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**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ABILENE STATION**



FD493427

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**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ABILENE STATION**

This Master Declaration of Covenants, Conditions and Restrictions for Abilene Station (the “Declaration”) is made by Abilene Station LLC, a Colorado limited liability company (“Declarant”) as of the date set forth at the end of this Declaration. Capitalized terms used herein shall have the meanings ascribed in ARTICLE 1.

RECITALS

A. This Declaration is made pursuant to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 *et seq.*

B. Declarant is the owner of the Property (as defined below); the Declarant, on behalf of itself and its successors and assigns, reserves the right to create up to 10 Lots on the Property, and reserves the right to create up to 1,000 Residential Units, 500 Hotel Rooms and 250,000 square feet of commercial office space on the Lots.

C. Pursuant to the Act, Declarant hereby declares that the Property shall, from and after the date hereof, constitute a “planned community” and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and otherwise enjoyed subject to the covenants, conditions and restrictions set forth herein.

D. Declarant, in imposing this Declaration on the Property, intends to empower the Association to provide certain services and, pursuant to Colo. Rev. Stat. § 32-1-1004, to empower the Metropolitan Districts with the authority to provide certain services as specified herein, including but not limited to the provision of park and street maintenance, and of parking administration, to the Property.

E. The Declarant now desires to establish certain easements, covenants, conditions, restrictions and equitable servitudes for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of the Property.

F. The Property, and any other real property made subject to this Declaration, shall be part of a master planned community created by the Declarant generally known as “Abilene Station,” located in the City of Aurora in Arapahoe County, Colorado, which may include several different types of Residential Units, Hotel Rooms, Office (as defined in Section 1.40) and other Improvements (as defined in Section 1.30) including, without limitation, condominiums, apartments, Tracts, and Retail Sites. Such Residential Units, Hotel Rooms, Office and Improvements may (but are not required to) be subject to covenants, conditions and restrictions in addition to those set forth in this Declaration pursuant to a Supplemental Declaration (as defined in Section 1.63). Additional real property may become subject to this Declaration by the recording of a Supplemental Declaration, and the Declarant hereby reserves the right to add additional real property to this Declaration pursuant to the terms hereof.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property (as defined below) is hereby made subject to this Declaration and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained and altered subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and equitable servitudes set forth in this Declaration. The terms of this Declaration touch and concern the Property, and shall (a) run with the land and all parts thereof at law and as an equitable servitude; (b) bind all Persons having or acquiring any interest in the Property or any part thereof; (c) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (d) inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and each Owner's grantees, heirs, assigns and successors in interest, and the Taxing District and Management District and any successors in interest thereto.

ARTICLE 1. DEFINITIONS.

The following sections define words and phrases which, as used in this Declaration, have the meanings set forth below. Other terms in this Declaration may be defined in specific provisions of this Declaration and shall have the meaning assigned by such definition. Defined words and phrases are indicated in this Declaration by capitalizing the first letter of a defined word or of each word in a defined phrase.

1.1. "Act" refers to the Colorado Common Interest Ownership Act, Colo. Rev. Stat. §§ 38-33.3-101 *et seq.*

1.2. "Allocation" shall have the meaning set forth in Section 4.1 below.

1.3. "Amenity" means any Lot or Tract now or hereafter owned or leased by the Association, together with all Improvements thereon, used or intended to be used for the provision of amenities to Owners, occupants or tenants of Lots, if any.

1.4. "Applicable Laws" means the decrees, edicts, laws, orders, ordinances, promulgations, regulations, rules and statutes of all federal, local (including the City and the County), or state governmental or quasi-governmental entities (including, but not limited to, the Management District), and all agencies, departments, divisions or parts thereof, having or from time to time exercising jurisdiction or authority over the Property.

1.5. "Articles" shall mean the Articles of Incorporation of the Association, as filed with the Colorado Secretary of State, and as the same may be amended from time to time.

1.6. "Assessment" means an assessment (as defined in the Act) levied by the Association on one or more Lots.

1.7. "Association" means the Abilene Station Owners Association, Inc., a Colorado nonprofit corporation and its successors and assigns. Every person or entity

who is a record Owner of a fee interest in any Lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Article, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

1.8. “Builder” means an Owner that (a) acquires one or more Lots from Declarant for the purpose of developing infrastructure on such Lots and for the construction of buildings on Residential, Hotel, Office, or Retail Sites for the purpose of selling or leasing such buildings and such Lot to the ultimate purchaser or tenant(s) thereof, and (b) is designated by Declarant as a “Builder” in a Recorded writing signed by the Declarant. Such Recorded writing may be (but is not required to be) part of a Supplemental Declaration and also may assign to a Builder some or all of Declarant’s rights under this Declaration, including Declarant’s right to make additional property as designated therein subject to this Declaration.

1.9. “Bylaws” the bylaws of the Association, as amended from time to time.

1.10. “CEC” means the Covenant Enforcement Committee established, if at all, by the Association for the purposes set forth in ARTICLE 8 and any other applicable provisions of this Declaration.

1.11. “City” means the City of Aurora, Colorado.

1.12. “Common Amenity Risks” means all risks attendant to or associated with the operation of those areas designated as part of an Amenity. Such risks include, without limitation, injury to person or property or both arising out of, or resulting from (a) the construction, design, maintenance, operation, or use of said Amenity, (b) light and noise associated with any Amenity (including by way of example and not by way of limitation, lights used to illuminate night time activities, parking, public events or tournaments, utility vehicles, mowers, seeders, pumps, filters, heaters, electronic equipment and wells), (c) maintenance vehicles, (d) the trespass, act, or omission of persons using an Amenity and persons employed in connection therewith, (e) drainage resulting from drainage easements to the extent such drainage is in accordance with the drainage plan established for the Property, and, (f) the fact that an Amenity may constitute an “attractive nuisance” under Applicable Laws.

1.13. “Common Assessment” shall mean an Assessment levied on all Lots under Section 3.5 to fund the Common Expenses.

1.14. “Common Elements” shall mean all real property, easements, possessory interests in the Property and Improvements within the Property that are owned or to be owned by the Association pursuant to this Declaration or the Plat for the benefit, use or enjoyment of Owners, generally.

1.15. “Common Expenses” shall mean all costs, expenses and financial liabilities incurred by the Association in the exercise of its functions under this

Declaration, including without limitation administrative costs and taxes on Common Elements to the extent payable by the Association. Common Expenses shall not include Metropolitan District expenses, which shall be separately levied or assessed by the Taxing District against the real property located within the boundaries of the Metropolitan Districts.

1.16. “County” means Arapahoe County, Colorado.

1.17. “Declarant” means Abilene Station LLC or any one or more successors in interest which have been designated in writing (which writing shall be Recorded in the Records) by the then existing Declarant who owns all or a portion of the Property, and any person who is granted or succeeds to any Special Declarant Right.

1.18. “Declaration” means this Master Declaration of Covenants, Conditions and Restrictions for Abilene Station, as Recorded in the Records, together with any amendments or supplements to such document.

1.19. “Dispute” shall have the meaning specified in Section 17.10.

1.20. “DRC” means the Design Review Committee established, if at all, by the Association for the purposes set forth in ARTICLE 7 and any other applicable provisions of this Declaration.

1.21. “Development Owner” means that person or entity owning a Lot designated as a Residential Site, Hotel Site, Office Site, or a Retail Site.

1.22. “Development Period” means the period of time beginning upon the date of Recording of this Declaration and expiring on the earlier of 1) fifty (50) years after recording of this Declaration, or such shorter period as deemed necessary by the Declarant to comply with any regulations of HUD or other Governmental Mortgage Agencies, or 2) upon the conveyance of the last Lot That May Be Created to a Purchaser other than a Declarant. The Development Period is established for the purposes set forth in ARTICLE 11.

1.23. “Easements” shall have the meaning specified in Section 13.1.

1.24. “Executive Board” means the body, regardless of name, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.

1.25. “Fines” means any monetary penalty imposed by the Association against the Owner of a Lot or a Residential Unit Owner or occupant due to a violation of this Declaration or the Rules and Regulations by such Owner of a Lot or Residential Unit Owner or occupant, a member of the Lot Owner’s or Residential Unit Owner’s or occupant’s family or a tenant, guest or invitee of the Lot Owner or Residential Unit Owner or occupant or any of the foregoing.

1.26. “Government Mortgage Agencies” means the FHA, the VA, the FHLMC, GNMA, FNMA, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase mortgage loans.

1.27. “Guidelines” means the Design Guidelines promulgated and adopted by the Association and administered by the DRC, if formed.

1.28. “Hotel” or “Hotel Site” means any Lot zoned and used or intended to be used for Hotel or mixed Hotel-residential uses and which is designated as a “Hotel Site” in the Supplemental Declaration applicable to such Lot.

1.29. “HUD” means the United States Department of Housing and Urban Development.

1.30. “Improvements” means all structures, facilities and appurtenances of any kind located on any portion of the Property including, but not limited to, the following: Residential Units, buildings, structures, swimming pools, outdoor play structures for persons and animals, gazebos, hot tubs, fences, walls, hedges, plantings, landscaping, lighting, poles, driveways, parking areas, sidewalks, patios, decks, signs, changes in any existing exterior color or shape, excavation and site work, removal of trees or plantings, walkways, trails, paving, parking areas, garages, carports, driveways, retaining walls, fixtures, solar equipment, exterior tank, and exterior heating and/or air conditioning equipment and any new exterior construction or exterior improvement on a Lot which may not be included in the foregoing. The term “Improvements” includes both original improvements and all later changes, modifications and improvements on a Lot.

1.31. “Intergovernmental Agreement” shall mean that certain agreement between the Management District and the Taxing District whereby the Management District has agreed to perform certain services called for by this Declaration which will be paid for by the Taxing District with revenues generated from the Property.

1.32. “Landscaping” shall mean all Improvements made to a Lot by means of planting or altering the contours of the ground for purposes other than physical structures. The term shall include, but not be limited to, the planting, clearing or removing of trees, shrubs, hedges, grass, plants and other flora. The installation, maintenance, repair and upkeep of Landscaping shall be allocated in accordance with Section 5.1(f).

1.33. “Lot” or “Lots” means a physical portion of the Property which is designated for separate ownership or occupancy, and the boundaries and identifying number of which are described in or may be determined from a declaration and/or a Plat. A Lot or Lots may be a Residential Site, Hotel Site, Office Site, or a Retail Site.

1.34. "Lots That May Be Created" means ten (10) Lots, which shall be the maximum number of Lots that may be subject to this Declaration. However, the aforesaid number of Lots that May be Created 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 Property.

1.35. "Management District" shall mean the Abilene Station Metropolitan District No. 2.

1.36. "Metropolitan Districts" shall mean the Taxing District and the Management District, both quasi-municipal corporations and political subdivisions of the State of Colorado, as well as any other metropolitan districts servicing portions of the Property or any additional real property subjected to this Declaration.

1.37. "Metropolitan District Property" means any real property within the Property now or hereafter owned or leased by the Metropolitan Districts, together with all landscaping improvements, trails, open space, irrigation systems, entry monuments and other Improvements now or hereafter located on such Metropolitan District Property.

1.38. "Mortgage" means any mortgage or deed of trust or other similar instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure the performance of an obligation or the payment of a debt and which is to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" as used herein is synonymous with the term "Mortgage." "First Mortgage" means a Mortgage which has priority over all other security interests in a Lot, other than statutory liens for taxes and special assessments, and shall include an executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is the seller, whether such contract is owned by the Veterans Administration or its assigns, and whether Recorded or not.

1.39. "Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee. "First Mortgagee" means any Person named as the mortgagee or beneficiary under any First Mortgage, or any insurer or guarantor of a First Mortgage, including the Administrator of Veterans Affairs for the Veterans Administration.

1.40. "Mortgagor" means the Person who mortgages his or its property to another (i.e., the maker or grantor of a Mortgage). The term "Mortgagor" shall include a trustor or grantor under a Deed of Trust.

1.41. "Notice of Violation" means a written notice given by the Association or by the DRC or the CEC, as applicable, to an Owner notifying the Owner that such Owner is responsible for a Violation of the Restrictions, which may include notification of the time period in which the Owner has to correct, remedy or otherwise remove the Violation, or notification of the date, time and place of a hearing related thereto.

1.42. “Office” or “Office Site” means any Lot zoned and used or intended to be used for Office or mixed Office-residential uses and which is designated as an “Office Site” in the Supplemental Declaration applicable to such Lot.

1.43. “Owner” means Declarant or any other Person, or, if more than one, all Persons collectively, who hold fee simple title of Record to any Lot or Residential Unit within the Property, including sellers under executory contracts of sale but excluding buyers thereunder, and further excluding any Mortgagee or other Person having an interest in a Lot solely as security for an obligation.

1.44. “Period of Declarant Control” shall mean that period during which the Declarant, or a person designated by Declarant, may appoint and remove the officers and members of the Executive Board, provided that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Created to Owners other than a Declarant, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two (2) years after any right to add new Lots to the Declaration was last exercised.

1.45. “Person” means any natural person, corporation, partnership (general or limited), limited liability company, governmental entity, association, trust, or any other entity or combination thereof.

1.46. “Plat” means the Recorded plat of the Property, as Recorded on June 9, 2015 at Reception No.D5059964 in the Office of the Clerk and Recorder of the County and all Recorded amendments, corrections and replats, and together with any Recorded plat of any other real property which becomes subject to this Declaration.

1.47. “Property” means and refers to the real property which is owned by the Declarant as described on **Exhibit A**, attached hereto and incorporated herein by this reference, and as of any particular time, any additional real property that has been annexed or otherwise made subject to this Declaration by a Supplemental Declaration.

1.48. “Public Facilities” means facilities that may include, but are not necessarily limited to, public parks, neighborhood parks, related parking, picnic shelters and picnic tables, playgrounds, plumbed restrooms, open areas for passive recreational use, open space used as a plaza, public viewing areas, and other facilities that are (a) owned by the City, any Metropolitan District, or the Association, and (b) intended to be used by the general public. The foregoing list of Public Facilities is non-exclusive, and is intended to be only an example of those types of Public Facilities that may exist; provided, however, that (i) some or all of such Facilities may not be constructed, (ii) the term “Public Facilities” only applies to those facilities that are actually constructed, and (iii) the term “Public Facilities” does, for the purpose of this Declaration, include any Amenity that is open to use by members of the public.

1.49. “Public Facilities Risks” means all risks attendant to or associated with the operation of the Public Facilities. Such risks include, without limitation, injury to person

or property or both arising out of, or resulting from, (a) the construction, design, maintenance, operation, or use of the Public Facilities, (b) lights and noise associated with the Public Facilities (including by way of example and not by way of limitation, lights and noise generated by blowers, compressors, crowds, lights used to illuminate night time activities on the Public Facilities, mulchers, parked cars or vehicles of persons using the Public Facilities, public events held from time to time on the Public Facilities, pumps, tractors, traffic, utility vehicles, and wells), (c) trespass, acts, or omissions of persons employed in connection with, using, or otherwise on the Public Facilities, (d) the use of reclaimed water, treated waste water, or other sources of non-potable water for irrigation and overspray in connection with such use, (e) the use of fertilizers, insecticides, and pesticides in connection with the maintenance of the Public Facilities, together with overspray in connection with such use, (f) drainage resulting from drainage easements established for the Public Facilities to the extent such drainage is in accordance with the drainage plan established for the Property, (g) creeks, water courses, and waterways constructed or located on a Tracts, and (h) the fact that the Public Facilities may constitute or be considered an "attractive nuisance" under Applicable Laws.

1.50. "Purchaser" means a Person, other than Declarant and other than a Builder who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than a leasehold interest in a Lot of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences, or a party holding a security interest on any portion of the Property.

1.51. "Records" means the official real property records maintained in the office of the Clerk and Recorder of Arapahoe County, Colorado; "to Record" means to file for recording in the Records; "of Record" and "Recorded" means having been recorded in the Records, and "Recording" means the act of recording a document or instrument in the Records.

1.52. "Residential Lot" or "Residential Site" means any Lot zoned and used or intended to be used for multi-family Residential or mixed Residential-commercial uses, and which is designated as a "Residential Site" in the Supplemental Declaration applicable to each Lot.

1.53. "Residential Unit" or "Unit" means those portions of any Residential Lot which are to be subject to exclusive ownership or occupancy by tenants or Residential Unit Owners; said Units shall only be used for residential occupancy and appurtenant uses which are customarily incident thereto.

1.54. "Residential Unit Owner" means that person or entity owning a Residential Unit.

1.55. "Residential Use" means a use for residential purposes.

1.56. “Restrictions” means (a) this Declaration, as amended from time to time, and (b) the Rules and Regulations.

1.57. “Retail or “Retail Site”” means any Lot zoned and used or intended to be used for Retail or mixed Retail-residential uses and which is designated as a “Retail Site” in the Supplemental Declaration applicable to such Lot.

1.58. “Rules and Regulations” means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Property, including all amendments to those instruments. The term “Rules and Regulations” specifically includes the Guidelines.

1.59. “Site” means a Residential, Hotel, Retail or Office Site, all as defined elsewhere herein.

1.60. “Special Assessment” shall mean an Assessment levied in accordance with Section 3.6 below.

1.61. “Special Declarant Rights” means rights that only the Declarant has the right to exercise as enumerated in this Declaration.

1.62. “Successor Declarant” shall mean any Person to whom the Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by a Recorded assignment or deed designating such party as a Successor Declarant, signed by the transferring Declarant and acknowledged by the transferee. Upon such recording, the Declarant’s rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

1.63. “Supplemental Declaration” means a written instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which may be Recorded against real property described therein and which subjects such described real property to the terms, conditions and restrictions of this Declaration.

1.64. “Taxing District” shall mean Abilene Station Metropolitan District No. 1.

1.65. “Telecommunication Facilities” means all facilities installed and used in the distribution of Telecommunication Services (including, but not limited to, cables, cabling conduits, cabling interfaces, conduits, cross connect panels, equipment cabinets, fiber, fiber interfaces, fiber transceivers, lines, network interface units, pads, patch panels and cords, pipes, power interfaces, routers/bridgers, service drop wiring and service laterals, sleeves, test equipment, wires, and other structures and improvements).

1.66. “Telecommunication Facilities and Utilities Easement” shall have the meaning specified in Section 13.9.

1.67. “Telecommunication Services” means cable, cable television, computer, data transmission, internet and intranet access and service (and any new or replacement technology), telecommunication, telephone, television, and other means of communicating, receiving, and transmitting audio, video, visual, and other data signals through electrical, light wave, radio, or other technology, whether now existing or hereafter developed.

1.68. “Tract” means any portion of the Property owned by the City or other governmental entity, the Metropolitan Districts or the Association.

1.69. “Transfer” means the conveyance of a Residential Site by a Transferor to a Transferee.

1.70. “Transfer Period” means the period from the date this Declaration is Recorded and expiring fifty (50) years thereafter.

1.71. “Transferee” means a Person to whom a Residential Site is transferred who is not Declarant, a First Mortgagee, a Government Mortgage Agency, HUD or a Mortgagee.

1.72. “Transferor” means any Owner of a Residential Site other than Declarant, a First Mortgagee, a Government Mortgage Agency, HUD, a Mortgagee, who is transferring a Residential Site to a Transferee.

1.73. “Urban Streets” shall mean those streets identified as North Blackhawk Street from 4th Avenue to Abilene Street, East 3rd Avenue, and East 2nd Place located in the City of Aurora, together with all related sidewalks, gutters and parking.

1.74. “Utilities” means all utility services necessary or convenient for the use and enjoyment of the Lots (including, but not necessarily limited to, electric, gas, water, sewer service and Telecommunication Facilities).

1.75. “Violation” means (a) an Improvement that has been installed or constructed without obtaining the DRC’s approval, (b) an Improvement that was not installed or constructed in substantial compliance with the approval that was granted by the Association or the DRC (including, without limitation, any time periods for completion), or (c) any other violation of the Restrictions by an Owner.

ARTICLE 2. DEVELOPMENT OF THE PROPERTY AND ADDITION OF PROPERTY.

2.1. Subdivision and Development by Declarant. Declarant has designated or intends to designate all or a portion of the Property into Lots for residential, hotel, office and retail development, as well as for construction of Public Facilities and, in Declarant’s sole discretion, any Amenities Declarant elects to construct; provided, however, that it is expressly acknowledged and agreed that Declarant shall not have any obligation to construct, or cause to be constructed, any Amenity by virtue of this Declaration.

2.2. Conveyance and Acceptance of Property to the Association or a Metropolitan District. Declarant expressly reserves the right in the course of planning the Property to convey to the Metropolitan Districts or to the Association certain Tracts and/or other property or facilities which are deemed by the Declarant to be most suitable for maintenance and administration by the Metropolitan Districts or the Association. Declarant contemplates that maintenance of certain open space, parks, sidewalks and Urban Streets may be assumed by the Metropolitan Districts, the Association, or another governmental entity. Any such conveyance of real property from Declarant, a Builder or other Owner shall be made by a separate conveyance deed whereby the designated entity shall accept such real property and all duties and responsibilities associated therewith pursuant to this Declaration.

2.3. Conveyance to Governmental Entities. For so long as Declarant owns any of the Property, Declarant may designate and dedicate sites within the Property for fire, police and Utility facilities, public schools and parks and other public or quasi-public facilities.

2.4. Merger. The properties, rights and obligations of the Association, by operation of law, may be transferred to a governmental entity or another entity of similar nature and purposes to the Association. Any such governmental entity or other entity may administer the Restrictions established upon any other basis as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Property except as expressly hereinafter provided.

2.5. Manner and Effect of Annexation. Portions of real property in addition to the Property, from time to time, may become part of and made subject to this Declaration as hereinafter set forth. The real property eligible to be annexed into the Property and submitted to the Declaration is identified and described on **Exhibit B**, attached hereto and incorporated herein by this reference.

2.6. Supplements to this Declaration. If the Declarant elects to submit any additional real property to this Declaration by annexation, such additions shall be described in and effected by a duly Recorded Supplemental Declaration. The Recording of any such Supplemental Declaration and the resulting expansion of the Property shall not require the consent or ratification of any Owner other than the Declarant. A Supplemental Declaration may impose on the real property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions other than those set forth in this Declaration, taking into account the unique and particular aspects of each Lot within the real property covered thereby. A Supplemental Declaration which applies only to Retail Sites, Hotel Sites, or Office Sites may also specify that certain use restrictions contained in this Declaration do not apply to all or a portion of the real property described in such Supplemental Declaration in light of the non-Residential Use being made of such property, and in which cases the Supplemental Declaration also may contain use restrictions different from this Declaration, provided however, that the use restrictions applicable to each non-Residential Site classification (Hotel, Retail, Office) shall be consistent and evenly applied to all Sites within the same classification. Upon Recordation of a Supplemental Declaration involving additional real property, such additional real property shall become part of the Property and shall be subject to all covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes

and other provisions set forth in this Declaration, except to the extent permitted hereunder and otherwise specifically stated in the Supplemental Declaration.

2.7. No Annexation Required; Contraction of Property. Notwithstanding any other provision of this Declaration to the contrary, nothing in this Declaration shall be construed to obligate Declarant to make any real property other than the Property subject to this Declaration. Declarant expressly reserves the right, in its sole discretion, from time to time to remove or withdraw any portion of the Property Declarant owns, effective upon the Recordation of a written instrument, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion shall thereafter be withdrawn from the Property under this Declaration. The recording of any such written instrument and the withdrawal of any portion of the Property shall not require the consent or ratification of any Owner or other owner of any portion of the Property other than Declarant. Declarant's election to remove or withdraw any portion of the Property under this Section will result in the recalculation of the Allocations applicable to the remaining Property under the formula set forth in Section 4.1 herein, and may result in an increase in the Common Expenses allocated to the remaining Owners.

ARTICLE 3. THE ASSOCIATION.

3.1. Formation. The Association will be formed no later than the date the first Lot is conveyed to an Owner other than Declarant. All Owners are members of the Association and, when an Owner consists of more than one Person, all such Persons will, collectively, constitute only one Owner. Membership in the Association shall immediately cease at such time as an Owner no longer owns a real property interest in the Development. Membership in the Association may not be transferred, pledged or alienated except to a new Owner upon conveyance of the existing Owner's real property interest in the Development.

3.2. Operation of the Association. The Association shall be governed in accordance with the Articles and the Bylaws and, except as expressly provided therein, herein or otherwise by law, the Association shall be entitled to exercise all rights and powers without a vote of the members. The appointment or election of, the term of office of, the removal or resignation of, and the qualifications and number of, directors on the Executive Board of the Association shall be as set forth in the Bylaws.

3.3. Powers and Authority. Notwithstanding the establishment of the Association for purposes of covenant enforcement and the other purposes set forth herein, each Owner, by its acceptance of a deed to a Lot or a Residential Unit, acknowledges and agrees that: (a) the Property is located within the boundaries of the Taxing District, as more fully set forth in the service plan therefore; and (b) the Management District and the Taxing District have entered into the Intergovernmental Agreement, which has been duly approved by the registered electors of both Metropolitan Districts whereby the Management District has agreed to perform the duties, rights and obligations of the Taxing District, and whereby the Taxing District has agreed to impose such taxes, fees, rates, tolls and charges as are permitted under Applicable Law to pay for the provision of certain services, including the provision of park and street maintenance, and of parking administration for Abilene Station.

3.4. Adoption of Rules and Regulations. The Association may adopt such Rules and Regulations as are consistent with the Act and the Association's Articles and Bylaws.

3.5. Common Assessments. The Association shall have the right to assess, and each Owner of a Lot shall be liable for, Common Assessments relative to the Common Expenses based upon the Allocation for such Lot. Reasonable fees, Fines, charges, late charges, attorney's fees, collection costs and interest charged in connection with the late payment of Common Expense Assessments are also enforceable as Common Assessments.

3.6. Special Assessments. In addition to Common Assessments, the Association shall have the power to levy a Special Assessment in the form of reasonable fees, Fines, charges, late charges, attorney's fees, and interest for Violations.

3.7. Payment of Assessments. The mechanism for collection of Special Assessments shall be as provided in ARTICLE 14 of this Declaration. The Association is hereby granted and shall have a lien on a Lot or Residential Unit for all Assessments levied against such Lot or Residential Unit, as provided by the Act, and all rights of collection and priority of liens granted by the Act. If a Common Expense Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. The Association shall have the right to delegate the collection and remittance of Assessments from Residential Unit Owners to any sub-association of which such Residential Units are a part.

3.8. Cooperation with the Metropolitan Districts. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with the Metropolitan Districts, any other community associations, any other governmental or quasi-governmental entity, and/or any other districts in furtherance of performing the services called for under this Declaration.

3.9. Other Rights and Powers. The Association shall have all other rights and powers granted to Associations by the Act.

ARTICLE 4. ALLOCATIONS

4.1. Allocations. For each Lot within the Property, such Lot shall be allocated a percentage of Common Expenses and voting rights in the Association in accordance with this Section 4.1 (an "Allocation"). Such Allocation shall be derived from a fraction, the numerator of which, for each Lot, shall be equal to the total square footage of such Lot as reflected on the final recorded Plat for such Lot and the denominator of which shall be equal to the total square footage of all Lots within the Property, at any given time. The Allocations to Lots presently included within the Property are set forth on **Exhibit C**, attached hereto and incorporated herein by this reference. As additional Lots are added to the Project by Annexation, or if existing final plats are re-platted, such that the square footage of any Lot, or the total square footage within the Property, is increased or decreased, the Association shall recalculate the Allocations pursuant to the formula described herein. The Allocation to Residential Units on a Residential Lot shall be specified in the Supplemental Declaration for such Residential Lot.

ARTICLE 5. MAINTENANCE & OPERATION OF PROPERTY.

5.1. General. No Landscaping or Improvements within the Property (including Residential Units), shall be permitted to fall into disrepair, and the same shall be kept and maintained in a clean, safe and attractive condition, in good repair, as determined by the Association (or the CEC to the extent formed by the Association) and in accordance with all Applicable Laws. Installation, maintenance, repair, and upkeep of the Property shall be allocated as follows:

(a) By Development Owner. All installation, maintenance, repair and upkeep of Landscaping and Improvements by any Development Owner for Hotel, Office, Retail and Residential Sites shall be performed in a manner considered acceptable to the Association and/or the DRC, and in a manner which complies with this Declaration and the Rules and Regulations. The Development Owner shall install, maintain, repair and replace, at the Development Owner's own expense, the following:

(i) All Improvements on a Lot (except for those items delegated to a Residential Unit Owner in Subsection (b) herein), including all common elements of the Lot. In addition, to the extent the following is not provided by the City, the Development Owner shall be responsible for the installation, maintenance, repair and replacement of the sidewalks located on the Development Owner's Residential, Hotel, Office or Retail Site, including the sidewalks adjacent to the right of way. Maintenance of these common elements specifically includes periodic removal of all papers, debris, filth, refuse, ice and snow, including vacuuming and broom sweeping to the extent necessary to keep these areas in a first class, clean and orderly condition. Maintenance of the common elements of the Site may be delegated to a sub-association where appropriate.

(ii) All portions of the Units (including interior wall surfaces) contributing to the support of the building, which portions shall include, but not limited to, the outside walls of the building and load-bearing columns. Such maintenance, repair and replacement obligations may be delegated to a sub-association where appropriate.

(iii) All parking structures and areas designated for parking that are located on the Development Owner's Residential, Hotel, Office, or Retail Site. The Development Owner may designate the maintenance and policing of the parking structure to a sub-association. Maintenance of parking structures specifically includes: snow and ice removal; and, maintenance all paved surfaces and curbs in a smooth and evenly covered condition (specifically including resealing and resurfacing).

(b) By the Residential Unit Owner or Occupant. The responsibilities of each Residential Unit Owner or occupant shall be as follows unless responsibility for one or more of such items is assigned to a subassociation in as Supplemental Declaration:

(i) To maintain, repair and replace at the Unit Owner's or occupant's expense, all plate glass, glass doors, window, screens and doors opening into or onto the Unit. All such maintenance, repairs and replacements shall be done without disturbing the rights of other Unit Owners or occupants.

(ii) The floor and interior walls of any balcony, terrace or patio of a Unit shall be maintained at the Unit Owner's or occupant's expense.

(iii) Within and without the Unit, not to paint or otherwise decorate or change the appearance of any exterior portion of the building, including balconies, patios or terraces, or any exterior wall finish material of the Residential Unit.

(iv) To promptly report to the Association any defects or need for repairs, the responsibility for the remedy of which is that of the Association.

(v) No Residential Unit Owner or occupant shall make or cause to be made any structural modifications or alterations or replacements in a Residential Unit, or in the exterior doors of the Residential Unit without compliance with the procedures set forth in ARTICLE 8 of this Declaration.

(c) By the Association. Except as specified as a Management District obligation below, the Association shall be responsible for the maintenance, repair, and upkeep of all portions of the Property it owns, including any Association-owned Lots or Tracts and any Improvements thereon, including, but not limited to:

(i) Any area designated as a part of an Amenity shall be the responsibility of the Association, except as may otherwise be provided herein or in a Supplemental Declaration or other Recorded instrument, and except that the Management District shall be solely responsible for maintenance of public parks and streets.

(d) By the Management District. The Management District shall be responsible for:

(i) Administration of parking located on the Urban Streets, to the extent not provided by the City, including without limitation maintenance of curbside parking and snow and ice removal; and

(ii) maintenance and repair of parks and streets (to the extent not dedicated to the City) within the Development to the extent designated in the service plan(s) of the Metropolitan Districts and as designated on the Plat.

(e) No improvements, alterations, repairs, change of paint colors, excavations, or other work which in any way alters the exterior of any Residential Unit, Site or Improvement located thereon from its natural or improved state existing on the date such Lot was first subject to this Declaration shall be made or done without compliance with the procedures set forth in ARTICLE 8 of this Declaration, unless such Site has been exempted from such requirement by a Supplemental Declaration.

(f) Landscaping. The initial installation of Landscaping on a Lot, including the installation of street trees and other Landscaping between the adjacent sidewalks and the curb-line of the streets, shall be solely at the expense of the Development Owner (or a Builder to the extent such obligation is established in writing), in conformance with the applicable Design Guidelines and the Metropolitan District's Master Streetscape Plan. Such obligation shall also include the obligation to install an irrigation system sufficient to support such Landscaping. The Development Owner shall maintain all Landscaping for the property located from the exterior boundaries of the Lot to the curb-line of the streets. The Development Owner must maintain and replace all Landscaping in a neat, clean, safe and attractive condition, including, but not limited to, periodic and horticulturally correct pruning, removal of weeds and debris, adequate irrigation, replacement of dead plants and landscape planters.

(g) Urban Streets. Operation, maintenance, repair, and enforcement of the Urban Streets shall be allocated as follows:

(i) Management District. To the extent not provided for by the City, the Management District shall provide the following operation and maintenance functions for the Urban Streets: snow removal on streets and parking lanes, cleaning of streets, cleaning of gutters, inspection and maintenance of parking signage, striping for parking, parking meters and all other facilities necessary to the regulation of parking, consistent with the rules and regulations of the Metropolitan District, all Applicable Laws and the recommendations, requirements, and standards of the City. The Management District shall have the right to delegate or assign all or a portion of such operation and maintenance and/or its parking regulation obligations.

(h) Project Identification Improvement(s). Declarant (or such other person to whom Declarant shall assign its rights under this provision) reserves the right to construct certain project identification signage or monument(s) at the entryways within the Property. Once constructed, the Management District shall maintain such project identification signage or monument(s) at its sole cost and expense. No Development Owner, Builder or Owner shall construct, modify, replace, paint or obstruct any such project identification signage or monument(s) without the prior written approval of the Association or the DRC, as applicable.

(i) Perimeter Fencing. Declarant may, or may cause the Association or the Management District to, install perimeter fencing along exterior portions of the Property; provided, however, that the decision to install such perimeter fencing shall be left to

Declarant's sole discretion. Perimeter fencing must be constructed pursuant to requirements of the City, and in accordance with the Guidelines. Some portions of such fencing may be constructed on Lot boundary lines, and other portions may be constructed adjacent to the Lots. Development Owners or Residential Unit Owners or occupants with perimeter fencing (either on the Lot boundary line or appurtenant to said Lot) shall not construct, modify, replace, paint or obstruct any such entryways, fences, fence pillars, stone pilasters or walls without the prior written approval of the Association or the DRC.

(j) Maintenance of Drainage. Each Owner agrees that it will not in any way interfere with the established drainage pattern over the Property. For purposes of this Section 5.1(j), "established drainage" means the drainage which exists at the time final grading of the applicable portion Property by Declarant or by a Builder is completed.

5.2. Additional Requirements in Supplemental Declarations. Notwithstanding the foregoing provisions of Section 5.1, a Supplemental Declaration may adopt additional maintenance requirements for the Property subject to such Supplemental Declaration, provided that such Supplemental Declaration has been approved by the Declarant and otherwise conforms to the requirements of Section 2.6.

5.3. Association's Right to Perform Work. In the event any Development Owner shall fail to timely and/or satisfactorily perform any maintenance, repair or upkeep obligations of the Hotel Site, Office Site, Residential Site or Retail Site owned by said Development Owner, the Association (or the CEC to the extent formed) may give written notice to the Development Owner of the work required to be performed, and, if such failure to perform the work continues for a period of thirty (30) days after such notice has been given, the Association or its representatives and agents may enter upon the Lot and perform the necessary maintenance, repairs or upkeep; provided, however, that the Association may enter upon a Lot in order to perform maintenance, repairs or upkeep without prior notice to the Development Owner in the event of an emergency, as determined by the Association in its reasonable discretion. The cost of any such maintenance, repair or upkeep shall be the obligation of the Development Owner and shall be added to and become a part of the fee to which the Lot is subject and the Association shall have a lien to secure such fee as provided by this Declaration. Such fees shall be payable by the Development Owner upon demand by the Association.

5.4. Association's Easement to Perform Work. The Association shall have an easement over, across and upon each Lot (and to the extent necessary, any Improvements on or in such Lot) as provided for in Section 13.2.

5.5. Damage by Owner or Occupant. Notwithstanding anything to the contrary contained in this Declaration, in the event the need for the Association to maintain, repair or replace any improvements (including Landscaping and/or fencing) is caused by the negligence, willful act or other misconduct of a Development Owner or Residential Unit Owner, or a member of such Owner's family or a guest, invitee or tenant of an Owner, or any Person acting by, for, through, or under any of the foregoing, the costs of such repair, replacement or maintenance shall be the personal obligation of such Owner, and the costs, expenses and fees incurred by the Association for the same shall be levied against such Owner as part of such

Owner's assessments to be collected by the Association. The Association shall have a lien against such Owner's Development Lot or Residential Unit to secure such assessments.

ARTICLE 6. SUB-ASSOCIATIONS

6.1. Requirement of Establishment of Sub-Association. Notwithstanding any other provision of this Declaration to the contrary, Declarant shall have the right to require any Development Owner, including without limitation a Builder, to establish a sub-association with respect to all Owners of Units situated within the boundaries of said Lot to address the ownership, maintenance, and repair of common elements situated on said Lot and for other purposes consistent herewith. Any such sub-association may have the right to impose assessments, own Tracts, and/or perform all duties typically allocated to an association under the Colorado Common Interest Ownership Act, or otherwise, subject to the Restrictions and provided any such assessments are subordinate to any assessments levied pursuant to this Declaration.

ARTICLE 7. DESIGN REVIEW COMMITTEE.

7.1. Design Review Committee and Design Guidelines. The Declarant, at its sole discretion may establish a Design Review Committee ("DRC") and, in such event, the members of the DRC shall be appointed by the Declarant during the Development Period. After the expiration of the Development Period, the Association may establish a DRC, if one does not already exist, and the members of the DRC shall be appointed by the Executive Board of the Association. For purposes of this Declaration, in the event a DRC does not exist, all references to "DRC" shall be deemed to be a reference to the Association. The DRC shall be responsible for the ministerial administration and application of the Guidelines to facilitate the purposes and intent of this Declaration. Separate and distinct Guidelines may apply to one or more specific sites within the Property. Other Guidelines may apply to the Property as a whole. During the Development Period, all such Guidelines shall be prepared and adopted by the Declarant and administered by the DRC, if formed. During the Development Period, the Declarant may promulgate, amend, vary, repeal and augment the Guidelines from time to time, in its sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of the Property, or other factors considered necessary or desirable to fulfill the intent of the Guidelines. Upon the expiration of the Development Period, all rights of Declarant under this ARTICLE 7 shall pass to the Association. The Guidelines shall be binding on the Property, provided, however, that the Guidelines shall only be binding on any Hotel Sites, Office Sites or Retail Sites made subject to this Declaration if specifically provided for in the Supplemental Declaration relating to any such Hotel, Office or Retail Site, provided however, that the Guidelines or other design restrictions applicable to each non-Residential Site classification (Hotel, Retail, Office) shall be consistent and evenly applied to all Sites within the same classification. In the event of any conflict between the Guidelines and this Declaration, this Declaration shall control. The Guidelines may include, but are not limited to, the restrictions and limitations set forth below:

- (a) Standards establishing an architectural theme and requirements pertaining to building style and design, colors, construction materials and site planning.

- (b) Procedures for making an application to the DRC for approval, including the documents to be submitted and the time limits for such submission.
- (c) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Guidelines.
- (d) Designation of building setbacks or building envelopes.
- (e) Limitations on the height of any Improvement.
- (f) Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other such Improvements.
- (g) Landscaping regulations.
- (h) General conditions for the construction, reconstruction, refinishing or alteration of any Improvement.
- (i) Rules for constructions activities, as well as maintaining construction sites and adjacent areas.

7.2. DRC Membership and Organization. In the event the Declarant or the Association establishes a DRC, the DRC shall be comprised of not less than one (1) nor more than three (3) persons. The DRC may include one (1) or more design professionals or licensed architects; and, members of the DRC are not required to be Owners or residents of Property within the Development. All members of the DRC shall be appointed, removed and replaced by the Declarant (and after the expiration of the Development Period, by the Association), in its sole discretion.

7.3. Purpose and General Authority. The DRC shall review, study and either approve or reject proposed Improvements, including Landscaping, on the Property, all in compliance with this Declaration and as further set forth in the Guidelines and such Rules and Regulations as the Association may establish from time to time to govern its proceedings. No Improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the DRC; provided, however, that Improvements that are completely within, and not visible from the outside of, a building may be undertaken without such approval, provided such Improvements do not affect the structural integrity of a building, or impact any party walls or other common or shared areas between Lots. All Improvements shall be constructed only in accordance with plans therefore approved by the DRC. In addition to reviewing and approving plans for Improvements, the DRC may review applications from Owners regarding proposed variances from the Restrictions or the Guidelines, and approve or disapprove the same.

7.4. Approval of Improvements Required. Except as may be otherwise set forth in a Supplemental Declaration, the approval of the DRC shall be required for any Improvement on any Lot except where prior approval of an Improvement on a Lot has been waived by the DRC or certain Improvements have been exempted in writing by the DRC. The foregoing notwithstanding, the approval of the DRC shall not be required for any Improvement made by

Declarant, or for any Improvement made by a Builder, the plans for which have been approved by Declarant in writing. Further, DRC approval of any Retail use, Hotel use or Office use shall not be required unless DRC approval is specifically required by the Supplemental Declaration making such Retail Site, Hotel Site or Office Site a part of the Property.

7.5. Improvement Defined. An Improvement requiring approval of the DRC means and includes, without limitation: (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; (d) installation of landscaping on a Lot or replacement of more than five percent (5%) of the total organic landscaped area on a Lot with non-organic landscape materials; and (e) any change or alteration of any previously approved Improvement, including any change of exterior appearance, color or texture.

7.6. Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement, including landscaping, to a Lot, the Owner proposing to make such Improvement (the "Applicant") shall submit to the DRC, all sketches, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the DRC reasonably shall request showing the nature, kind, shape, height, width, color, materials and location of the proposed Improvement. The DRC may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the DRC of all required design review fees and materials in connection with the proposed Improvement, the DRC may postpone review of any materials submitted for approval.

7.7. DRC Approval. The DRC, by majority vote, shall approve plans and specifications submitted to it only if it determines that the construction, alteration and additions contemplated thereby, and in the location as indicated, will comply with this Declaration, the applicable Supplemental Declaration, and the Guidelines, and will serve to preserve and/or enhance the values of the Lots within the Property and will maintain a harmonious relationship among structures, vegetation, topography and the overall design of the Property. All plans and specifications submitted to the DRC shall be drawn to scale and include such detail necessary for the DRC to make an informed review of such plans and specifications. The DRC may reject any plans and specifications it deems to be insufficient, in its sole and absolute discretion. The DRC may condition its approval of plans and specifications for Improvements on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The DRC shall consider the proposed quality of workmanship, type of materials, harmony of exterior design with other portions of the Property and conformance to the Guidelines. Furthermore, unless otherwise allowed in writing by the DRC, an Owner shall not apply for a building permit for any Improvements from the City or other governmental authority having jurisdiction over the Property until DRC approval for such Improvements has been obtained. Approval by the DRC shall be in writing or indicated by endorsement on the plans and specifications submitted for approval. The DRC shall designate an approved proposal as a Major Improvement or a Minor Improvement for purposes of Section 7.9, a determination that is in the sole discretion of the

DRC. No building, other structure or landscaping shall be erected or allowed to remain on any Lot or Unit which violates this Declaration. The issuance of a building permit by the City or other governmental authority having jurisdiction over the Property shall not prevent or prohibit the DRC from enforcing the terms and provisions of this Declaration. Furthermore, any approval granted shall not be considered a permit to build under applicable governmental regulations. Compliance with the provisions of ARTICLE 7 hereof is not a substitute for compliance with the City and other governmental building, zoning and subdivision regulations and other Applicable Laws, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction of Improvements. Furthermore, DRC approval does not approve or guarantee engineering design or compliance with Applicable Laws, and does not constitute any representation by the DRC as to such matters. The Owner is solely responsible for all such compliance. By promulgating Guidelines, and by approving plans and specifications, neither the DRC, its members, the Association nor Declarant assumes any liability or responsibility for engineering design, construction or compliance with Applicable Laws.

7.8. Failure of DRC to Act on Plans. Any request for approval of a proposed Improvement shall be deemed disapproved, unless written approval is transmitted to the Applicant by the DRC within thirty (30) days after the date of receipt by the DRC of all required fees and materials. If additional fees, information, or materials are requested by the DRC, the thirty-day time period within which the DRC is required to make its decision shall be automatically extended to thirty (30) days after the DRC receives the requested fees, information, or materials. Upon request of the Applicant, the DRC shall provide written notice of disapproval of a proposed Improvement, which shall include an explanation of the reasons for disapproval.

7.9. Prosecution of Work After Approval. After approval of any proposed Improvement by the DRC, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement, any materials submitted to the DRC in connection with the proposed Improvement, and any conditions imposed by the DRC and all Applicable Laws. Failure (a) to complete the proposed Major Improvement within eighteen (18) months after the commencement of construction, or to complete the proposed Minor Improvement within six (6) months after the date of approval, or extension of the initial period as specified in the Guidelines or in writing by the DRC or (b) to complete the Improvement in accordance with the description and materials furnished to, and the conditions imposed by, the DRC and all Applicable Laws, shall constitute noncompliance with the requirements for approval of the Improvement.

7.10. Notice of Completion. Upon completion of any Improvement, the Applicant shall submit a written notice of completion to the DRC requesting final approval of the Improvement. No Owner or Builder shall seek a certificate of occupancy for any Improvement until receipt of final approval from the DRC.

7.11. Discretion and Variances. The DRC may, but is under no obligation to, authorize variances from compliance with any of the provisions of the Restrictions and the Guidelines, including restrictions on height, size, floor area, or placement of structures or similar restrictions, taking into account circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations. Such variances must be in writing and shall become effective

only when signed by at least a majority of the DRC. If any such variance is granted, no violation of the provisions of the Restrictions or the Guidelines shall be deemed to have occurred with respect to the matter for which the variance is granted. However, the granting of a variance shall not affect in any way the Owner's obligation to comply with all Applicable Laws and any conditions imposed by the DRC in granting the variance.

7.12. No Implied Waiver or Estoppel. No action or failure to act by the Association or the DRC, including the granting of a variance, shall constitute a waiver or estoppel with respect to future action by the Association or the DRC with respect to any matter covered by this Declaration. Specifically, the approval by the DRC of any Improvement or granting of a variance shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement on the same Lot or any other Lots, or in the same Unit or any other Units, or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement on the same Lot or any other Lot.

7.13. Changes to Approved Plans. Any and all changes or alterations whatsoever to plans previously approved by the DRC must be reviewed and approved by the DRC.

7.14. Binding Effect. The actions of the DRC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

7.15. Fees and Expenses. The Association shall have the right to charge reasonable fees and deposits for each application submitted to the DRC for review, in an amount which may be established by the DRC from time to time, and such fees shall be collected by the Association to help defray the expenses of the DRC's operation. The Association or a private management company hired by the Association shall provide the DRC with staff for the recording of committee meeting minutes and assistance with other administrative needs, at the Association's cost and expense as it deems reasonably necessary.

7.16. No Representation. Any inspection made by the DRC pursuant to the Restrictions shall not constitute a representation by the DRC or the Association that there has been or will be compliance with this Declaration, the approved plans for any Improvements, the Guidelines or any other architectural guidelines or design standards, rules or regulations promulgated under this Declaration, or that the subject Lot, and the Improvements thereon, are free from defective materials or workmanship.

7.17. Construction and Certificate of Compliance. All approved Improvements constructed upon a Lot or Unit shall be constructed in strict accordance with the plans and specifications approved by the DRC. Upon written request of any Owner or his agent, or a prospective Transferee, and upon payment of a reasonable fee established from time to time by the DRC, the DRC shall issue a certificate setting forth generally whether, to the best of the DRC's knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Guidelines and this Declaration.

7.18. Limitation of Liability. Neither the DRC nor any individual DRC member shall be liable to any person for any official act of the DRC in connection with submitted plans and

specifications, except to the extent the DRC or any individual DRC member acted willfully in bad faith. The DRC, its members and the Association shall not be responsible or liable to any Owner or occupant, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of plan approval or disapproval, or the construction of Improvements whether or not pursuant to any approved plans. As set forth in Section 7.7, neither the DRC, nor the Association, nor any agent of either, nor Declarant or any of its managers, members, employees, agents or consultants, shall be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with any Applicable Laws, and in all events the DRC shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the DRC's decision. The Association, however, shall not be obligated to indemnify each member of the DRC to the extent any such member of the DRC is adjudged to be liable for bad faith or willful misconduct in the performance of his or her duty as a member of the DRC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

7.19. Rights of the Association. The rights of the Association to remove, modify or otherwise correct any Improvement constructed, reconstructed, refinished, altered or maintained upon a Lot or Unit in Violation of the Restrictions, or otherwise correct, remedy or otherwise remove any Violation shall be in addition to all other rights and remedies which the Association may have at law, in equity or under the Restrictions.

7.20. Construction and Certificate of Compliance. All approved Improvements constructed upon a Lot or Unit shall be constructed in strict accordance with the plans and specifications approved by the DRC. Upon written request of any Owner or his agent, or a prospective Transferee, and upon payment of a reasonable fee established from time to time by the DRC, the DRC shall issue a certificate setting forth generally whether, to the best of the DRC's knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Guidelines and this Declaration.

7.21. Access Easement. Each Lot is subject to an easement in favor of the DRC and the Association, including their respective employees, agents and representatives as provided for in Section 13.3.

ARTICLE 8. COVENANT ENFORCEMENT COMMITTEE.

8.1. Committee. The Declarant, at its sole discretion, may establish a Covenant Review Committee ("CEC") and, in such event, the members of the CEC shall be appointed by the Declarant during the Development Period. After the expiration of the Development Period, the Association may establish a CEC, if one does not already exist, and the members of the CEC shall be appointed by the Executive Board of the Association. For purposes of this Declaration, in the event a CEC does not exist, all references to the CEC shall be deemed to be a reference to the Association. The CEC shall be responsible for the ministerial administration and enforcement of the Restrictions, and shall have the right to: (a) accept complaints for violations of the Restrictions; (b) submit complaints to the Association regarding violations of the

Restrictions; (c) inspect the Property for violations of the Restrictions; (d) issue various notices to Owners regarding the Restrictions; and (e) provide all ministerial administration and enforcement of the Restrictions as permitted by the Association and this Declaration. Notwithstanding anything to the contrary herein, at all times a member of the Association's Executive Board shall be appointed as the "Chairman" of the CEC.

8.2. CEC Membership and Organization. The CEC shall be composed of not less than one (1) nor more than three (3) persons. Subject to Section 8.1, during the Development Period, all members of the CEC shall be appointed, removed and replaced by the Declarant, in its sole discretion, and thereafter by the Executive Board of the Association. Members of the CEC are not required to be Owners or occupants of Property within the Development.

8.3. Purpose and General Authority. The CEC shall review all complaints and notifications provided by the Declarant, an Owner, the Association or any Metropolitan District regarding any alleged Violation on the Property. The CEC also shall have the right to make an investigation on its own regarding potential Violations. The CEC shall have the authority to determine whether a Violation has occurred by any Owner or occupant, and upon such determination, may issue to an Owner or occupant a Notice of Violation identifying the particular circumstances or conditions of the Violation and requiring the Owner or occupant to take such action as may be necessary to correct, remedy or otherwise remove the Violation, including the time period in which the Violation is to be remedied.

8.4. Fees and Expenses. The Association shall have the right to charge reasonable fees for inspections and Fines for costs of enforcement of the Restrictions and the costs incurred to correct, remedy or otherwise remedy Violations from the subject Owner or occupant, in amounts which may be established by the CEC from time to time, and such fees and Fines shall be collected by the Association to help defray the expenses of the CEC's operation. The Association or the private management company hired by the Association shall provide the CEC with staff for the recording of committee meeting minutes and assistance with other administrative needs, at the Association's cost and expense, as it deems reasonably necessary from time to time.

8.5. General Inspections; Violation Identified by Another Owner; Notice and Hearing Procedures; Remedies.

(a) General Inspection. Any member or authorized agent or consultant of the CEC, or any authorized officer, director, employee or agent of the Association may enter upon any Lot or Unit at any reasonable time after notice to the Owner or occupant, without being deemed guilty of trespass, in order to investigate or inspect any portion of the Property for alleged violations of the Restrictions.

(b) Notice of Violation. Where such investigation or inspection reveals that any part or portion of a Lot or Unit is not in compliance with the Restrictions, the CEC may send a Notice of Violation to the noncompliant Residential Unit Owner or occupant of such Unit. The Notice of Violation shall be sent via certified mail/return receipt requested and shall identify the particular circumstances or conditions of the Lot or Unit that fail to conform to the Restrictions. The Notice of Violation sent pursuant to this

Section 8.5 shall also contain the date, time, and place of a hearing to be held by the Association for the purpose of evaluating the Lot or Unit's conformance with such Restrictions and to consider the issuance of a finding of Violation. Any Notice of Violation sent pursuant to this Section 8.5 shall also be sent via first class U.S. mail addressed to "occupant" at the address of the alleged nonconforming Lot or Unit, which is subject to the Declaration and for which the Notice of Violation is issued, as well as a copy to any Owner notifying the CEC of any alleged violation of the Restrictions in accordance with subsection (c) below. All Notices of Violation shall be sent no less than fifteen (15) days prior to the date of the hearing.

(c) Violations Identified by Another Owner or Occupant. If an Owner or occupant alleges that another Owner or occupant is in violation of this ARTICLE 8 or otherwise is not in compliance with any Restrictions or Guidelines, the complaining Owner or occupant must first submit written notice to the CEC of the alleged Violation, and the CEC may investigate such allegation and may then send a Notice of Violation to the alleged noncompliant Owner or occupant in accordance with subsection (b) above. A hearing must be held by the Association or the Association must issue a written waiver to a hearing before the complaining Owner or occupant may resort to legal or other action for relief.

(d) Procedure for Hearing. On the date and time of the hearing specified in any Notice of Violation, the Association shall hear and consider information and evidence presented by any Owners or occupants or other interested parties regarding the conformance of the subject Lot or Unit with the Restrictions. The hearing shall be conducted in accordance with any rules and procedures promulgated by the Association. Not more than five (5) business days following the hearing, the Association shall either: (i) make a finding that the Lot or Unit is in compliance with the Restrictions; (ii) make a finding that the Lot or Unit is in Violation of the Restrictions; or (iii) continue the hearing to a date certain for the purpose of obtaining additional information regarding the alleged Violation. The decision of the Association shall be final. Where the Lot or Unit is determined to be in Violation of the Restrictions, the Association shall issue a written finding of Violation, which shall include the time period, not to exceed forty-five (45) days, in which the Violation is to be corrected, remedied or otherwise removed. Any Owner who is found to be in violation of the Restrictions shall correct, remedy, or otherwise remove the Violation within the time period specified in the Notice of Violation. If the Owner does not comply within the specified time period, the Association may, at its option, pursue those remedies specified in subsection (e) below. Notwithstanding anything to the contrary contained herein, at any time prior to the Association's final determination of Violation, an Owner or occupant may notify the CEC in writing that any Violation has been corrected, remedied or removed. Following inspection of the Lot or Unit by the CEC and confirmation that the Lot or Unit is in compliance, the CEC may suspend or dismiss all actions to enforce its remedies.

(e) Remedies. If an Owner or occupant fails to remedy the Violation within the time period specified in the Notice of Violation, the CEC and the Association shall have all remedies available to it at law or in equity, including, without limitation, the remedies provided for in Section 14.2.

(f) Deemed Nuisances. Every Violation is hereby declared to be and to constitute a nuisance, and every remedy allowed for such Violation at law, in equity or under the Restrictions against the violating Owner shall be applicable.

(g) Rights of the Association. The rights of the Association to remove, correct or otherwise remedy any Violation shall be in addition to all other rights and remedies which the Association may have at law, in equity or under the Restrictions.

(h) Access Easement. Each Lot is subject to an easement in favor of the CEC and the Association as provided for in Section 13.3.

ARTICLE 9. USE RESTRICTIONS

9.1. General Restrictions Applicable to the Entire Property. In addition to the recorded easements, licenses and other permitted exceptions set forth on **Exhibit D**, attached hereto and incorporated herein by this reference, the Restrictions set forth in this Section 9.1 shall govern the entire Property.

(a) Damage or Destruction. In the event any Residential Unit or other Improvement constructed on a Residential, Hotel, Office or Retail Site is damaged, either in whole or in part, by fire or other casualty, such Residential Unit or other Improvement shall be promptly rebuilt, repaired or remodeled to comply with this Declaration.

(b) Vehicular Parking, Storage and Repairs.

(i) Parking. Except as otherwise set forth in any Rules and Regulations, vehicles shall be parked in appropriate spaces or areas on each Site, as designated by the Development Owner for each Site, or in appropriate spaces or areas on the Urban Streets as may be designated by the Management District. The Management District may designate certain parking areas on the Urban Streets for visitors or guests and adopt reasonable rules and regulations, from time to time, governing such areas.

(ii) Storage. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted upon the Urban Streets. For purposes of this Section 9.1, a vehicle shall be considered "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours without the prior approval of the Management District or the CEC.

(iii) Violations. In the event the CEC, the Management District or the Association shall determine that a vehicle is being parked or stored in violation of this Section 9.1(b), then a written notice describing such infraction shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined

by the CEC or the Management District in its discretion from time to time, the Management District shall have the right to remove the vehicle at the sole expense of the owner thereof.

(c) Nuisance and Waste. No noxious or offensive activity shall be permitted in or on any Site nor shall anything be done therein which may be or become an annoyance, disturbance or nuisance to any Owner, or occupant or tenant of a Site. No waste shall be committed on any Site or in any Unit.

(d) Violation of Law. Nothing shall be done or kept in or on any Site or any portion of the Property which would be in violation of any Applicable Laws.

(e) Annoying Light, Sound or Odors. No light shall be emitted from any Site which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Site which is unreasonably loud or annoying; and no odor shall be emitted on any Site which is noxious or offensive.

(f) Unsightliness. No unsightly conditions, structures, facilities, equipment or objects shall be permitted to remain on any Site if they are visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, no lumber, bulk materials, scrap, refuse or trash shall be kept stored or allowed to accumulate on any Site except within an enclosed structure or appropriately screened from view.

(g) Trash Disposal. No trash, garbage, refuse, or rubbish shall be deposited on any street, or on the exterior of any Site (specifically including, but not limited to, any balcony, hallway or stairwell), except in designated trash dumpsters or other similar trash facilities for the Site.

(h) Restrictions on Temporary Structures. No camper, tent, trailer, motorhome, mobile home or other temporary structure shall be used as a Residential Unit or other living quarters anywhere within the Property.

(i) Restrictions on Antennas, Pipes, Utility Lines and Transmitters. Pipes for water, gas, sewer, drainage, or other purposes for a Site, and wires, poles, aerials, antennae, and other facilities for the Telecommunication Facilities or electricity, and utility meters or other utility facilities for a site shall be kept and maintained, to the extent possible, underground or within an enclosed structure. A Residential Unit Owner or occupant is prohibited from any installation of a satellite dish or antenna except within his Unit or as otherwise expressly provided by the Telecommunications Act of 1996, as amended or supplemented from time to time.

(j) Restrictions on Storage Tanks. No tanks for the storage of gas, fuel, oil, or other materials shall be erected, placed, or permitted on any Site (other than reasonably sized propane tanks intended for use with gas grills, but only if and as specifically allowed in the Rules and Regulations).

(k) Insurance Risks. No Site may be used for any use which would constitute an unusual fire hazard, would result in jeopardizing any insurance maintained on other Sites within or on any other portion of the Property or would result in any increase in the premium for any such insurance; provided, however, that the DRC may approve the use if adequate safeguards are undertaken at the applicable Owner's expense and any increase in insurance premiums is allocated to, and paid by, the applicable Owner.

(l) Easement Areas. By taking title to any Site within the Property, each Owner and occupant acknowledges that certain portions of the Property are subject to easement rights as provided for in Section 13.4.

(m) Storage of Explosives, Gasoline, and Similar Substances. No Site shall be used for storage of explosives, gasoline or other volatile or incendiary materials or devices. Gasoline or other volatile or incendiary materials or devices shall be stored only in a manner that strictly complies with all Applicable Laws.

(n) Prohibition of Marijuana Uses. Marijuana Uses, as defined herein, are prohibited on all portions of the Property, regardless of applicable changes in local, regional, state or Federal laws. For purposes of this Section 17.13, "Marijuana Uses" shall include, but are not limited to, all uses related to the sale, manufacture, cultivation, warehousing, distribution, pruning, cutting, processing, packaging, or production of marijuana or other THC-containing products, including but not limited to, the operation of marijuana warehouse and distribution facilities, marijuana grow facilities, marijuana testing facilities, marijuana product manufacturing facilities, marijuana clubs, medical marijuana facilities and marijuana retail facilities. This covenant and restriction may be further clarified by the Executive Board through Rules and Regulations.

(o) Signage. Any and all signs, if allowed, shall comply with all sign standards of the applicable governmental authorities which may be applicable to the Property, as well as the Restrictions. Flashing, neon or animated signs shall not be permitted anywhere on the Property.

9.2. Restrictions Applicable only to Residential Sites. The Restrictions set forth in this Section 9.2 shall only govern those portions of the Property that have been designated as a Residential Site in this Declaration, or in any Supplemental Declaration subjecting such property to this Declaration. Residential Sites shall be used only for the purposes set forth in this Declaration, as permitted by the Applicable Laws, and as set forth in this Declaration or other specific Recorded covenants, conditions or restrictions affecting all or any part of the Property. No Residential Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely, but in no event shall the maximum number of occupants in a Residential Unit exceed the lesser of (a) two (2) persons multiplied by the number of designated bedrooms (according to the Records) in such Residential Unit plus one (1) person, or (b) the maximum number permitted under Applicable Law.

(a) Residential Use of Lots. Subject to the provisions of Sections 1.52 and 11.1(c), each Residential Site shall only be used for a Residential Unit and appurtenant uses which are customarily incident thereto. No business, commercial or retail use or

other non-residential use may be conducted on any part of a Residential Site, except for compatible commercial uses as specifically provided in the Supplemental Declaration for such Residential Site, or as otherwise as provided in this Section 9.2 and ARTICLE 11.

(b) Home Occupations; Owner Occupancy.

(i) Home Occupations. The conduct of a home occupation within a Residential Unit shall be considered accessory to the Residential Use and shall not be deemed a violation of this Declaration, provided that the following requirements are met:

(aa). Such home occupation shall be conducted only within the interior of the Residential Unit and shall be clearly secondary to the Residential Use.

(bb). The home occupation shall be conducted only by residents of the Residential Unit and no non-residents shall be employed in connection with the home occupation carried on in the Residential Unit.

(cc). The home occupation is conducted by computer, mail, or telephone in which customers, clients, patients or other business associates do not come to the Residential Unit for business purposes.

(dd). There shall be no evidence of a home occupation detectable from the outside of the Residential Unit by sight, sound, smell or otherwise.

(ee). The conduct of such home occupation must be permitted under the zoning ordinances of the City and all other Applicable Laws.

(ff). No commercial deliveries for such home occupation shall be allowed other than occasional mail service deliveries.

(ii) No formal child daycare facility shall be conducted within a Residential Unit. A Residential Unit Owner or occupant may only provide child care services in the Residential Unit if the child is related to the Residential Owner or occupant by blood, adoption or legally recognized marriage in the State of Colorado. Upon a complaint by an Owner or occupant, the CEC and the Association reserves the right to review conduct associated with child care.

(c) Pets. No Residential Unit may have more than two (2) domestic pets, and the aggregate weight of such pets must be less than eighty (80) pounds. No type of exotic pet or exotic animal (including, but not limited to, livestock, poultry, rodents or reptiles), nor any animal or breed of animal, dog or cat covered under dangerous animal laws shall be kept or harbored within the confines of a Residential Unit. No fish tanks or similar tanks holding in excess of 35 gallons of water shall be permitted without obtaining the

CEC's prior written approval thereof. In addition, pets may be kept in a Residential Unit, provided that: (c) they are not kept, bred, or maintained for any commercial purposes; (d) they do not make objectionable noises or otherwise constitute an unreasonable nuisance to other Owners or occupants (as determined by the CEC in its sole discretion); (e) when outside the Residential Unit, they are kept on a leash being held by a person capable of controlling the animal; (f) the Residential Unit Owner or occupant immediately picks up and disposes of all solid pet waste; (g) the Owner or occupant shall be financially responsible and liable for any damage caused by such pets; and (h) the Owner or occupant is not in violation of any other provision of the Restrictions or any Applicable Laws. The CEC may, from time to time, determine that a reasonable number or aggregate weight of pets in any instance may be more or less than the above numbers. The CEC shall have the right to prohibit any animal which, in the sole opinion of the CEC, is not being kept in accordance with the restrictions contained herein. The Association may adopt and enforce additional Rules and Regulations governing the subject of pets within the Property.

(d) Hazardous Activities/Fires. No activities shall be conducted which are or might be unsafe or hazardous to any Person or property. Grills, barbecues, and any other outdoor cooking or open flame devices run by the use of charcoal are prohibited. Such devices are only permissible when powered by propane or natural gas. Without limiting the generality of the foregoing, no firearms shall be discharged, no exploding fireworks shall be set off and no open fires shall be lighted or permitted except in a contained propane or natural gas barbecue unit, or indoor fireplace. Trash, leaves, and other similar materials shall not be burned.

(e) Leases. The Owner of a Residential Unit shall have the right to lease such Residential Unit, subject to the following conditions:

(i) All leases shall be in writing and shall be for a term of not less than six (6) months.

(ii) The lease and each tenant and his, her or their family members (collectively, "tenant") occupying the Residential Unit shall be specifically subject to this Declaration and the Rules and Regulations, which the Owner shall attach to each lease. Any failure of a tenant to comply with such documents shall be a default under the lease.

(iii) The Owner and the tenant shall be jointly and severally liable for any violation of the Restrictions committed by the Owner's tenant(s), without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant(s).

(f) Restrictions on Signs. Except as expressly permitted by Applicable Law, no signs or flags shall be displayed to the public view on any Residential Site without the prior written approval of the CEC, with the following exceptions: a) Owners of Residential Units shall have rights to display certain items as established pursuant to Section 106.5 of the Act, subject to such limitations thereon as permitted or established

by the Act and as established in the Rules and Regulations; b) Declarant may erect and maintain a sign or signs in connection with the construction, development, operation, promotion and sale of the Lots; and c) a Development Owner or Builder of a Residential Site may erect and maintain no more than two (2) signs advertising a Lot or portion thereof as "For Sale" or "For Rent"; provided, however, that any "For Sale" or "For Rent" sign must comply with the Design Guidelines and any Development Owner or Builder must obtain DRC approval before displaying such a sign on a Lot. .

(g) Rules and Regulations. Rules and Regulations concerning and governing the use of Residential Sites may be adopted, amended or repealed from time to time by the Association. Such Rules and Regulations may address matters not appearing in this Declaration as well as matters appearing in this Declaration, provided that the Rules and Regulations shall not contradict the provisions of this Declaration. Either or both of the CEC and the Association may establish and enforce penalties for the infraction of such Rules and Regulations including, without limitation, the levying and collecting of Fines.

9.3. Violation of Restrictions. If any Owner or his or her respective family, guests, licensees, lessees, tenants, invitees, agents or employees is in Violation of the Restrictions set forth in this ARTICLE 9, the Association may invoke the remedies provided for in Section 14.3.

ARTICLE 10. DRAINAGE AND SOILS CONDITIONS.

10.1. Acknowledgment. The soils within Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of an Improvement (including a Residential Unit) if the Improvement, the Residential Unit and the Lot on which they are constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

10.2. Disclaimer. Neither the Declarant, the Association, any Metropolitan District, the DRC and the CEC, and their respective officers, directors, managers, members and shareholders shall be liable for any loss or damage to any Improvement or Residential Unit or to any Person, caused by, resulting from, or in any way connected with soil conditions on any Lot, including, by example and not limitation, expansive soils.

10.3. Water Flow. The Owner of a Lot shall not impede or hinder in any way any water falling on or passing through the Lot from reaching the drainage courses established for the Lot and the Property.

10.4. Actions by Development Owners. By accepting title to a Lot, each Development Owner covenants and agrees:

(a) To maintain all gutters and downspouts which discharge water into extensions or splash blocks by assuring that: (i) the gutters and downspouts remain in the down position and are free and clear of all obstructions and debris; (ii) the water flow from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) that splash blocks are maintained under outdoor faucets.

(b) Not to alter, obstruct, or obliterate, in any manner, any drainage swales, pans, easements, or channels located or installed, or required to be located or installed, upon the Property pursuant to established drainage plans.

ARTICLE 11. SPECIAL DECLARANT RIGHTS.

11.1. Special Declarant Rights. Declarant reserves the right during the Development Period to perform the acts and exercise the rights specified below (the "Special Declarant Rights"). The Special Declarant Rights include the following:

(a) Completion of Improvements. The right to construct and complete Improvements within the Property, including, without limitation, the Metropolitan District Property.

(b) Exercise of Development Rights. The right to exercise any right reserved in ARTICLE 12 of this Declaration or any other rights reserved by Declarant in this Declaration.

(c) Sales, Management and Marketing. The right within the Property to maintain sales offices, construction offices, management offices, model Residential Units, and signs, flags and other on-site marketing and sales promotion materials advertising the Property. Declarant shall have the right to determine the number of model Residential Units and the size and location within the Property of any sales offices, management offices, construction offices and model Residential Units. Declarant shall also have the right to relocate any sales offices, management offices, or construction office from time to time at its discretion. After Declarant ceases to be the Owner of a Lot, Declarant shall have the right to remove any sales offices and management offices. No structure used by Declarant for a sales office, construction office, management office or model Residential Unit shall be deemed the property of any party other than Declarant unless specifically assigned, conveyed or dedicated by Declarant to such other party. In addition to Declarant, all Builders shall also have the rights specified in this subsection (c). All expenses attributable to the sale, management and marketing of Residential Units shall be borne solely by Declarant or the Builder of the Residential Site, and shall not be included in the Common Expenses.

(d) Project Management. The right to select and hire a third-party manager for the management, administration and operation of the Property or any lesser portion thereof. In addition to Declarant, the Association shall also have the rights specified in this subsection (d).

(e) Construction and Access Easements. The right to use easements through the Property for the purpose of making improvements and providing access within the Property.

(f) Alteration of Lots. The right to alter any condition (including size and location of Improvements) on any portion of the Property owned by Declarant, whether with respect to sales and marketing efforts or otherwise.

(g) Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member during any Period of Declarant Control.

(h) DRC and CEC. The right to appoint or remove any member of the DRC or the CEC during the Development Period.

11.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves the following additional rights (the "Additional Reserved Rights") during the Development Period:

(a) Amendment of Declaration. The right to amend this Declaration without Owner consent or approval in connection with the exercise of any Development Rights (as defined in ARTICLE 12) or in connection with the qualification or continued qualification for loan guarantees, and for compliance with the requirements of HUD or other Government Mortgage Agencies or any other available financing programs. Declarant also shall have the right to amend this Declaration to comply with the requirements of Applicable Law in the event any provision contained in this Declaration does not comply with Applicable Law.

(b) Errors. The right to amend this Declaration without Owner consent or approval in order to correct clerical, typographical or technical errors, or to clarify any of the Restrictions or any provision hereof.

(c) Amendment of Plat/Re-Plats. The right to supplement the Plat in connection with the exercise of any Development Rights, the right to re-plat all or any portions of the Property owned by Declarant, the right to create additional Lots up to the maximum number of Lots allowed by the City and the right to subdivide or combine Lots which it owns.

(d) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Property for purposes including, but not limited to, streets, paths, walkways, drainage, Tracts, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Property for the benefit of the Owners of the Lots.

(e) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of the Property.

(f) Irrigation Water. The right to use potable or non-potable water, from whatever source, for the following purposes:

(i) Dust control in connection with constructing and completing improvements within the Property;

(ii) Initial establishment of grass on Tracts and Lots (as a temporary dust and erosion control measure before such Lots are initially sold by Declarant); and

(iii) Initial establishment of grass on planned parks and trails, if any.

(g) Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

11.3. Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this ARTICLE 111 for the benefit of Declarant may be transferred to any Person in whole or in part by Recording an instrument in the Records describing specifically the rights transferred. Such instrument shall be executed by Declarant and the Transferee.

11.4. Amendment. The Special Declarant Rights and Additional Reserved Rights created or reserved under this ARTICLE 11 or elsewhere in this Declaration may not be amended or terminated without the prior written consent of the Declarant.

ARTICLE 12. RESERVATION OF DEVELOPMENT RIGHTS.

12.1. Development Rights. During the Development Period, Declarant reserves the following rights (the "Development Rights"):

(a) Expansion Rights. Declarant reserves the right (but is not required) to subject additional real property to the terms, conditions and restrictions of this Declaration in accordance with ARTICLE 2 above. Furthermore, Declarant reserves the right to subject all or any portion of any such additional real property to such other covenants, conditions and restrictions as Declarant deems appropriate by Recording a Supplemental Declaration with respect thereto; provided, however, that no such other covenants, conditions and restrictions may amend or be in conflict with this Declaration, unless approved as an amendment to this Declaration or, where approval is not required, executed by Declarant in accordance with the provisions hereof. No consent of any Owner shall be required for the exercise of these rights, and Declarant may proceed to exercise such rights without limitation, at its sole option.

(b) Exercise of Rights. Declarant may exercise any Development Rights with respect to all or a portion of different parcels of real property at different times in whatever order and to whatever extent, if at all, that Declarant, in its sole discretion, may determine.

12.2. Interpretation. Upon the Recording of a Supplemental Declaration, the real property subject thereto, or any part thereof as specifically stated therein, shall be added to and become a part of the Property for all purposes, or for such limited purposes as are set forth in the Supplemental Declaration, and, except as set forth in the Supplemental Declaration, the definitions in this Declaration shall automatically be extended to encompass and refer to all real property then comprising the Property. Reference to this Declaration in any instrument shall be deemed to include all supplements and amendments to this Declaration without specific reference thereto.

12.3. Transfer of Development Rights. Any right created or reserved under this ARTICLE 12 for the benefit of Declarant may be transferred to any Person by Recording an

instrument in the Records specifically describing the rights transferred. Such instrument shall be executed by Declarant and the Transferee.

ARTICLE 13. EASEMENTS AND DISCLOSURES.

13.1. Easements. In addition to any other easements which may be granted or reserved elsewhere in this Declaration, this ARTICLE 13 describes (a) certain disclosures regarding the Property, (b) additional easements (the "Easements") that are declared, established, granted, and reserved hereby as more particularly set forth in Sections 13.2 through 13.9 hereof, and (c) the limitations on the Easements. Further, the rights to access 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; provided, however, that no such notice shall be required in connection with any exterior, non-intrusive maintenance and 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 warned of impending emergency entry as early as is reasonably possible. The interior of any Residential Unit located on a Lot shall not be subject to the Easements provided for in this Section.

13.2. Access Easement for Declarant and Association. Declarant hereby declares, establishes, grants, and reserves an Easement over, across and upon each Lot or Unit (and the extent necessary, any Improvements on or in such Lot) in favor of the Declarant, the Association, and the Management District, including their respective agents, contractors, employees and independent contractors, to enter upon the Lot as reasonably necessary and with reasonable notice so that the Declarant, the Association or the Management District, as applicable, may perform maintenance, repair, replacement or other services as provided in this Declaration, including, without limitation, maintenance, repair, or replacement pursuant to ARTICLE 5 hereof. All Persons performing such work shall use reasonable efforts to minimize interference with the Owner's or occupant's use and enjoyment of the Lot or Unit when performing such work.

13.3. Access Easement for DRC, CEC and the Association. Each Lot or Unit is subject to an easement in favor of the DRC, CEC and the Association, including their respective members, employees, agents and representatives, for the performance of any actions contemplated by ARTICLE 7 and ARTICLE 8. All Persons performing such work shall use reasonable efforts to minimize interference with the Owner's or occupant's use and enjoyment of the Lot or Unit when performing such work.

13.4. Easement Areas. By taking title to any Lot or Residential Unit in the Property, each Owner and occupant acknowledges that certain portions of the Property are subject to easement rights in favor of governmental, quasi-governmental and other parties, including easements for the benefit of the City, Utility Providers, the Metropolitan Districts and the Association, among others, pursuant to a Plat or other document creating such easement rights. Notwithstanding any other provision of this Declaration, no Owner or occupant shall be allowed to use any portion of the Property or place any trees, structures, fences or other improvements on any portion of the Property that would violate any use restrictions contained in any easement, Plat or other document creating easement rights.

13.5. Retention Ponds and Detention Ponds. In furtherance of developing the Property, retention ponds and/or detention ponds may be constructed on certain portions of the Property (including the Metropolitan District Property) to hold and release storm water in accordance with storm water drainage plan(s) that have been or will be approved by the City. Either the Management District or the Association, as designated on the Plat or other instrument, will be responsible for maintaining any retention ponds or detention ponds within the Property. With the presence of retention pond(s) or detention pond(s), there may be surface water that accumulates within the area of such ponds, and there may be periods of time when the area immediately surrounding a retention pond or detention pond is subject to flooding. Additionally, there are certain risks and dangers of physical injury and property damage inherent in the physical configuration of a retention pond and a detention pond, and the location of such a pond relative to the Property. Neither the Management District, the Association, and/or Declarant, or their respective officers, directors or shareholders, shall be liable for any injury, loss or damage arising from such flooding or otherwise arising from the proximity of any retention ponds or detention ponds to the Property.

13.6. Easements and Disclosures Regarding Public Facilities and Amenities. The following disclosures are made and easements established with respect to any Public Facilities and any Amenities within the Project, if any:

(a) Easement for Operation of Public Facilities. Declarant hereby declares, establishes, grants, and reserves to itself, to the City and to the Management District the responsibility of operating a Public Facility, and to their respective assigns, concessionaires, licensees, and representatives, a nonexclusive Easement over the Property for the purpose of permitting (i) the performance of every act necessary and proper for the operation and use of the Public Facilities, (ii) the effect on such Lot of one or more of the risks disclosed hereby as one of the Public Facilities Risks, (iii) light, noise, and sound emanating from the operation and use of any Public Facility for its intended uses and purposes, and (iv) overspray in connection with the watering or fertilizing of the Public Facilities.

(b) Easement for Operation of Amenities. Declarant hereby declares, establishes, grants, and reserves, to itself and to the Association and their respective assigns, concessionaires, licensees, and representatives, a nonexclusive Easement over the Property for the purpose of permitting i) the performance of every act necessary and proper for the maintenance of the Amenities, ii) the effect on such Lot of one or more of the risks disclosed hereby as one of the Common Amenity Risks, and iii) light, noise, and sound emanating from the operation and use of any Site upon which an Amenity is situated; iv) overspray in connection with the watering or fertilizing of the Amenities.

(c) Proximity to the Public Facilities; Acceptance and Acknowledgment of Risks. Portions of the Property adjoin, are adjacent to, border, or are otherwise in the vicinity of the Public Facilities and are subject to the Public Facilities Risks. Each Owner and each family member, guest, invitee or tenant of an Owner, by acceptance of a deed to a Lot, or through the use or occupancy of a Residential Unit or other Improvement within the Property, as applicable, is hereby deemed to have assumed and agreed to accept the Public Facilities Risks.

(d) Proximity to Amenities; Acceptance and Acknowledgment of Risks. Portions of the Property may adjoin, be adjacent to, border, or are otherwise in the vicinity of an Amenity, and are subject to the associated Common Amenity Risks. Each Owner and each family member, guest, invitee or tenant of an Owner, by acceptance of a deed to a Lot, or through the ownership, use or occupancy of a Residential Unit or other Improvement within the Property, as applicable, is hereby deemed to have assumed and agreed to accept the Common Amenity Risks.

(e) Release by Owner of Claims Relating to Risks. Each Owner agrees that, by acceptance of a deed to a Lot within the Property, and each family member, guest, invitee or tenant of an Owner, by ownership, use or occupancy of a Residential Unit or other Improvement within the Property, hereby (i) discharges and releases Declarant, the Association, the DRC, the CEC, the Metropolitan Districts, the City, the County, any Builder, any Development Owner, and any party operating the Public Facilities or any Amenity or any portion thereof, and their respective parents, subsidiaries, and affiliated entities and their agents, directors, employees, members, managers, officers, partners, and shareholders, and their respective heirs, successors, and assigns (the "Benefited Parties") from all Claims (as that term is hereinafter defined) and (ii) waives all Claims against the Benefited Parties. The foregoing discharge, release, and waiver are made by each Owner and each family member, guest, invitee or tenant of an Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, guests, invitees, lessees, personal representatives, representatives, and successors, and for any person using or occupying any Residential Unit or other Improvement within the Property, through, under, or with the permission of each Owner and each family member, guest, invitee or tenant of an Owner. As used in this Section 13.6(f), the term "Claims" means any and all causes of action, claims, costs, damages, expenses, liabilities, and other claims arising directly or indirectly from or otherwise in connection with the Public Facilities, the Public Facilities Risks, the Amenities (including any swimming pool facilities and/or recreation center), and the Common Amenity Risks, regardless of whether such Claims are caused by the negligence of the Benefited Parties (including, without limitation, the negligent design, development, construction, operation, or use thereof).

(f) Covenant Not to Sue. Each Owner, by acceptance of a Lot, and each family member, guest, invitee or tenant of an Owner, by the ownership, use or occupancy of a Residential Unit or other Improvement within the Property, hereby further agrees that it will not assert, institute, maintain, or prosecute any proceeding (as that term is hereinafter defined) against the Benefited Parties, or any of them, for or on account of any Claim. As used herein, the term "proceeding" means any action, civil action, suit at law, claim in equity, arbitration, or other proceeding against the Benefited Parties or any of them.

13.7. Public and Pedestrian Easements. Easements are hereby reserved in favor of all Owners, their guest, tenants and invitees for ingress and egress over, through and across all Stairways, as may be reasonably necessary for access to and from any Lot and the Common Areas and/or for emergency ingress and egress purposes. In addition, easements for public

pedestrian ingress and egress are hereby reserved over and across any sidewalk bounding the property.

13.8. Utilities Easement. Declarant hereby reserves, for itself and for the Association, the following:

(a) Each portion of a Lot and all Public Facilities shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, utility lines and similar or related facilities located in the Lots and Public Facilities and serving such portion thereof.

(b) Each portion of the Lots and all Public Facilities shall be subject to an easement in favor of all other portions thereof to use, maintain, repair, alter and replace Utilities, including, but not limited to, pipes, wires, ducts, vents, cables, conduits, utility lines and other similar or related facilities located in such portion of the Lots and all Public Facilities and serving other portions thereof.

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, Declarant reserves and is hereby given the absolute right and authority to grant such easement upon, across, over or under any part or all of the Property, specifically including the Lots and the Metropolitan District Property, provided, however, that such right and authority of Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in ARTICLE 11 of this Declaration, at which time such reserved rights shall vest in the Association. The easement provided for in this Section 13.8 shall in no way void, extinguish or modify any other Recorded easement(s) on the Property, specifically including the Metropolitan District Property.

13.9. Easement and Reserved Rights for Telecommunications Facilities. Declarant hereby declares, establishes, grants and reserves the following Easements and rights with respect to Telecommunications Facilities, Telecommunications Services and Utilities:

(a) Easement. Declarant hereby declares, establishes, grants, and reserves, for the benefit of itself and the Association, a blanket Easement (the "Telecommunication Facilities and Utilities Easement") upon, across, over, and under the Property for Telecommunication Facilities and Utilities and for the construction, installation, maintenance, replacement, and repair of Telecommunication Facilities and Utilities. By virtue of the Telecommunication Facilities and Utilities Easement, it shall be expressly permissible for Declarant, the Association, and their respective assignees or designees to (i) erect and maintain the necessary appurtenances, equipment, lines, and other facilities on the Property that are needed for Telecommunication Facilities and Utilities, and (ii) affix, maintain, repair, and replace the necessary appurtenances, equipment, lines, and other facilities necessary or desirable for the operation, repair, replacement, and use of the Telecommunication Facilities and the Utilities.

(b) Reserved Rights. Declarant declares, establishes, grants, and reserves the right for itself and the Association to (i) grant the use of the Telecommunication Facilities

and Utilities Easement to contractors, licensees, Builders, providers of Telecommunication Services, and utility companies, together with the respective contractors, designees, licensees, and subcontractors of such parties, (ii) contract with a common provider of one or more Telecommunication Services on such conditions, provisions, and terms (including length of the term over which such Telecommunication Services will be provided, the type of Telecommunication Services to be provided, and the cost of such Telecommunication Services), (iii) receive a marketing fee from providers of Telecommunication Services, and (iv) require Owners in all or a designated part of the Property to use one or more common providers of one or more types of Telecommunication Services. If any provider of Telecommunication Services, utility, or quasi-utility company furnishing Telecommunication Services or Utilities requests a specific easement by separate Recordable document, Declarant declares, establishes, grants, and reserves the right to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof.

13.10. Limitations on Easements. Notwithstanding anything to the contrary contained herein, the Easements (a) shall in no way affect, avoid, extinguish, or modify any other Recorded covenants, easements, limitations, reservations, or restrictions affecting all or part of the Property, (b) may be amended, limited, modified, restricted, or terminated by Declarant by means of a Recorded instrument, and (c) shall not be interpreted or construed as preventing or precluding the construction, operation, and use of any structure or use on any Lot which is otherwise permitted by the terms of this Declaration or which is otherwise approved by Declarant or the Association.

13.11. Delegation and Termination of Rights. The duties, Easements, responsibilities, and rights that are reserved and granted pursuant to Sections 13.2 through 13.9 hereof may be delegated in whole or in part by Declarant or the Association to (a) an agent or management company that is acting on behalf of the Association with respect to all or part of the Property, or (b) a sub-association with respect to a portion of the Property; provided, however, that any such delegation shall not relieve the Association of its obligations and rights hereunder. The right and authority of Declarant pursuant to Sections 13.2, 13.5, 13.8, and 13.9 hereof shall automatically cease upon expiration of the Development Period at which time the foregoing reserved rights shall vest solely in the Association.

13.12. Recorded Easements. In addition to all easements and rights-of-way of Record at or before Recordation of this Declaration, the Property, and all portions thereof, shall be subject to the Easements shown on any Plat of the Property.

13.13. Acknowledgment of Inconvenience. Each Owner of a Lot has, by its acceptance of a deed to such Lot, acknowledged and agreed that there are inconveniences which will accompany the construction of this Property, including but not limited to construction noise, portable toilets, construction traffic, uncompleted buildings, areas not landscaped, potholes and construction supplies stored in plain view, and general inconvenience associated with construction sites and related issues. Each Owner of a Lot, by taking title to such Lot, shall be deemed to have waived any claims associated with the inconveniences, nuisance and hazards associated with such construction.

ARTICLE 14. REMEDIES

14.1. General. The rights of the Association to remove, correct or otherwise remedy any Violation shall be in addition to all other rights and remedies which the Association may have at law, in equity or under the Restrictions.

14.2. Remedies for Violation of DRC or CEC. If an Owner or occupant fails to remedy a Violation of ARTICLE 7 or ARTICLE 8 within the time period specified in the Notice of Violation, the CEC and the Association shall have all remedies available to it at law or in equity, including without limitation the following remedies:

(a) The Association may Record a Notice of Violation against the Lot or Unit on which the Violation exists;

(b) The Association, upon request of the CEC, shall have the right to remove, correct or otherwise remedy any Violation in any manner the Association deems appropriate, which may include adding an Improvement to the Lot or Unit, removing a Improvement in Violation or obtaining an injunction prohibiting a restricted use of the Lot or Unit;

(c) The Association may levy reasonable Fines for such Violation.

(d) The Association shall have a lien against the Lot or Unit subject to the Violation to secure (i) payment for reimbursement by the violating Owner for any remedial work performed by the Association required to remove, correct or otherwise remedy the Violation, plus (ii) an additional charge on such amount equal to eight percent (8%) over the U.S. prime rate of interest quoted in the "Money Rate" section of The Wall Street Journal, from the date the Association invoices the Owner for such reimbursement until such reimbursement is paid in full, and (iii) all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in any manner allowed for foreclosure of mortgages in the State of Colorado.

14.3. Remedies for Violation of Use Restrictions. If any Owner or his or her respective family, guests, licensees, lessees, tenants, invitees, agents or employees is in Violation of the Use Restrictions set forth in ARTICLE 9, then in addition to any enforcement and remedies described in Section 14.1, the Association may invoke any one or more of the following remedies:

(a) Levy Fines upon such Owner for each Violation which shall accrue interest as set forth in Section 14.2(d);

(b) Cause the violation to be cured and charge the cost thereof to such Owner;
and

(c) Obtain injunctive relief against the continuance of such violation. Before invoking any such remedy, the Association shall give such Owner prior written notice of the Violation, including a specific description of the Violation and shall require the Owner to take such action as may be necessary to remedy the Violation, including the

time period in which the Violation is to be remedied, which time period shall not exceed forty-five (45) days.

14.4. Remedies for Damage Inflicted on a Lot, Unit or Any Property. If damage is inflicted on a Lot, any Unit or any other Property, then:

(a) The Person responsible for such damage will be responsible for the cost and expense of repairing or avoiding such damage, and

(b) The Association may, at its option, take steps necessary to avoid or mitigate damage and, if an Owner(s) or occupant(s) are responsible for such damage, then such Owner(s) or occupant(s) will reimburse the Association for the cost and expense of avoiding or repairing such damage which shall accrue interest as set forth in Section 14.2(d).

14.5. Remedies for Failure to Timely Pay Assessments. The Association shall have all of the rights and powers granted by the Act to collect past due Assessments, including the foreclosure of the Association's lien.

ARTICLE 15. PUBLIC FACILITIES AND AMENITIES.

15.1. General. Use of any Public Facilities and Amenities shall be subject to the Restrictions. The Association (or the Management District, with respect to parks and streets) shall have the right and authority to restrict or expand the use of the Public Facilities and/or the Amenities, and to establish and charge use fees, guest fees and other fees as deemed necessary or desirable by the Association (or the Management District, as applicable) at any time and from time to time.

ARTICLE 16. EXEMPTION FOR DECLARANT AND BUILDERS

16.1. Exemption. Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of, or under the jurisdiction of the Association, the Management District, the DRC or the CEC (including any Design Guidelines, Rules and Regulations), nor shall the Declarant be required to seek the approval or consent of the Association, the Management District, the DRC or the CEC for any construction or other work to be performed by or on behalf of the Declarant on the Property. Declarant, in its sole discretion, may also exempt any Builder from the provisions of (a) ARTICLE 7, as long as Builder has received written design approval under the Design Guidelines from Declarant, and (b) ARTICLE 9, for activities which Declarant deems to be incidental to the Builder's development activities, in Declarant's sole and absolute discretion. This exemption shall terminate upon expiration of the Development Period.

ARTICLE 17. MISCELLANEOUS PROVISIONS.

17.1. Enforcement. Enforcement of any provision of this Declaration, the Guidelines, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering

damages for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. Such proceedings may be instituted by the Association, its designated committee, a Development Owner or a sub-association. In any such proceedings the prevailing party shall recover the costs and reasonable attorneys' fees incurred by such party in connection with such proceedings. In addition, the Association may levy Fines against an Owner of a Lot, a Residential Unit Owner or occupant or any such Owner's lessee, due to a violation of the terms of this Declaration. Reasonable notice of the opportunity for a hearing shall be provided to the affected Owner of a Lot, Residential Unit Owner or occupant, or such Owner's lessee, before any such Fines are charged. The unpaid Fines shall be added to the assessments charged against the Lot or Residential Unit of such Owner by the Association. The failure to enforce any provision of this Declaration, the Guidelines, and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision. The Association shall not be liable to reimburse any Owner of a Lot, Residential Unit Owner or occupant for attorneys' fees or costs incurred in any suit brought by such Owner or occupant to enforce or attempt to enforce this Declaration.

17.2. Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration.

17.3. Duration. The covenants, conditions and restrictions contained in this Declaration shall run with the Property, and, except as otherwise specifically set forth in a Supplemental Declaration, shall be binding on all Development Owners and Residential Unit Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration.

17.4. Amendment. Except as otherwise provided in this Declaration, this Declaration may be amended in accordance with the following provisions:

(a) This Declaration may be amended or terminated at any time by a written and recorded instrument containing the affirmative consent of 67% of the total votes allocated to Lots in the Association subject to the prior written consent of the Declarant during the Development Period.

(b) To the extent the Property and this Declaration has been submitted to and approved by HUD or any Government Mortgage Agencies, all amendments to this Declaration must have the approval by any of the foregoing entities that have approved the same and have outstanding guaranteed loans secured by Lots within the Property.

17.5. Waiver. No provision in this Declaration is or shall be deemed waived by reason of any failure to enforce the provision, regardless of the number of violations or breaches which may occur.

17.6. Limited Liability. Neither Declarant, the Association, the Metropolitan Districts, nor any officers, directors, shareholders, managers, members, partners, agents or employees of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter in which the action taken or failure to act was in good faith and without malice. Such

parties shall be reimbursed by the Association for any costs and expenses, including reasonable attorneys' fees, incurred by them with the prior approval of the Association (which approval shall not unreasonably be withheld) as a result of the threatened or pending litigation pertaining to the Property or this Declaration in which they are or may be named as parties.

17.7. Disclaimer Regarding Safety. DECLARANT, THE ASSOCIATION, AND THE METROPOLITAN DISTRICTS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT OR RESIDENTIAL UNIT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THE METROPOLITAN DISTRICTS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THE RESTRICTIONS AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.

17.8. No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, or the Metropolitan Districts, or by any of their respective officers, directors, shareholders, managers, members, partners, agents or employees in connection with any portion of the Property, or any Improvement, its 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, operation, maintenance, cost of maintenance, taxes or regulation thereof, or any other matter whatsoever whether similar or dissimilar to the foregoing, unless and except as specifically set forth in writing. The release and waiver set forth in Section 17.9 shall apply to this Section.

17.9. Waiver. By acceptance of a deed to a Lot or a Residential Unit, each Owner hereby releases, waives and discharges Declarant, the Association, and the Metropolitan Districts and their respective officers, directors, managers, members, partners, agents, employees, successors and assigns from all losses, claims, liabilities, costs, expenses and damages arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration.

17.10. Arbitration of Disputes. All Disputes (as defined below) shall be subject to and be resolved by binding arbitration, as follows:

(a) Binding Arbitration. Except as specifically provided in subsection (b) below, any action, dispute, claim or controversy between Declarant, the Association, the Metropolitan Districts and the Owners (each a "Bound Party" and collectively, whether all or less than all, the "Bound Parties"), or any of them, whether sounding in contract, tort or otherwise, and whether or not concerning an individual Lot or other portion of the Property (each a "Dispute" and collectively, whether all or less than all, the "Disputes"), shall be resolved by binding arbitration in accordance with the Colorado Uniform Arbitration Act, C.R.S. §§ 13-22-201, *et seq.*, as then in effect, by a single arbitrator. The arbitrator's award shall be entered as a final, unappealable judgment in the appropriate

court in the County. In the event of any inconsistency between such rules and the provisions of this Declaration, the provisions set forth herein shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceedings under this Section. The parties shall be entitled to conduct discovery as if the Dispute were pending in a District Court in the State of Colorado. In any arbitration proceeding subject to these provisions, the arbitrator is specifically empowered to allow discovery and decide pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Any arbitrator selected under this Section shall be knowledgeable in the area of the subject matter of the Dispute and shall be selected by the parties to the Dispute, any court in which the Property is located or any private organization providing such services. In the event the parties to the Dispute cannot agree upon an arbitrator, they shall apply to the Chief Judge of the District Court where the Property is located for appointment of a qualified arbitrator.

(b) Exceptions to "Disputes." The following actions shall not be subject to the provisions of this Section 17.10:

(i) actions brought by the Association, the CEC, the DRC or Declarant to enforce the terms of this Declaration (including, without limitation, the foreclosure of liens); or

(ii) the imposition and collection of Assessments, Fines, costs and attorney fees, or other specific amounts due under this Declaration; or

(iii) counterclaims brought by the Association in proceedings instituted against it; and/or

(iv) any suit between or among Owners, which does not include Declarant or the Association as a party.

(c) Stenographic Record. A stenographic record of the binding arbitration mandated hereby shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and appeals. The arbitrator's decision shall contain findings of fact and conclusions of law to the extent applicable, and the arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the arbitrator upon all of the issues considered by the arbitrator is final and binding upon the parties, and upon filing of a statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon.

(d) Procedure. If any claim regarding defects in construction is made, each claim shall be specified with particularity. Each location of any claimed defect must be identified, and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided to the party or parties against whom the claim is made in advance of any request for arbitration.

17.11. Waiver of Trial to a Jury or Trial to a Judge. BY ACCEPTING A DEED TO ANY LOT OR ANY RESIDENTIAL UNIT, EACH OWNER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY A JURY OR TO A JUDGE WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY THEM AGAINST DECLARANT OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO, OR ANY CLAIM ARISING OUT OF ALLEGATIONS OF DEFECTIVE CONSTRUCTION.

17.12. Amendment. No portion of this Article 17 may be amended in whole or in part unless such amendment is approved by 67% of the total votes allocated to Lots in the Association, and with the prior written consent of the Declarant.

Dated as of the 29 day of July, 2015.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants, Conditions and Restrictions for Abilene Station as of the day and year first above written.

DECLARANT:

ABILENE STATION LLC, a Colorado limited liability company

By: David J. Erb & Company
Its: Manager

By: [Signature]
David J. Erb, President

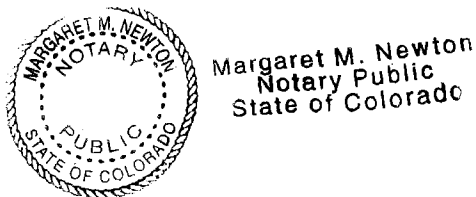
STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 29th day of July, 2015 by David J. Erb, as President of David J. Erb & Company, the Manager of Abilene Station LLC, a Colorado limited liability company, on its behalf.

Witness my hand and official seal.

[Signature]
Notary Public

My Commission expires: May 12, 2018



**EXHIBIT A
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ABILENE STATION**

LEGAL DESCRIPTION OF THE PROPERTY (FIRST PHASE)

LOT 2, BLOCK 1,
ABILENE STATION SUBDIVISION FILING NO. 1,
PURSUANT TO PLAT RECORDED JUNE 9, 2015 AT RECEPTION NO. D5059964
COUNTY OF ARAPAHOE, STATE OF COLORADO.

**EXHIBIT B
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ABILENE STATION**

**LEGAL DESCRIPTION OF THE REAL PROPERTY
WHICH MAY BE SUBMITTED TO THE DECLARATION OF
BY ANNEXATION IN FUTURE PHASES**

All or any portion of the land legally described as follows:

ABILENE STATION SUBDIVISION FILING NO. 1,
PURSUANT TO PLAT RECORDED JUNE 9, 2015 AT RECEPTION NO. D5059964,
COUNTY OF ARAPAHOE, STATE OF COLORADO,

except for the Property being initially annexed into the Property by this Declaration, as set forth
in Exhibit A.

**EXHIBIT C
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ABILENE STATION**

TABLE OF ALLOCATIONS (FIRST PHASE)

<u>Lot</u>	<u>Sq. Footage</u>	<u>Share of Common Expenses</u>	<u>Votes in the Association</u>
Lot 2, Block 1	79,529	1.000	1.000
TOTAL:	79,529	100%	100%

**EXHIBIT D
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ABILENE STATION
RECORDED EASEMENTS, LICENSES AND PERMITTED EXCEPTIONS
(FIRST PHASE)**

1. Taxes and assessments for 2015 and subsequent years, a lien not yet due and payable.
2. Each and every right or rights of access to and from any part of the right of way for Colorado State Highway No. 225, from and to any part of subject property abutting upon said highway, as granted to The Department of Highways, State of Colorado, by the instruments recorded August 29, 1961 in Book 1284 at Page 148; February 25, 1964 in Book 1129 at Page 326 (Adams County Records); September 11, 1966 in Book 1682 at Page 271 and February 19, 1976 in Book 2420 at Page 150.
3. The effect of the Ordinance # 77-236 annexing subject property to the City of Aurora as set forth under the instrument recorded February 4, 1974 in Book 2209 at Page 183.
4. Effects of City of Aurora Ordinance No. 75-53 creating Phase II Multiple Purpose District No. 2-75 recorded June 2, 1975 in Book 2339 at Page 640.
5. An easement to construct, reconstruct, operate and maintain its water, sewer and storm drainage transmission mains, lines and facilities and all fixtures, devices and structures whatsoever necessary or useful in the operation of said transmission mains, lines and facilities, in, over, through, along and across subject property granted to The City of Aurora, Colorado by the instrument recorded November 28, 1975 in Book 2396 at Page 582.
6. An easement for water, sewer, and storm drainage transmission mains, lines and fixtures and incidental purposes granted to The City of Aurora, Colorado by the instrument recorded November 1, 1983 in Book 4006 at Page 58.
7. Effects of City of Aurora, Colorado, Ordinance No. 89-17 rezoning the subject property to P-D (Planned Development District) recorded March 15, 1989 in Book 5650 at Page 214.
8. Terms, conditions, provisions, easements, agreements and notes contained on the plat of Harris Marine Subdivision Filing No. 1 recorded April 18, 1989 at Reception No. 3078843.

NOTE: Fire lane, fire lane and utility and utility easements located within the limits of Lot 1, Block 1, Murray-Krause Subdivision Filing No. 1 released by Quit Claim Deed recorded February 28, 2002 at Reception No. B2038702.

9. Terms, conditions, provisions, agreements and obligations contained in the Harris Marine Center Site Plan recorded April 28, 1989 at Reception No. 3082182.
10. Terms, conditions, provisions, agreements and obligations contained in the Harris Marine Center Development Plan recorded April 28, 1989 at Reception No. 3082183.
11. General plat notes, covenants, conditions, easements, rights-of-way and all other matters as set forth on the recorded plat of Murray-Krause Subdivision Filing No.1 recorded July 19, 1995 at Reception No. 70515.

NOTE: Fire lane, fire lane and utility and utility easements located within the limits of Lot 1, Block 1, Murray-Krause Subdivision Filing No. 1 released by Quit Claim Deed recorded February 28, 2002 at Reception No. B2038702.

12. Effects of the City of Aurora, Colorado, Ordinance No. 96-01 amending the General Development Plan for Abilene and Blackhawk recorded April 9, 1996 at Reception No. A6042722.
13. The effect of the General Development Plan for Abilene and Blackhawk recorded April 29, 1996 at Reception No. 16051608.
14. The effect of the Corporate Center 225 General Development Plan Amendment/Preliminary Development Plan recorded September 14, 1999 at Reception No. A9149346.
15. Terms, conditions, provisions, agreements and obligations contained in the Rezoning Ordinance 99-56 recorded March 13, 2000 at Reception No. B0029409.
16. The effect of the Ordinance 2002-04 Vacating a portion of Blackhawk Street, by the City of Aurora as set forth under the instrument recorded February 19, 2002 at Reception No. B2032034.
17. General plat notes, covenants, conditions, easements, rights-of-way and all other matters as set forth on the recorded Plat of Corporate Center 225 Subdivision Filing No. 1 recorded February 28, 2002 at Reception No. B2038703.
18. The effect of the Corporate Center 225 Site Plan recorded March 28, 2002 at Reception No. B2055235.
19. Terms, conditions, provisions, agreements and obligations contained in the License Agreement as set forth below:

Recording Date: December 12, 2002
Recording No.: Reception No. B2238390

20. Terms, conditions, provisions, agreements and obligations contained in the Order and Decree recorded March 16, 2007 at Reception No. B7033272 and B7033273.

21. The effect of the Order for Inclusion annexing subject property into the Abilene Station Metropolitan District No. 1, as set forth under the instrument recorded April 6, 2007 at Reception No. B7052772. Amendment recorded August 22, 2007 at Reception No. B7108927, Order for Exclusion recorded April 13, 2009 at Reception No. B9036703 and Order to Amend Order for Exclusion recorded January 14, 2011 at Reception No. D1005424, Order for Inclusion recorded April 28, 2015 at Reception No. D5041618.

22. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. 2007-06-01 as set forth below:

Recording Date: August 3, 2007
Recording No.: Reception No. B7100152

23. Effects of City of Aurora, Colorado, Ordinance No. 2007-87, recorded February 28, 2008 at Reception No. B8020232.

24. The effect of the Abilene Station T.O.D. map recorded April 7, 2008 at Reception No. B8040128.

25. Terms, conditions, provisions, agreements and obligations contained in the Amended and Restated Agreement as set forth below:

Recording Date: April 22, 2015
Recording No.: Reception No. D5039584

26. Terms, conditions, provisions, agreements and obligations contained in the Common Use Agreement recorded August 27, 2013 at Reception No. D3108478.

27. Terms, conditions, provisions, agreements and obligations contained in the Utility Easement as set forth below:

Recording Date: January 17, 2014
Recording No.: Reception No. D4004641

28. Covenants, conditions, restrictions, notes and easements as shown on the map of Abilene Station Subdivision Filing No. 1 recorded June 9, 2015 at Reception No. D5059964.

29. Terms, conditions, provisions, agreements and obligations contained in the License Agreement as set forth below:

Recording Date: April 28, 2008
Recording No.: Reception No. B8048833