced promptly by the Association, except as may otherwise be provided in CCIOA.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be

used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests.

Section 7.2. *Lots.*

Except as provided in Section 7.1 of this Declaration (Common Elements), any damage to or destruction of any structure located on a Lot shall be promptly repaired and replaced by the Owner thereof in accordance with this Declaration. "**Repaired and replaced**," as used in this Section, means restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Lot does not commence repair or replacement activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Design Review Committee, then the Association may, after providing the notice required in Section 8.3 of this Declaration (Association's Right to Maintain, Repair and Replace) enter upon the Lot and complete such repair or replacement. Except as provided in Section 8.5 of this Declaration (Acts or Omissions), the cost of such repair or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work was performed, and shall be subject to the terms and provisions of Article 4 of this Declaration (Assessments).

ARTICLE 8. MAINTENANCE

Section 8.1. *General.*

8.1.1. Maintenance, repair and replacement of all Common Elements, Improvements thereon, and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association, unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement, or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. The foregoing includes, maintenance, repair, and replacement by the Association of any private drives and private streets in the Community that are Common Elements, and the sidewalk(s), if any, on Common Elements. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors determines, including publicly-dedicated property and Improvements located thereon, and including perimeter fencing. The costs, expenses, fees, and other amounts to be expended for the work that is provided for in this

subsection shall, subject to Section 8.5 of this Declaration (Acts or Omissions), be collected by the Association as assessments as provided in Article 4 of this Declaration (Assessments).

8.1.2. The extent, degree and timing of any maintenance, repair, replacement and snow removal, by the Association, shall be determined by the Board of Directors. In no event shall the Association be responsible for removal of, or damage caused to any Person or property by, ice or the build-up of ice.

8.1.3. Except as provided in subsections 8.1.1 and 8.1.2, above, the maintenance, repair and replacement of each Lot and the Improvements thereon, shall be performed by the Owner thereof at such Owner's sole cost and expense. However, the foregoing is subject to all provisions of this Declaration.

Section 8.2. *Changed or Added Improvements.*

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

Section 8.3. *Association's Right to Maintain, Repair and Replace.*

If any Owner(s) shall fail to perform his maintenance, repair and/or replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a fifteen (15) day period after written notice to said Owner(s) by the Board, enter upon said Lot subsequent to the expiration of said fifteen (15) day time period, to perform any or all of such maintenance, repair and/or replacement. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair and/or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 4 of this Declaration (Assessments), including interest, late charges and lien rights.

Section 8.4. Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.

8.4.1. Each Owner shall maintain the grading on his Lot (including grading around the foundation of the building constructed thereon) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. For purposes of this Section, "**established drainage**" is defined as the drainage that exists at the time final grading by the Declarant or the Builder of a dwelling unit on a Lot is completed, and such Lot is conveyed to an Owner who is not Declarant or a Builder.

8.4.2. Any change in established drainage by an Owner is discouraged. However, if an Owner desires to change the established drainage on his Lot, it shall be the sole responsibility of such Owner to provide adequate alternative drainage for both the Owner's Lot and all other property that may be affected by such change. To ensure that adequate alternative drainage is provided, the Owner desiring to change the established drainage on his Lot must submit to the Design Review Committee, for their review and approval, plans and specifications for alternative drainage which have been prepared and certified by a qualified, licensed professional. Any damages incurred by another Owner, the Association or any other Person, due to a change in the established drainage of a Lot, shall be the sole liability of the Person who changed such established drainage.

8.4.3. No approval of a proposed Improvement shall in any way imply that the Design Review Committee, or Declarant, has reviewed or approved any change in the established drainage of a Lot. Neither the Association, nor the Design Review Committee, nor the Declarant, shall be liable for any damages incurred by any Owner or other Person due to a change in the established drainage.

8.4.4. The Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens or other landscaping, which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery only by "**controlled hand-watering**," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls or slabs.

Section 8.5. Acts or Omissions.

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Elements, a Lot, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any of such Owner's Permittees, the cost of such repair, maintenance, replacement or expense to avoid such damage, shall be the personal obligation of such Owner to the extent that said Owner would be

liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration (Assessments), including interest, late charges and lien rights. A determination of the act or omission of any Owner, or any of such Owner's Permittees, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at a hearing after notice to the Owner.

ARTICLE 9. EASEMENTS

Section 9.1. *Access Easement.*

Each Owner hereby grants: to the Association, and to their agents, employees and contractors, a right and easement on, over, under, across and through such Owner's Lot for maintenance, repair and replacement as provided in this Declaration; to utility companies, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of, utility meters, lines and appurtenances; and to the Association, for and incidental to enforcement of any term or provision of any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Lot may be made at any time, provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any dwelling unit located on a Lot shall not be subject to the easements provided for in this Section.

Section 9.2. *Utilities Easement.*

9.2.1. The Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, replacement, repair and maintenance of utilities, including water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Declarant reserves and is hereby given the right and authority to grant such easement

upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall terminate upon expiration of the Additional Reservations and Rights, as provided in Section 3.9 of this Declaration, at which time said right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other Recorded easement(s).

9.2.2. The Declarant hereby reserves, and grants to the Association, Builders, and the Todd Creek Village Metropolitan District, as well as to natural gas, electric, water, telephone, cable and other utility companies, access and maintenance easements upon, across, over and under all of the Community, to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any cable television systems, security and other systems, roads, walkways, bicycle pathways, wetlands, drainage systems, street lights, signage, and all utilities, including water, sewer, storm sewer, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on the property which it owns or within easements designated for such purposes on the Bartley Subdivision Plat or otherwise granted. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a dwelling on a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the right of easement. Entry onto a Lot may be made only in accordance with the last two sentences of Section 9.1 of this Declaration. The reservation and grants contained in this subsection shall terminate upon expiration of the Additional Reservations and Rights, as provided in Section 3.9 of this Declaration.

9.2.3. Declarant hereby specifically grants to the Todd Creek Village Metropolitan District, the electric company, telephone company, natural gas provider, cable company, and all other utility providers, easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable. However, the exercise of these easement rights shall not extend to permitting entry into the dwelling unit on a Lot.

9.2.4. In addition to the foregoing reservations and grants of easements, Declarant hereby specifically reserves, and grants to Builders, across each Lot, a twenty (20) foot wide easement adjacent to all road rights-of-way, for supplying utilities, and such easement shall include all necessary rights of construction, installation, maintenance, repair, replacement and removal of

utilities. The reservation contained in this subsection shall terminate upon expiration of the Additional Reservations and Rights, as provided in Section 3.9 of this Declaration.

Section 9.3. *Drainage Easement.*

In addition to those easements shown on the plat(s) of the Community, Declarant hereby reserves, to itself, and grants to the Association and Builders, easements for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot; provided, however, that if a residence or garage is located on any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line of such Lot to the nearest exterior wall of the residence or garage on such Lot. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself, and grants to the Association and Builders, the right to enter in and upon each such rear and side yard drainage easements, at any time, to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant, Builders or the Association may determine; provided, however, that such right and authority in the Declarant and Builders shall cease at such time as the Additional Reservations and Rights terminate, as provided in Section 3.9 of this Declaration, at which time said right shall vest solely in the Association.

Section 9.4. *Easements for Perimeter Fencing, Structural and Decorative Walls and Entry Monument(s).*

The Declarant and/or the Association shall be entitled, but not required, to construct and maintain: perimeter fencing surrounding the Community, structural and decorative walls throughout the Community, and entry monuments, landscaping and other entry features at significant entry access streets or intersections within the Community. In connection therewith, Declarant hereby reserves to itself and to the Association permanent easements for any such perimeter fencing, structural or decorative walls, or entry monument, landscaping and other entry features now or hereafter constructed, on, over, across, under and through any of the Community and any and all Lots upon which such perimeter fencing and structural and decorative walls are placed or planned to be placed by Declarant, as well as easements for construction, access, maintenance, repair, replacement relocation or removal of any such perimeter fencing, structural or decorative walls, or entry monuments, landscaping or other entry features. Any and all such perimeter fencing, walls, and entry monuments, landscaping or other entry features shall be Common Elements.

ARTICLE 10. RESTRICTIONS

Section 10.1. *Restrictions Imposed.*

The Community is subject to the recorded easements, licenses, and other documents listed on **Exhibit C** attached hereto and incorporated herein by this reference, but only to the extent provided in such recorded easements, licenses, and other documents. In addition, the Declarant declares that all of the Community shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. Further, all laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

Section 10.2. *Residential Use; Certain Permitted Business Activities.*

Subject to Section 3.3 of this Declaration (Declarant's and Builder's Use), Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, the Owners or tenants of Lots may conduct business activities within their homes provided that all of the following conditions are satisfied:

10.2.1. The business, profession, trade or similar activity is clearly secondary to the residential use of the home;

10.2.2. The existence or operation of the activity is not detectable from outside of the home or other enclosed Improvements, including garages by sight, sound, smell or otherwise, or by the existence of one or more signs indicating that a business is being operated;

10.2.3. The activity does not result in an undue volume of traffic or parking within the Community, as determined by the Board of Directors;

10.2.4. The activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Owners;

10.2.5. The activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazard to others, as determined by the Board of Directors;

10.2.6. The activity conforms to all zoning requirements and is lawful in nature; and

10.2.7. The activity conforms to any rules and regulations and policies and procedures that may be imposed by the Board of Directors.

Section 10.3. *Animals.*

Subject to the following provisions of this Section, animals are permitted to be kept in the Community, to the extent and as permitted by law. However, the Association shall have, and is hereby given, the right and authority to: set a size or poundage limit on animals; regulate the type(s) of animals that are permitted to be kept; determine that one or more animals are being kept in such number or in such manner as to be unreasonable or create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable laws, ordinances, or other provisions; adopt, amend, repeal and/or enforce, rules and regulations, policies and procedures, design guidelines, or other document(s), regarding animals; and/or determine that an Owner is otherwise in violation of the provisions of any of the Governing Documents, and take any action(s) to correct the same. An Owner's right to keep animals shall be coupled with the responsibility to pay for any damage caused by such animals, as well as all costs incurred by the Association as a result of such animals, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article 4 of this Declaration (Assessments), including interest, late charges and lien rights.

Section 10.4. *Temporary Structures; Unsightly Conditions.*

Except as hereinafter provided, no structure of a temporary character, including a house trailer, tent, or shack, shall be placed or erected in the Community (except by the Association on the Common Elements); provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Declarant, Builder or Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects, shall be so located in the Community as to be visible from a street or from any other portion of the Community.

Section 10.5. *Miscellaneous Improvements.*

10.5.1. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "**For Sale**," "**Open House**," "**For Rent**," or security sign of not more than five (5) square feet in the aggregate; and such other signs, for such length(s) of time, which have the prior written approval of the Committee or are otherwise expressly permitted by law. Notwithstanding the foregoing, reasonable signs, advertising, or billboards, used by the Declarant and/or Builders, in connection with the sale or rental of the Lot(s) or otherwise in connection with development and construction, shall

be exempt from this subsection; provided that this exemption shall expire upon the expiration of the Additional Reservations and Rights, as provided in Section 3.9 of this Declaration.

10.5.2. No wood piles or storage areas, shall be allowed in the Community, unless completely screened from view, as approved in advance by the Committee.

10.5.3. Except as may otherwise be permitted by the Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant or Builders during development, sales or construction; and provided further, however, that the requirements of this subsection shall be subject to the Telecommunications Act of 1996 and applicable regulations, as amended from time to time.

10.5.4. No fences shall be permitted unless first approved in writing by the Committee, except such fences as may be constructed, installed or located by the Declarant or Builders in their development or construction of Improvements in the Community.

10.5.5. This Section 10.5 shall be construed and applied in accordance with all applicable laws.

Section 10.6. *Vehicles.*

Subject to the following provisions of this Section, vehicles are permitted to be parked or stored in the Community, to the extent and as permitted by law. However, the Association shall have, and is hereby given, the right and authority to: regulate and/or restrict the type(s), parking, storage, speed, and all other matters, regarding vehicles; determine that one or more vehicles are being parked or stored in such manner as to be unreasonable, create a nuisance, or cause an unreasonable eyesore; determine that an Owner is in violation of the laws of the applicable jurisdiction or other applicable laws, ordinances, or other provisions; adopt, amend, repeal and/or enforce, rules and regulations, policies and procedures, design guidelines, or other document(s), regarding vehicles; and/or determine that an Owner is otherwise in violation of the provisions of any of the Governing Documents, and take any action(s) to correct the same. The right to park or store vehicles includes the responsibility to pay for any damage caused by such vehicles, as well as all costs incurred by the Association as a result of such vehicles, and any such costs and damages, shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article 4 of this Declaration (Assessments), including interest, late charges and lien rights.

Section 10.7. *Nuisances.*

Any use, activity, or practice which is the source of or unreasonably interferes with the peaceful enjoyment or possession of any portion of the Community, shall not be permitted. No nuisance shall be permitted, nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs, the occupant of any Lot, or which interferes with the proper use of any Lot, or any portion thereof. As used herein, the term "**nuisance**" shall include each violation of the Governing Documents, but shall not include any activities of Declarant or a Builder which are incidental to the development and construction of, or sales activities in, the Community. No noxious or unreasonably offensive activity shall be carried on in the Community nor shall anything be done or placed in the Community which is or may become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to others.

Section 10.8. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

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

Section 10.9. *No Annoying Light, Sounds or Odors.*

No light shall be emitted which is unreasonably bright or causes unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be permitted which is noxious or unreasonably offensive to others. Any exterior lighting installed or maintained on a Lot or Improvements(s) shall either be indirect or of such controlled focus and intensity so as not to unreasonably disturb the residents of any adjacent or nearby property.

Section 10.10. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside a structure on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup; provided, however, that such container shall not be visible from any other Lot except on the day of garbage pickup. All equipment for the storage or disposal of trash shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. Trash removal is the responsibility of each Owner. However, the Association (through the

Board of Directors) may provide any trash removal services for the Community and, if so, then all matters of the same shall be determined by the Board of Directors.

Section 10.11. *Lots to Be Maintained.*

Subject to Section 10.4 of this Declaration (Temporary Structures; Unsightly Conditions), each Lot shall at all times be kept in a clean, sightly, wholesome, and attractive condition, without clutter, by the occupant of such Lot. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot, except as necessary during the period of construction or as provided in Section 10.10 of this Declaration (Restrictions on Trash and Materials). Owners shall maintain lawns and landscaping in a neat and attractive condition; such maintenance shall include mowing and watering, pulling of weeds from lawn, mulch or rock areas, pruning of shrubs and trees, removal of horticultural debris (including yard waste and tree or shrub trimmings), replacement of landscaping and plant material, and keeping the adjacent streets, free from dirt, mud, and debris.

Section 10.12. *Leases.*

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

10.12.1. All leases shall be in writing, and notice of the lease, including the name of the tenant(s) and the duration of the lease, shall be delivered to the Board of Directors or the Association's managing agent, if any, within thirty (30) days after such lease has been signed by the grantor and the grantee; and

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

Section 10.13. *Restrictions on Mining and Drilling.*

No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, water, or earth, except drilling or exploring for oil, gas or other hydrocarbons pursuant to oil and gas leases in effect on the date that this Declaration is recorded, as the same may be amended and supplemented from time to time.

Section 10.14. Oil and Gas Well Disclosure.

Each Owner acknowledges the existence of oil and gas well(s) in or near to the Community, and further acknowledges that there may be ongoing oil and gas operations in or near the Community, and there are likely to be future wells drilled and associated oil and gas operations taking place on the surface of the oil and gas operation areas in the Community, as well as the vehicular traffic necessarily associated with such operations. By acceptance of a deed to a Lot, each Owner assumes the risk of owning property near to an oil and gas well operation. Such risks include injury or damage to Person and/or property arising out of or resulting from the drilling, operation and maintenance of an oil and gas well; noise associated with oil and gas well operations; explosion and fire; leakage of oil and/or gas from drilling or production facilities; and vehicles servicing the oil and gas sites. The waiver and release set out in Section 13.12 of this Declaration (Waiver) shall apply to this Section.

ARTICLE 11. COMMON ELEMENTS

Section 11.1. Owners' Easement of Enjoyment.

Subject to this Declaration, every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner's Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot. Such right and easement is subject to this Declaration, and is subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Person (other than the Declarant or the Association) may place any structure on the Common Elements. In addition, such right and easement is subject to the following:

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

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

11.1.3. The right of the Association to enact, re-enact, issue, promulgate, amend, repeal and publish standards, guidelines, rules and regulations or policies and procedures, with which each Member shall strictly comply; and

11.1.4. The right of the Association to suspend the voting rights of a Member for any period during which any assessment against such Member's

Lot or any other amounts due from such Member to the Association remains unpaid and, for a period not to exceed sixty (60) days, for any other infraction of any of the Governing Documents; and

11.1.5. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding the foregoing, the granting of permits, licenses or easements for utilities, roads or for other purposes shall not be deemed a transfer within the meaning of this subsection; and

11.1.6. The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may determine; and

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

Section 11.2. *Duty to Accept Property and Facilities Transferred by Declarant.*

The Association shall accept title to all property, including Improvements thereon, as well as personal property, equipment, and easements, if any, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association, including the payment of real property taxes due and payable for the tax year in which such property was transferred to the Association. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of easements and/or Common Elements, to be located in the property described on the attached **Exhibit A**, **Exhibit B**, and/or the Annexable Area.

ARTICLE 12. DISPUTE RESOLUTION

Section 12.1. *Intent and Applicability of Article and Statutes of Limitation.*

12.1.1. Each Person agrees to encourage the amicable resolution of disputes under any of the Governing Documents, without the emotional and financial costs of litigation. Accordingly, each Person covenants and agrees to submit all Claims (as defined below) to final, binding arbitration, and not to a court of law.

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

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

Section 12.2. *Definition of "Claim" Under this Article.*

For purposes of this Article only, "**Claim**" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between any Person(s) under any of the Governing Documents, and one or more other Persons, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to the interpretation, application or enforcement of any of the Governing Documents, or the rights, obligations or duties under any of the Governing Documents. But for this Article, a Claim may be brought by lawsuit, counterclaim, cross-claim, mediation, arbitration, or in any other manner.

Section 12.3. *Exclusions from "Claim".*

Unless specifically exempted by this Article, all Claims shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all parties thereto otherwise agree in writing, "**Claim**" does not include any of the following, and the same shall not be subject to the provisions of this Article:

12.3.1. Any action by the Association to enforce any provision of Article 4 of this Declaration (Assessments); or

12.3.2. Any action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief), and such other ancillary relief as the Association or court may determine, in order to enforce any of the provisions of Article 10 of this Declaration (Restrictions) or of Article 5 of this Declaration (Design Review); or

12.3.3. Any action that asserts a Claim which would constitute a cause of action independent of the Governing Documents.

Section 12.4. *Liability for Certain Failures of Association.*

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

ARTICLE 13. GENERAL PROVISIONS

Section 13.1. *Enforcement; Fines.*

13.1.1. All provisions of this Section 13.1 are subject to Article 12 hereof (Dispute Resolution).

13.1.2. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in any of the Governing Documents, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Remedies shall be cumulative and no remedy shall be exclusive of other remedies that may be available. For each claim, including counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions of CCIOA or any of the Governing Documents, the prevailing party shall be awarded its reasonable collection costs and attorneys' fees and costs incurred in asserting or defending the matter. Failure by the Association or any Owner to enforce any covenant, restriction or other provision contained in any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter.

13.1.3. Subject to the following sentence, the Association shall have the right to levy and collect fines (as provided in Article 4 of this Declaration (Assessments)) for the violation of any provision of the Governing Documents. Prior to collection of any fines, the Association, the Board of Directors, or an authorized management company of the Association, shall mail a notice of violation to the Person(s) alleged to be in violation of any such provision and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated, within ten (10) days after the notice of violation has been mailed or such other time as the Board of Directors may decide; failure of a notified Person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

Section 13.2. *Severability.*

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents by judgment, court order or otherwise, shall in no way affect or limit any other provisions, which shall remain in full force and effect.

Section 13.3. *Conflicts.*

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

Section 13.4. *Minor Violations of Setback Restrictions.*

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the Lot on which such structure was erected, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "**minor violation**," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

Section 13.5. *Duration, Revocation, and Amendment.*

13.5.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including Sections 3.4 and 3.5), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided, however, that until expiration of the Additional Reservations and Rights, as provided in Section 3.9 of this Declaration, no amendment of this Declaration shall be effective without the prior, written approval of the Declarant. Further, an amendment of this Declaration enacted by the Members shall be applicable only to disputes, issues, circumstances, events, actions, claims or causes of action that arose out of circumstances or events that occurred after the date of Recording of such amendment; and no such amendment shall be applied retroactively to any earlier occurring dispute, issue, circumstance, event, action, claim or cause of action.

13.5.2. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, Recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant

to this Declaration or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory.

Section 13.6. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and all statements, notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest shall, subject to Section 2.9 of this Declaration (Authenticated Electronic Representation), be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any statement, notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All statements, demands, or notices intended to be served upon the Board of Directors or the Association during the Period of Declarant Control shall be sent by U.S. mail, postage prepaid, to Todd Creek Riverside Homeowners Association, Inc., 7501 Village Square Drive, Suite 205, Castle Rock, CO 80108, unless such address is changed by the Association during the Period of Declarant Control; subsequent to expiration of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

Section 13.7. *HUD or VA Approval.*

During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more first Security Interests, and if HUD or VA require such approval: annexation of additional real property (if any Declarant desires to obtain VA or HUD approval of the property that is being annexed); amendment of this Declaration, except as provided in Sections 3.4 and 3.5 hereof; termination of this Community; or merger or consolidation of the Association, except as provided in Section 3.2.5 of this Declaration.

Section 13.8. *Limitation on Liability.*

The Association, the Board of Directors, the Design Review Committee, the Declarant, the Builders, and their respective officers, directors, members, partners, agents and employees, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. To the extent permitted by law, the release and waiver set forth in Section 13.12 (Waiver) shall apply to this Section.

Section 13.9. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Builders, the Association, the Board of Directors, the Design Review Committee, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or

their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, rental, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. To the extent permitted by law, the release and waiver set forth in Section 13.12 (Waiver) shall apply to this Section.

Section 13.10. *Disclaimer Regarding Safety.*

DECLARANT, BUILDERS, THE ASSOCIATION, THE BOARD OF DIRECTORS, THE DESIGN REVIEW COMMITTEE, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, BUILDERS, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, AND THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS, RULES AND REGULATIONS AND POLICIES AND PROCEDURES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. TO THE EXTENT PERMITTED BY LAW, THE RELEASE AND WAIVER SET FORTH IN SECTION 13.12 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 13.11. *Development Within and Surrounding the Community.*

Each Owner acknowledges that development within and surrounding the Community may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Community, views of or from the Community or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and to the extent permitted by law each Owner hereby waives and releases any claim against the Declarant, the Builders, the Association, the Board of Directors, the Design Review Committee, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. To the extent permitted by law, the release and waiver set forth in Section 13.12 (Waiver) shall apply to this Section.

Section 13.12. *Waiver.*

By acceptance of a deed to a Lot, to the extent permitted by law, each Owner hereby releases, waives, and discharges the Declarant, all Builders, the Association, the Board of Directors, the Design Review Committee, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures, risks or other matters set forth in this Declaration, including those contained in Sections 10.14, 13.8, 13.9, 13.10, and 13.11 of this Declaration.

Section 13.13. *Headings.*

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

Section 13.14. *Gender.*

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

Section 13.15. *Use of "Include," "Includes" and "Including".*

All uses in the Governing Documents of the words "**include**," "**includes**" and "**including**" shall be deemed to include the words "**without limitation**" immediately thereafter.

Section 13.16. *Action.*

Any action that has been or may be taken by the Declarant, the Association, the Board, any Member, any director, any committee, or any other Person, may be taken "**at any time, from time to time**". Each provision that authorizes, directs or permits action shall be deemed to include such language.

Section 13.17. *Sole Discretion.*

Except as otherwise expressly provided in this Declaration as to specified actions, all actions which are taken by the Declarant, the Association, the Board, the Design Review Committee, any Member, any director, any committee, or any other Person, shall be deemed to be taken "**in the sole discretion**" of each of such parties.

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TODD CREEK RIVERSIDE**

(Initial Lot(s))

Lot 15, Block 5, as shown on the plat of Bartley Subdivision, recorded on January 6, 2006, at Reception No. 2006012600092280, in the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented:

**EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TODD CREEK RIVERSIDE**

(Initial Common Elements)

None at the time of recording of this Declaration.

**EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TODD CREEK RIVERSIDE**

(Certain Title Exceptions)

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

1. Taxes and assessments for the year of recording of this Declaration and for subsequent years, not yet due and payable.
2. The right of a proprietor of a vein or lode to extract or remove his ore, should the same be found to penetrate or intersect the premises thereby granted and rights of way for ditches and canals as reserved in the United States Patent recorded September 13, 1893 in Book 771 at Page 492, Arapahoe County Records (SEA/4), and February 1, 1894 in Book 771 at Page 506, Arapahoe County Records (SW1/4), and any and all assignments thereof or interests therein.
3. Seltzer-Carlson irrigation well no. 1 and pipeline as disclosed by Map and Statement recorded February 8, 1957 at Reception No. 502214.
4. Fifty Foot Right of Way for Water Pipeline, and other incidental purposes, granted to Carl C. Seltzer through the S1/2 recorded in instrument recorded April 30, 1963 in Book 1063 at Page 268.
Consent by the Federal Land Bank of Wichita recorded September 11, 1963 in Book 1095 at Page 265.
5. Perpetual easement for irrigation, ditches and other incidental purposes granted to the Department of Highways, State of Colorado recorded in instrument recorded June 22, 1967 in Book 1370 at Page 382.
6. Right of Way and easement 10 feet in width through the SW1/4 of the SW1/4 of Section 2, Township 1 South, Range 67 West, granted to Union Rural Electric Association in instrument recorded August 29, 1968 in Book 1459 at Page 183.
7. An oil and gas lease, executed by Edward C. Newlander and Ernest L. Newlander, as Lessor(s) and by Vessels Oil and Gas Company, as Lessee(s), recorded November 27, 1979 in Book 2408 at Page 912, and any and all assignments thereof or interests therein.

Ratification Agreements recorded December 19, 1983 in Book 2821 at Page 185 and April 9, 1984 in Book 2858 at Page 536.

Extension of Lease recorded November 13, 1985 in Book 3072 at Page 774.

8. An oil and gas lease, executed by Edward C. Newlander, as Lessor(s) and by Petrogulf Energy Company, as Lessee(s), recorded July 3, 1982 in Book 2660 at Page 257, and any and all assignments thereof or interests therein.
9. An oil and gas lease, executed by Irene R. Newlander, Personal Representative of the Estate of Ernest L. Newlander, as Lessor(s) and by Petrogulf Energy Company, as Lessee(s), recorded July 3, 1982 in Book 2660 at page 255, and any and all assignments thereof or interests therein.
10. The effect of Release and Damage Payment receipt by and between Edward C. Newlander and Petrol, Inc., recorded December 11, 1984 in Book 2945 at Page 952.
11. Right of Way and Easement for Oil and Gas Pipelines and other incidental purposes granted to Vessels Gas Processing Ltd. in instrument recorded January 18, 1984 in Book 2831 at page 206.
12. Right of Way and easement for Oil and Gas Pipelines and other incidental purposes granted to Vessels Gas Processing, Ltd in instrument recorded March 12, 1985 in Book 2976 at Page 319.
13. Terms, conditions, provisions, agreements, and obligations specified under the Right of Way Easements and Licenses recorded December 10, 1985 in Book 3083 at Page 294.
14. Terms, conditions, provisions, agreements and obligations specified under the Notice of General Description Area Serviced by Panhandle Eastern Pipe Line recorded June 25, 1986 in Book 3162 at Page 961.
15. Reservations as contained in Warranty Deed recorded August 17, 1990 in Book 3702 at Page 710.
16. The effect of Special Warranty Deed recorded August 7, 2001 at Reception No. C0839204.
17. The effect of Zoning Hearing Decision Case #PUD200100030 recorded March 12, 2002 at Reception No. C0938822.
18. The effect of Right of Way Agreement recorded July 22, 2002 at Reception No. C0999711.
19. The effect of the Todd Creek Village Preliminary PUD recorded August 23, 2002 at Reception No. C1014679.
20. The effect of Order of Inclusion into the Eagle Shadow Metropolitan District No. 1 recorded November 15, 2002 at Reception No. C1053863.
21. The effect of Order creating the Todd Creek Village Park and Recreation District recorded November 21, 2002 at Reception No. C1057049. Amended Order recorded January 13, 2003 at Reception No. C1079703.
22. Terms, conditions, provisions, stipulations and obligations as specified under Resolution Approving Zoning Hearing – Case #PLT200400032 Todd Creek Village – Bartley recorded May 26, 2005 at Reception No. 20050526000559440.

23. Terms, conditions, provisions, agreements and obligations specified under the Final Plat Decision - Bartley Subdivision, Case #PLT2005-00048 recorded January 26, 2006 at Reception No. 20060126000090780.
24. All easements and notes as set forth and shown on the plat of Bartley Subdivision recorded January 26, 2006 at Reception No. 20060126000092280.
25. Terms, conditions, provisions, agreements, consents and obligations as evidenced by Memorandum of Compatible Development and Surface Use Agreement recorded March 3, 2006 at Reception No. 20060303000219010.
26. Terms, conditions, provisions and obligations as set forth in Request for Notification of Surface Development recorded March 31, 2006 at Reception No. 20060331000327090.
27. Terms, conditions, provisions agreements and obligations specified under the Todd Creek Bartley Property Planned Unit Development – Final Development Plan recorded April 13, 2006 at Reception No. 20060413000376210.
28. Terms, conditions, provisions, agreements and obligations as set forth in Surface Use Agreement recorded June 9, 2006 at Reception No. 20060609000590570.
29. Terms, conditions, provisions and obligations as set forth in Request for Notification of Pending Surface Development recorded August 7, 2007 at Reception No. 2007000076064.
30. An easement for utilities and incidental purposes granted to Public Service Company of Colorado by the instrument recorded August 15, 2007 at Reception No. 2007000078491.
31. An easement for utilities and incidental purposes granted to Public Service Company of Colorado by the instrument recorded August 15, 2007 at Reception No. 2007000078492.
32. Terms, conditions, provisions and obligations as set forth in Request for Notification of Surface Development recorded December 24, 2007 at Reception No. 2007000116902.

**EXHIBIT D
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TODD CREEK RIVERSIDE**

(Part of Annexable Area)

All of the property as shown on the plat of Bartley Subdivision, recorded on January 6, 2006, at Reception No. 20060126000092280, in the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented from time to time.