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**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BANNING LEWIS RANCH**

After recording, return to:

Rebecca Wilcox Dow, Esq.
Holland & Hart LLP
P.O. Box 8749
Denver, Colorado 80201

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**MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BANNING LEWIS RANCH**

This Master Declaration of Covenants, Conditions and Restrictions for Banning Lewis Ranch (the “Declaration”) is made by The Banning Lewis Ranch Company, LLC, a Delaware limited liability company, and Banning Lewis Ranch Development I & II, LLC, a Delaware limited liability company (together, the “Declarant”).

RECITALS

A. The Declarant owns that certain real property described on **Exhibit A** attached hereto and incorporated herein by this reference (the “Annexed Property”).

B. This Declaration is exempt from the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. because there is no mandatory association or assessments created under this Declaration, and there is no obligation to pay for real estate taxes, insurance premiums, maintenance, or improvements of other real estate or common area described in this Declaration.

C. Pursuant to C.R.S. § 32-1-1004, the Declarant, in imposing this Declaration on the Annexed Property, intends to empower the Finance District (as defined in **Section 1.13** below) with the authority to provide governmental services, including but not limited to the provision of covenant enforcement and design review services, to the Annexed Property and to use therefor revenues that are derived from the Annexed Property.

D. The Annexed Property is located within the boundaries of the Finance District, which has entered, or will be entering, into a binding multi-year intergovernmental agreement with the Operating District (as defined in **Section 1.35**) for the provision of covenant enforcement and design review services to the Annexed Property.

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

F. The Annexed 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 “Banning Lewis Ranch,” located in the City of Colorado Springs in El Paso County, Colorado, which may include several different Neighborhoods (as defined in **Section 1.32**). The Neighborhoods may contain different types of Residences (as defined in **Section 1.43**) and other Improvements (as defined in **Section 1.23**) including, without limitation, single family detached homes, attached homes, multi-family housing, such as townhomes and/or condominiums and apartment complexes, Tracts, Commercial Sites and Industrial Sites (as such terms are defined respectively in **Sections 1.53, 1.6 and 1.24**). Such Neighborhoods 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 1.49**) and may (but are not required to) be deemed to be a “Common Interest Community” as defined in C.R.S. § 38-33.3-103. 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, the Declarant hereby declares that the Annexed Property 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 Annexed 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 Annexed Property or any part thereof; (c) inure to the benefit of and be binding upon every part of the Annexed Property and every interest therein; and (d) inure to the benefit of, be binding upon, and be enforceable by the Declarant, its successors in interest, each Owner and each Owner's grantees, heirs, assigns and successors in interest, and the Finance District and Operating 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. "Annexed Property" means and refers to the real property which is owned by the Declarant as described on Exhibit A, 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.

1.2. "Applicable Laws" means the decrees, edicts, laws, orders, ordinances, promulgations, regulations, rules and statutes of all federal, local (including the City, the County and the Operating Districts), or state governments (including, but not limited to, all agencies, departments, divisions or parts thereof) having or from time to time exercising jurisdiction or authority over the Annexed Property.

1.3. "Banning Lewis Ranch Documents" means the Banning Lewis Ranch Annexation Agreement dated September 23, 1988, and the Banning Lewis Ranch Master Plan adopted thereunder, as clarified by the agreement dated September, 2004, all amendments thereto, and all Plats and plans for the Annexed Property, and all constructions drawings, utility plans, engineering plans, drainage plans and subdivision or development improvements agreements approved by the City.

1.4. "Builder" means an Owner that (a) acquires one or more Lots from the Declarant for the purpose of developing infrastructure on such Lots and for the construction of Residential, Commercial or Industrial buildings thereon 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 the Declarant as a "Builder" in a Recorded writing signed by the Declarant.

Such Recorded writing may (but is not required to be) part of a Supplemental Declaration and also may assign to a Builder some or all of the Declarant's rights under this Declaration, including the Declarant's right to make additional property as designated therein subject to this Declaration.

1.5. "City" means the City of Colorado Springs, Colorado.

1.6. "Commercial Site" means any Lot zoned and used or intended to be used for commercial or mixed commercial-residential uses and which is designated as a "Commercial Site" in the Supplemental Declaration applicable to such Lot.

1.7. "CEC" means the Covenant Enforcement Committee established, if at all, by the Operating District for the purposes set forth in **ARTICLE 6** and any other applicable provisions of this Declaration.

1.8. "County" means El Paso County, Colorado.

1.9. "Declarant" means The Banning Lewis Ranch Company, LLC, a Delaware limited liability company, and Banning Lewis Ranch Development I & II, LLC, a Delaware limited liability company, or any Person or group of Persons acting in concert with Declarant who:

(a) As a part of a common promotional plan, offers to dispose of to a Purchaser such the Declarant's interest in a Lot not previously disposed of to a Purchaser; or

(b) Is granted or succeeds to any Special Declarant Right.

The term "the Declarant" also shall include 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 own all or a portion of the Annexed Property.

1.10. "Declaration" means this Master Declaration of Covenants, Conditions and Restrictions for Banning Lewis Ranch, as Recorded in the Records, together with any amendments or supplements to such document.

1.11. "DRC" means the Design Review Committee established, if at all, by the Operating District for the purposes set forth in **ARTICLE 5** and any other applicable provisions of this Declaration.

1.12. "Development Period" means the period of time beginning upon the date of Recording of this Declaration and expiring 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.

1.13. "Easements" shall have the meaning specified in **Section 13.1**.

1.14. "Finance District" means the Banning Lewis Ranch Metropolitan District No. 2 and any other finance district created or empowered under a Supplemental Declaration.

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

1.16. “Foundation” means the Banning Lewis Ranch Community Foundation, a Colorado nonprofit corporation, formed or to-be-formed as of the date of this Declaration.

1.17. “Golf Course” means any golf course constructed or to be constructed on the Annexed Property.

1.18. “Golf Course Site” means any Lot or Lots zoned for construction and use as a Golf Course and designated as a Golf Course Site in the Supplemental Declaration making such Lot(s) a part of the Annexed Property.

1.19. “Golf Course Facilities” means those facilities associated with a Golf Course (including, as and if applicable, a driving range and practice facilities, clubhouse, and golf course maintenance facilities).

1.20. “Golf Course Risks” means all risks attendant to or associated with the operation of a Golf Course and any Golf Course 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 a Golf Course, (b) light and noise associated with a Golf Course (including by way of example and not by way of limitation, compressors, blowers, golfers, golf carts, lights used to illuminate night time activities, mulchers, parked cars or vehicles of persons using a Golf Course or any Golf Course Facilities, public events or tournaments held on a Golf Course, mowers, seeders, leaf blowers, pumps, tractors, utility vehicles, and wells), (c) the flight, passage, and landing of golf balls (including errant golf balls), (d) golf carts, maintenance vehicles, and lawnmowers, (e) the trespass, act, or omission of golfers and persons employed in connection with, using, or otherwise on a Golf Course, (f) the use of reclaimed water, treated waste water, or other sources of non-potable water for irrigation and overspray in connection with such use, (g) the use of fertilizers, insecticides, and pesticides in connection with the maintenance of a Golf Course, together with overspray in connection with such use, (h) drainage resulting from drainage easements established for a Golf Course to the extent such drainage is in accordance with the drainage plan established for the Annexed Property, (i) creeks, water courses, and waterways constructed on a Golf Course to the extent consistent with the drainage plan established for the Annexed Property, (j) the fact that a Golf Course and any Golf Course Facilities may constitute an “attractive nuisance” under Applicable Laws, and (k) water hazards, ponds, and lakes on a Golf Course.

1.21. “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.

1.22. “Guidelines” means the Design Guidelines promulgated and adopted by the Operating District and administered by the DRC, if formed.

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

1.24. “Improvements” means all structures, facilities and appurtenances of any kind located or occurring in or on any portion of the Annexed Property including, but not limited to, the following: Residences, buildings, structures, pools, trampolines, basketball backboards, outdoor play structures, gazebos, hot tubs, tree houses, fences, walls, hedges, plantings, landscaping, “yard art” (including, without limitation, all statues, decorative pieces and other pieces of art located in the yard area of any Lot which are intended to remain in place longer than typical holiday period decorations; holiday period decorations which are in place for less than six (6) weeks are specifically excluded from this definition of Improvements), 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, satellite dishes, antennae, 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.

1.25. “Industrial Site” means any Lot zoned and used for industrial purposes (as defined under Applicable Laws related to zoning) and which is designated as an Industrial Site in the Supplemental Declaration for such Lot.

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

1.27. “Lot or Lots” means a physical portion of the Annexed 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, Commercial or Industrial Site. As used herein, the definition of a Lot shall include a separate fee parcel, a condominium unit, a town-house unit, a lot on a plat, or other portion of property designated for separate ownership.

1.28. “Metropolitan Districts” shall mean the Banning Lewis Ranch Metropolitan District No. 1 and the Banning Lewis Ranch Metropolitan District No. 2, both quasi-municipal corporations and political subdivisions of the State of Colorado, as well as any other Metropolitan Districts servicing portions of the Annexed Property or any additional real property subjected to this Declaration.

1.29. “Metropolitan District Property” means any real property within the Annexed 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.

1.30. “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.

1.31. “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.

1.32. “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.

1.33. “Neighborhood” means any area of the Annexed Property having a similar type of housing, such as an area with detached single family homes, an area with attached homes (duplexes), or an area with multi-family housing, such as townhomes and/or condominiums. The area of Annexed Property within a specific Neighborhood may be identified as such in a Supplemental Declaration, or it may simply be an area of Annexed Property subject to this Declaration which is comprised of similar housing and which is designated as a Neighborhood by the Metropolitan District. A Neighborhood may contain more than one type of housing if so stated in the Supplemental Declaration for that Neighborhood or as approved by the Metropolitan District.

1.34. “Neighborhood Associations” means any Colorado corporation, nonprofit corporation or limited liability company, and its successors and assigns, organized and established or authorized pursuant to, or in connection with, any portion of the Annexed Property.

1.35. “Notice of Violation” means a written notice given 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.

1.36. “Operating District” means the Banning Lewis Ranch Metropolitan District No. 1.

1.37. “Owner” means the Declarant or any other Person, or, if more than one, all Persons collectively, who hold fee simple title of Record to any portion of the Annexed 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.

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

1.39. “Plat” means collectively the Recorded plats of the Annexed Property, and all Recorded amendments, corrections and replats, together with any subsequently Recorded plats of the Annexed Property or other real property which becomes subject to this Declaration.

1.40. “Public Facilities” means facilities that may include, but are not necessarily limited to, community building and recreation centers, municipal parks, neighborhood parks, related parking, picnic shelters and picnic tables, playgrounds, plumbed restrooms, open areas for passive recreational use, public viewing areas, school grounds, soccer fields, softball diamonds, basketball courts, tennis courts, trails, and other facilities that are (a) owned by the City, the School District, the Metropolitan Districts or a Neighborhood 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 not, for the purpose of this Declaration, include any Golf Course or any Golf Course Facilities.

1.41. “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 Annexed 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.

1.42. “Purchaser” means a Person, other than the 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 Annexed Property.

1.43. “Records” means the official real property records maintained in the office of the Clerk and Recorder of El Paso 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.

1.44. “Residence” means a single-family residential dwelling constructed within the Annexed Property, specifically including, but not limited to, a detached home, an attached home, or an apartment or a condominium unit or other separate living unit within a multi-family home.

1.45. “Residential Site” means any Lot zoned and used for single-family or multi-family residential purposes.

1.46. “Residential Use” means a use for dwelling purposes.

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

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

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

1.50. “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.

1.51. “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).

1.52. “Telecommunication Facilities and Utilities Easement” shall have the meaning specified in **Section 13.5(a)**.

1.53. “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.

1.54. “Tract” means any portion of the Annexed Property owned by the City, the Metropolitan Districts or a Neighborhood Association.

1.55. “Transfer” means the conveyance of a Residential Site by a Transferor to a Transferee, except as excluded under **Section 9.6**.

1.56. “Transfer Fee” means a fee equal to one quarter of one percent (.25%) of the gross purchase price paid for a Residential Site during the Transfer Period by a Transferee to

a Transferor for the conveyance of a Residential Site, not to exceed \$500.00. The gross purchase price is the total cost to the purchaser of a Residential Site pursuant to a Transfer during the Transfer Period.

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

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

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

1.60. “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).

1.61. “Violation” means (a) an Improvement that has been performed without obtaining the DRC’s approval, (b) an Improvement that was not performed in substantial compliance with the approval that was granted by the Operating District 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/ANNEXATION.

2.1. Subdivision and Development by the Declarant. The Declarant has designated or intends to designate all or a portion of the Annexed Property into both Public Facilities as well as Lots for residential, commercial and industrial development and related uses.

2.2. Conveyance and Acceptance of Metropolitan District Property. The Declarant expressly reserves the right in the course of planning the Annexed Property to convey to the Operating District 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, and which are hereinafter referred to as “Metropolitan District Property.” The Declarant contemplates that maintenance of certain open space, parks, sidewalks and private roads may be assumed by the Metropolitan Districts or another governmental entity or a Neighborhood Association. Conveyance of real property from the Declarant, a Builder or other Owner to the Metropolitan Districts shall be made by a separate conveyance deed to the Operating District, whereby, upon acceptance of such deed, the Operating District shall be responsible as to such real property and all duties and responsibilities related thereto, as provided and assumed by the Metropolitan Districts in this Declaration.

2.3. Merger. The properties, rights and obligations of the Metropolitan Districts, by operation of law, may be transferred to another surviving governmental entity or consolidated association similar in nature and purposes. The surviving governmental entity or consolidated association may administer the covenants and 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 Annexed Property except as expressly hereinafter provided.

2.4. Manner and Effect of Annexation. Portions of real property in addition to the Annexed Property, from time to time, may become part of and made subject to this Declaration as hereinafter set forth.

2.5. Supplements to this Declaration. If the Declarant elects to submit any additional real property to this Declaration, 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 Annexed 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 the Neighborhoods within the real property covered thereby. A Supplemental Declaration which applies only to Commercial and/or Industrial 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 uses being made of such property, and in which cases the Supplemental Declaration also may contain use restrictions different from this Declaration. Upon Recordation of a Supplemental Declaration, the portion of the real property subject to the Supplemental Declaration shall become part of the Annexed 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.

2.6. No Annexation Required; Contraction of Annexed Property. Notwithstanding any other provision of this Declaration to the contrary, nothing in this Declaration shall be construed to obligate the Declarant to make any real property other than the Annexed Property subject to this Declaration. The Declarant expressly reserves the right, in its sole discretion, from time to time to remove or withdraw any portion of the Annexed Property effective upon the Recordation of a written instrument, executed by the Declarant, referring to this Declaration, describing such portion and declaring that such portion shall thereafter be withdrawn from the Annexed Property under this Declaration. The recording of any such written instrument and the withdrawal of any portion of the Annexed Property shall not require the consent or ratification of any Owner or other owner of any portion of the Annexed Property other than the Declarant, but shall require the written consent of the Owner of the portion of the Annexed Property being withdrawn, if and only if at the time such portion of the Annexed Property then being withdrawn from the Annexed Property is not then owned by the Declarant.

ARTICLE 3. METROPOLITAN DISTRICTS.

3.1. Powers and Authority. The Annexed Property is located within the boundaries of the Finance District. The Operating District and the Finance District have entered into the Intergovernmental Agreement, which has been duly approved by the registered electors of both Metropolitan Districts whereby the Operating District has agreed to perform the duties, rights and obligations of the Finance District, and the Finance District has agreed to impose such taxes, fees, rates, tolls and charges as are permitted under Applicable Law to pay for the provision of such services, including the provision of covenant enforcement and design review services as set forth in this Declaration. The Operating

District shall have, and may exercise with regard to the Annexed Property, all powers and authority reasonably necessary to administer its rights and duties under this Declaration, including, without limitation: (a) the power to adopt and amend budgets for revenues, expenditures, and reserves; (b) the power to collect taxes and fees for expenses from the Owners to administer its duties and obligations provided in this Declaration; (c) the power to manage and enforce the Restrictions provided herein; (d) the power to contract with a third-party property manager for the management of the Annexed Property and/or for all other duties and responsibilities related to the overall operation of the Annexed Property; and (e) all other rights, powers and authority necessary to enforce this Declaration. The Operating District may adopt Rules and Regulations. Additionally, the Operating District, acting through its governing board, shall have the power to levy reasonable fees, fines and penalties for violations of any provision of this Declaration and/or the Rules and Regulations. The mechanism for collection of any such fees, Fines and penalties shall be as provided in **ARTICLE 5** of this Declaration.

3.2. Cooperation with the Metropolitan Districts. The Metropolitan Districts shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any Neighborhood Association, 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.

ARTICLE 4. MAINTENANCE OF RESIDENTIAL SITES.

4.1. General Maintenance. All Residential Improvements in the Annexed Property shall be maintained in accordance with the following:

(a) Maintenance of Improvements, Tracts, and Golf Course Sites. No property within the Annexed Property shall be permitted to fall into disrepair, and all property within the Annexed Property, including all Improvements and landscaping, shall be kept and maintained in a clean, safe and attractive condition, in good repair, as determined by the Operating District and in accordance with all Applicable Laws. Maintenance, repair, and upkeep of the Annexed Property shall be allocated among the Owners as follows: (i) the maintenance, repair, and upkeep of each Lot shall be the responsibility of the Lot Owner; and (ii) the maintenance, repair, and upkeep of all other Tracts shall be the responsibility of the Operating District except as may otherwise be provided herein or in a Supplemental Declaration or other Recorded instrument. At its option, the Operating District may contract with third parties to perform its maintenance, repair, and upkeep obligations hereunder, and levy fees therefor. Nothing shall be done or kept on any property within the Annexed Property in violation of any Applicable Law. All maintenance, repair and upkeep by Lot Owners shall be performed in a manner considered acceptable to the Operating District and/or the DRC, and in a manner which complies with this Declaration and the Rules and Regulations. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot or Improvements 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 6** of this Declaration. Notwithstanding the foregoing, the maintenance, repair, and upkeep, in accordance with all Applicable Laws and City standards, of those Tracts owned by

the City shall be the responsibility of the City, except as may otherwise be provided herein or in a Plat, a Supplemental Declaration, or other Recorded instrument.

(b) Maintenance of Landscaping. Landscaping shall be installed on the side, front and back yards of each Lot by the Owner thereof within the first growing season in effect after acquisition of title to such Lot by the first Owner of such Lot (other than the Declarant or a Builder); provided, however, that if such acquisition occurs between the months of October and March, landscaping will be installed in the subsequent spring following such acquisition. Landscaping plans must be submitted to the Operating District or DRC, as applicable, for review, and the approval of such plans shall be obtained from the applicable governing board prior to the installation of landscaping. Each Owner shall maintain all landscaping on such Owner's Lot in a neat, clean, safe and attractive condition, including periodic and horticulturally correct pruning, removal of weeds and debris, and replacement of dead plants.

(c) Fencing and Maintenance of Fencing by Owners. No fence, including a fence for the containment of any pets permitted by the Restrictions, may be constructed by an Owner on a Lot without the prior approval of the Operating District or the DRC, as applicable. Any fences constructed on a Lot (including, without limitation, any fences constructed by a Builder or Metropolitan District) must be repaired and maintained by the Owner of that Lot, or by each of the Owners of adjacent Lots in the event such fence is located on a Lot boundary line between the adjacent Lots and shared by such Lots, and such Owners shall be responsible for maintaining the portion of the fence that faces the Owner's Lot. The cost of reasonable repair and maintenance of a fence shall be shared equally by the Owners of the adjacent Lots sharing the fence. If a shared fence is destroyed or damaged by fire or other casualty, any Owner whose Lot abuts the fence may restore it, and the Owner of the other Lot(s) abutting the fence shall contribute equally to the cost of restoration thereof, subject, however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Declaration, an Owner who by his, her or its negligence or willful acts causes a shared fence to be damaged shall bear the entire cost of repairing such damage. Within ten (10) days after the occurrence of the damage, the Owner causing such damage shall commence to repair or reconstruct the damaged fence to its original condition and shall diligently complete all such repairs and reconstruction. If such Owner shall fail to do so, then the non-responsible Owner of a Lot abutting such fence may do so at the sole cost and expense of the Owner causing such damage.

(d) Maintenance by Operating District/the Declarant. The Operating District or the Declarant (or a Builder, with the Declarant's consent) may construct certain entryways, fences, fence pillars, stone pilasters or walls on or within the Annexed Property, including the Metropolitan District Property. The constructing party shall also maintain such entryways, fences, fence pillars, stone pilasters or walls at its sole cost and expense; provided, however, that the Operating District shall be responsible for maintenance of all stone pilasters constructed by Declarant or any Builder on the Annexed Property. No Owner shall construct, modify, replace, paint or obstruct any such entryways, fences, fence pillars, stone pilasters or walls without the prior written approval of the Operating District or the DRC, as applicable.

(e) Construction and Maintenance of Perimeter Fencing. The Operating District or a Builder may install perimeter fencing along exterior portions of the Annexed Property or a Neighborhood. Perimeter fencing must be constructed pursuant to requirements of the City, in accordance with the Banning Lewis Ranch Documents and the Guidelines, as defined in **Section 5.1** below. Some portions of such fencing may be constructed on Lot boundary lines, and other portions may be constructed adjacent to the Lots. Owners of Lots with perimeter fencing (either on the Lot boundary line or appurtenant to said Lot) shall be responsible for maintaining the portion of the fence that faces the Owner's Lot, to the extent such Owner is also responsible for landscaping and maintaining his or her Lot.

(f) Maintenance of Drainage. Each Owner shall maintain the grading upon such Owner's Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner agrees that it will not in any way interfere with the established drainage pattern over the Owner's Lot. In the event that it is necessary or desirable to change the established drainage over any Lot, then the Owner thereof shall submit a plan to the Operating District for its review and approval, and any such approved change shall also be made in accordance with all Applicable Laws. For purposes of this **Section 4.1(f)**, "established drainage" means the drainage which exists at the time final grading of a Lot by the Declarant or by a Builder, is completed.

4.2. Additional Requirements in Supplemental Declarations. Notwithstanding the foregoing provisions of **Section 4.1**, a Supplemental Declaration may adopt additional maintenance requirements for certain Neighborhoods subject to such Supplemental Declaration, provided that such Supplemental Declaration has been approved by the Declarant and otherwise conforms to the requirements of **Section 2.5**.

4.3. Operating District's Right to Perform Work. In the event any Lot Owner shall fail to timely and/or satisfactorily perform any maintenance, repair or upkeep obligations of such Lot Owner (including, without limitation, the initial installation of landscaping on the Owner's Lot), the Operating District may give written notice to the Lot 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 Operating District may enter upon the Lot and perform the necessary maintenance, repairs or upkeep; provided, however, that the Operating District may enter upon a Lot in order to perform maintenance, repairs or upkeep without prior notice to the Lot Owner in the event of an emergency, as determined by the Operating District in its reasonable discretion. The cost of any such maintenance, repair or upkeep shall be the obligation of the Lot Owner and shall be added to and become a part of the fee to which the Lot is subject and the Operating District shall have a lien to secure such fee as provided by this Declaration. Such fees shall be payable by the Lot Owner upon demand by the Operating District.

4.4. Operating District's Easement to Perform Work. The Operating District shall have an easement over, across and upon each Lot (and to the extent necessary, any Improvements on or in such Lot) permitting the Operating District, its agents, employees and independent contractors to enter upon the Lot as reasonably necessary and with reasonable notice so that the Operating District may perform any required work on the Lot pursuant to

this Declaration. All persons performing such work shall use reasonable efforts to minimize interference with the Lot Owners' use and enjoyment of the Lot when performing such work.

4.5. Damage by Owner. Notwithstanding anything to the contrary contained in this Declaration, in the event the need for the Operating District to maintain, repair or replace any portion of the Metropolitan District Property is caused by the negligence, willful act or other misconduct of an Owner, or a member of such Owner's family or a guest, invitee or tenant of an Owner, or any Person acting by, for 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 Operating District for the same shall be levied against such Owner as part of such Owner's taxes and fees to be collected by the Operating District. The Operating District shall have a lien against such Owner's Lot to secure such taxes and fees.

ARTICLE 5. DESIGN REVIEW COMMITTEE.

5.1. Design Review Committee and Design Guidelines. The Operating District may establish a DRC and, in such event, the members of the DRC shall be appointed by the governing board of the Operating District. 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 Operating District. 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 Neighborhoods within the Annexed Property. Other Guidelines may apply to the Annexed Property as a whole. All such Guidelines shall be prepared and adopted by the Operating District and administered by the DRC, if formed. The Operating District 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 Banning Lewis Ranch, or other factors considered necessary or desirable to fulfill the intent of the Guidelines. The Guidelines shall be binding on the Annexed Property, provided, however, that the Guidelines shall only be binding on any Commercial Sites or Industrial Sites made subject to this Declaration if specifically provided for in the Supplemental Declaration relating to such Commercial Sites or Industrial Sites. In the event of any conflict between the Guidelines and this Declaration, this Declaration shall control. The Guidelines may include, among other things, those 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.
- (e) Minimum and maximum areas of living space that may be developed on any Lot.

- (f) Limitations on the height of any Residence or other Improvement.
- (g) Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other such Improvements.
- (h) Landscaping regulations.
- (i) General conditions for the construction, reconstruction, refinishing or alteration of any Improvement.
- (j) Rules for constructions activities, as well as maintaining construction sites and adjacent areas.

5.2. DRC Membership and Organization. In the event the Operating District establishes a DRC, the DRC shall be comprised of not less than three (3) nor more than five (5) persons. The DRC may include one (1) or more design professionals or licensed architects. All members of the DRC shall be appointed, removed and replaced by the Operating District, in its sole discretion.

5.3. Purpose and General Authority. The DRC shall review, study and either approve or reject proposed Improvements, including landscaping, on the Annexed Property, all in compliance with this Declaration and as further set forth in the Guidelines and such Rules and Regulations as the Operating District 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 therefor 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.

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

5.5. 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.

5.6. 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 at its offices or at such place as it may designate for such purpose such descriptions, 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.

5.7. 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, the Guidelines, and the Banning Lewis Ranch Documents and will serve to preserve and/or enhance the values of the Lots within the Annexed Property and will maintain a harmonious relationship among structures, vegetation, topography and the overall design of the Annexed 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 and harmony of exterior design with other portions of the Annexed Property. 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 Annexed 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. No building, other structure or landscaping shall be erected or allowed to remain on any Lot which violates this Declaration. The issuance of a building permit by the City or other governmental authority having jurisdiction over the Annexed 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 5** 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 approving plans and specifications, neither the DRC, its members, the Operating District nor the Declarant assumes any liability or responsibility for engineering design, construction or compliance with Applicable Laws.

5.8. Failure of DRC to Act on Plans. Any request for approval of a proposed Improvement shall be deemed approved, unless written disapproval is transmitted to the Applicant by the DRC within sixty (60) 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 sixty-day time period within which the DRC is required to make its decision shall be automatically extended to sixty (60) days after the DRC receives the requested fees, information or materials.

5.9. Prosecution of Work After Approval. After approval or deemed 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 Improvement within twelve (12) months after the date of such approval or such other period or extension of the initial twelve-month 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.

5.10. 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.

5.11. Inspection of the Work. Any member or authorized agent or consultant of the DRC, or any authorized officer, director, employee or agent of the Operating District may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect any Improvement on a Lot prior to or after completion in order to determine whether or not the Improvement is being completed or has been completed in compliance with the approval granted pursuant to **Section 5.7** and **Section 5.9**; provided, however, that the right of inspection shall terminate ninety (90) days after the DRC's receipt the applicant's notice of completion. Failure of the DRC to inspect the work shall not relieve the applicant from its obligations to comply with this Declaration or all conditions of approval or prevent the DRC or the Operating District from pursuing all remedies available to it in the event of any Violation.

5.12. Violations.

(a) Notice of Violation. If, as a result of the DRC's inspection of an Improvement or otherwise, the DRC determines that a Violation exists, the DRC shall issue a Notice of Violation to the noncompliant Owner within thirty (30) days of inspection. The Notice of Violation shall be sent via certified mail/return receipt requested and shall identify the particular circumstances or conditions of the Violation and shall require the Owner 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.

(b) Remedies. If an Owner fails to remedy the Violation within the time period specified in the Notice of Violation, the DRC and the Operating District shall have all remedies available to it at law or in equity, including without limitation the following remedies:

(i) The Operating District may Record a Notice of Violation against the Lot on which the Violation exists;

(ii) The Operating District, upon request of the DRC, shall have the right to remove, modify or otherwise correct any Violation constructed, reconstructed, refinished, altered or maintained upon a Lot that is a Violation of the Restrictions, or otherwise correct, remedy or otherwise remove any Violation, in any manner the Operating District deems appropriate;

(iii) The Operating District may levy reasonable Fines for such Violation; and

(iv) The Operating District shall have a lien against the noncompliant Lot to secure (1) payment for reimbursement by the noncompliant Owner for any work performed by the Operating District required to remove, modify or otherwise correct the Violation, plus (2) interest on such amount at a rate equal to two percent (2%) over the prime rate of interest quoted at such time in the Wall Street Journal, (3) an additional charge on such amount equal to four percent (4%) of the amount due, and (4) 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.

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

(a) General Inspections. In addition to the inspection of completed Work as provided in **Section 5.11** and other provision of this Declaration, any member or authorized agent or consultant of the DRC, or any authorized officer, director, employee or agent of the Operating District, may enter upon any Lot, at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to investigate or inspect any part or portion of the Annexed Property for conformance or compliance with the Restrictions, and the DRC approved Improvements. Where such investigation or inspection reveals that any part or portion of such Lot is in violation of the Restrictions, the DRC may issue a Notice of Violation to the Owner of the Lot. The Notice of Violation shall be sent via certified mail/return receipt requested and shall identify the particular circumstances or conditions of the Lot that fail to conform to the Restrictions. The Notice of Violation sent pursuant to this **Section 5.13** shall also contain the date, time, and place of a hearing to be held by the Operating District for the purpose of evaluating the Lot's conformance with such Restrictions and to consider the issuance of a finding of Violation. Any Notice of Violation sent pursuant to this **Section 5.13** shall also be

sent via first class U.S. mail addressed to "Occupant" at the address of the alleged nonconforming Lot, which is subject to the Declaration for which the Notice of Violation is issued, as well as a copy to any Owner notifying the DRC of any alleged Violation in accordance with subsection (b) below. All such Notices of Violation shall be sent no less than fifteen (15) days prior to the date of the hearing.

(b) Violation Identified by Another Owner. If an Owner alleges that another Owner is in Violation of this **ARTICLE 5** or otherwise is not in compliance with any Restrictions, the complaining Owner must first submit written notice to the DRC of the alleged Violation, and the DRC may investigate such allegation and may then send a Notice of Violation to the alleged noncompliant Owner in accordance with subsection (a) above. A hearing must be held by the Operating District before the complaining Owner may resort to legal or other action for relief.

(c) Procedure for Hearing. On the date and time of the hearing specified in any Notice of Violation, the Operating District shall hear and consider information and evidence presented by any Owners or other interested parties regarding the conformance of the subject Lot with such Restrictions. The hearing shall be conducted in accordance with any rules and procedures promulgated by the Operating District. Not more than five (5) business days following the hearing, the Operating District shall either: (i) make a finding that the Lot is in compliance with the applicable Restrictions; (ii) make a finding that the Lot is in Violation of the applicable 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 Operating District shall be final. Where the Lot is determined to be in Violation of the Restrictions, the Operating District shall issue a written finding of Violation, which shall include the time period in which the Violation is to be corrected, remedied or otherwise removed. Following such decision, any noncompliant Owner shall correct, remedy, or otherwise remove the Violation within the time period specified in the written finding of the Operating District. If the Owner does not comply within the specified time period, the Operating District may, at its option, pursue those remedies specified in **Section 5.12(b)**. Notwithstanding anything to the contrary contained herein, at any time prior to the Operating District's final determination of Violation, an Owner may notify the DRC in writing that the Violation has been corrected, remedied or removed. Following inspection of the Lot by the DRC and confirmation that the Lot is in compliance, the DRC may suspend or dismiss all actions to enforce its remedies.

(d) Rights of the Operating District. The rights of the Operating District to remove, modify or otherwise correct any Improvement constructed, reconstructed, refinished, altered or maintained upon a Lot 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 Operating District may have at law, in equity or under the Restrictions.

(e) No Representation. Any inspection made by the DRC pursuant to the Restrictions shall not constitute a representation by the DRC or the Operating District 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.

5.14. 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.

5.15. No Implied Waiver or Estoppel. No action or failure to act by the Operating District or the DRC, including the granting of a variance, shall constitute a waiver or estoppel with respect to future action by the Operating District 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 any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement on the same Lot or any other Lot.

5.16. 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 in accordance with this **ARTICLE 5**.

5.17. 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.

5.18. Fees and Expenses. Except as provided in the next sentence, all expenses of the DRC shall be paid by the Operating District with revenues derived from the portion of the Annexed Property within which the DRC's services are performed. The Operating District shall have the right to charge 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 Operating District to help defray the expenses of the DRC's operation. The Operating District or a private management company hired by the Operating District shall provide the DRC with staff for the recording of committee meeting minutes and assistance with other administrative needs, at the Operating District's cost and expense as it deems reasonably necessary.

5.19. 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 Operating District shall not be responsible or liable to any Owner, 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 5.7**, neither the DRC, the Operating District, the Finance District, nor any agent thereof, nor the 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 Operating District in any such suit or proceeding which may arise by reason of the DRC's decision. The Operating District, 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.

5.20. Construction and Certificate of Compliance. All approved Improvements constructed upon a Lot 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.

5.21. Access Easement. Each Lot is subject to an easement in favor of the DRC and the Operating District, including their respective members, employees, agents and representatives, for performing any of the actions contemplated by this **ARTICLE 5**, including without limitation **Sections 5.11** and **5.20** hereof. All Persons performing such work shall use reasonable efforts to minimize interference with the Lot Owners' use and enjoyment of the Lot when performing such work.

ARTICLE 6. COVENANT ENFORCEMENT COMMITTEE.

6.1. Committee. The Operating District may establish a CEC and, in such event, the members of the CEC shall be appointed by the governing board of the Operating District. For purposes of this Declaration, in the event a CEC does not exist, all references to "CEC" shall be deemed to be a reference to the Operating District. 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 Operating District regarding violations of the Restrictions; (c) inspect the Annexed 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 Operating District and this Declaration. Notwithstanding anything to the contrary herein, at all times a member of the Operating District's governing board shall be appointed as the "Chairman" of the CEC.

6.2. CEC Membership and Organization. The CEC shall be composed of not less than one (1) nor more than five (5) Persons. Subject to **Section 6.1**, all members of the CEC shall be appointed, removed and replaced by the Operating District, in its sole discretion.

6.3. Purpose and General Authority. The CEC shall review all complaints and notifications provided by the Declarant, an Owner, the Finance District, the Operating District or a Neighborhood Association regarding any alleged Violation; provided however, that the CEC shall have no authority over any Commercial Sites or Industrial Sites unless such authority is specifically granted in the Supplemental Declaration relating to such Commercial Site or Industrial Site. 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, and upon such determination, may issue to an Owner a Notice of Violation identifying the particular circumstances or conditions of the Violation and requiring the Owner 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.

6.4. Fees and Expenses. All expenses of the CEC shall be paid by the Operating District with revenues derived from that portion of the Annexed Property with respect to which the CEC's services are required or performed. The Operating District shall have the right to charge 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, in amounts which may be established by the CEC from time to time, and such fees and Fines shall be collected by the Operating District to help defray the expenses of the CEC's operation. The Operating District or the private management company hired by the Operating District shall provide the CEC with staff for the recording of committee meeting minutes and assistance with other administrative needs, at the Operating District's cost and expense, as it deems reasonably necessary from time to time.

6.5. 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 Operating District may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to investigate or inspect any portion of the Annexed 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 is not in compliance with the Restrictions, the CEC may send a Notice of Violation to the Owners of such Lot. The Notice of Violation shall be sent via certified mail/return receipt requested and shall identify the particular circumstances or conditions of the Lot that fail to conform to the Restrictions. The Notice of Violation sent pursuant to this **Section 6.5** shall also contain the date, time, and place of a hearing to be held by the Operating District for the purpose of evaluating the Lot's conformance with such Restrictions and to consider the issuance of a finding of Violation. Any Notice of Violation sent pursuant to this **Section 6.5** shall also be sent via first class U.S. mail addressed to "Occupant" at the address of the alleged nonconforming Lot, 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. If an Owner alleges that another Owner is in violation of this **ARTICLE 6** or otherwise is not in compliance with any Restrictions, the complaining Owner 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 in accordance with subsection (b) above. A hearing must be held by the Operating District before the complaining Owner 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 Operating District shall hear and consider information and evidence presented by any Owners or other interested parties regarding the conformance of the subject Lot with the Restrictions. The hearing shall be conducted in accordance with any rules and procedures promulgated by the Operating District. Not more than five (5) business days following the hearing, the Operating District shall either: (i) make a finding that the Lot is in compliance with the Restrictions; (ii) make a finding that the Lot 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 Operating District shall be final. Where the Lot is determined to be in Violation of the Restrictions, the Operating District 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 Operating District 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 Operating District's final determination of Violation, an Owner may notify the CEC in writing that any Violation has been corrected, remedied or removed. Following inspection of the Lot by the CEC and confirmation that the Lot is in compliance, the CEC may suspend or dismiss all actions to enforce its remedies.

(e) Remedies. If an Owner fails to remedy the Violation within the time period specified in the Notice of Violation, the CEC and the Operating District shall have all remedies available to it at law or in equity, including without limitation the following remedies:

(i) The Operating District may Record a Notice of Violation against the Lot on which the Violation exists;

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

(iii) The Operating District may levy reasonable Fines for such Violation.

(iv) The Operating District shall have a lien against the Lot subject to the Violation to secure (1) payment for reimbursement by the violating Owner for any remedial work performed by the Operating District required to remove, correct or otherwise remedy the Violation, plus (2) interest on such amount at a rate equal to two percent (2%) over the prime rate of interest quoted at such time in the Wall Street Journal, (3) an additional charge on such amount equal to four percent (4%) of the amount due, and (4) 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.

(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 Operating District. The rights of the Operating District to remove, correct or otherwise remedy any Violation shall be in addition to all other rights and remedies which the Operating District 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 Operating District, including their respective members, employees, agents and representatives, for the performance of any actions contemplated by this **ARTICLE 6**, including, without limitation, **Section 6.5**. All Persons performing such work shall use reasonable efforts to minimize interference with the Lot Owner's use and enjoyment of the Lot when performing such work.

ARTICLE 7. USE RESTRICTIONS.

7.1. Applicability; General Restriction. The Restrictions set forth in this **ARTICLE 7** shall only govern those portions of the Annexed 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 Annexed Property. No Residence 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 Residence exceed the lesser of (a) three (3) persons multiplied by the number of designated bedrooms in such Residence (according to the Records), or (b) the maximum number permitted under Applicable Law.

7.2. Residential Use of Lots. Subject to the provisions of **Sections 7.3** and **10.1(c)**, each Residential Site shall only be used for the construction of a Residence and appurtenant uses which are customarily incident thereto. No business or commercial use or other non-residential use may be conducted on any part of a Residential Site, except as provided in **Section 7.3** and **ARTICLE 10**.

7.3. Home Occupations. The conduct of a home occupation within a Residence 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:

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

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

(iii) The home occupation does not result in undue volume of traffic or parking at or near the Residence.

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

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

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

A child daycare facility within a Residence does not comply with the above requirements but may nevertheless be allowed in limited circumstances if a variance for such use is considered advisable by the CEC or the Operating District (as determined in its respective sole discretion), and if such variance is granted in writing by the CEC or the Operating District and is otherwise allowed under Applicable Laws.

7.4. Damage or Destruction. In the event any Residence or other Improvement constructed on a Residential Site is damaged, either in whole or in part, by fire or other casualty, such Residence or other Improvement shall be promptly rebuilt, repaired or remodeled to comply with this Declaration. In the alternative, if a damaged Residence or other Improvement is not to be rebuilt, repaired or remodeled, all remaining portions of the damaged Residence or Improvement, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other Improvement.

7.5. Vehicular Parking, Storage and Repairs.

(a) Parking. Except as otherwise set forth in any Rules and Regulations, vehicles shall be parked only in the garages or the driveways, if any, serving the Residential Sites, or in appropriate spaces or areas which may be designated by the Operating District from time to time, except that any vehicle may be otherwise parked on a temporary basis for loading, delivery, emergency, or for guests of an Owner at the Residence on a temporary basis. The Declarant or Operating District may designate certain parking areas for visitors or guests and adopt reasonable rules and regulations, from time to time, governing such areas. Except as otherwise set forth in the Rules and Regulations, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, recreational vehicles, golf carts and boat trailers, shall be parked only in enclosed garages or specific areas, if any, which may be designated by the Operating District from time to time. This restriction, however,

shall not restrict trucks or commercial vehicles which are necessary for construction or for the maintenance of any portion of the Annexed Property or any Improvements located thereon, nor shall such restriction prohibit vehicles (including, without limitation, emergency vehicles driven by an on or off duty employee of the entity providing emergency services) that may be otherwise parked on a temporary basis for loading, delivery, emergency or, in the case of emergency vehicles, for any other lawful purpose.

(b) Storage. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted on a Residential Site or upon a street adjacent to a Residential Site except within enclosed garages. For purposes of this **Section 7.5**, 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 Operating District or the CEC.

(c) Repair Work. No activity such as, but not limited to, maintenance (other than washing and polishing and activities normally incident thereto), repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers, or boats, may be performed on any Residential Site unless it is done within a fully enclosed garage or other building which screens the sight and sound of the activity from the street and from adjoining Residences, nor shall any such activity be performed upon a street adjacent to a Residential Site.

(d) Violations. In the event the CEC or the Operating District shall determine that a vehicle is being parked, stored or repaired in violation of **Subsections 7.5(a), (b) or (c)** hereof, 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 Operating District in its discretion from time to time, the Operating District shall have the right to remove the vehicle at the sole expense of the owner thereof.

7.6. Pets. No animals, including, but not limited to, livestock, poultry, or reptiles shall be raised, bred, or kept within a Residential Site except as hereinafter provided. A reasonable number of cats, dogs, birds or other common household pets may be kept on a Residential Site, provided that (a) they are not kept, bred, or maintained for any commercial purposes; (b) in the CEC or the Operating District's opinion, they do not make objectionable noises or otherwise constitute an unreasonable nuisance to other Owners; (c) they are kept within an enclosed yard on a Residential Site occupied by the owner of such pets or on a leash being held by a person capable of controlling the animal; (d) the Owner of the Residential Site properly disposes of all pet waste; (e) the Owner shall be financially responsible and liable for any damage caused by such pets; and (f) they are not in violation of any Applicable Laws. A "reasonable number" as used in this **Section 7.6** shall mean not more than two (2) dogs and two (2) cats (for a total of four (4) pets) per Residential Site, provided, however, that the CEC or the Operating District may, from time to time, determine that a reasonable number in any instance may be more or less than the above number. The CEC or the Operating District shall have the right to prohibit any animal which, in the sole

opinion of the CEC or the Operating District, is not being kept in accordance with the restrictions contained herein. The Operating District may adopt and enforce additional rules and regulations governing the subject of pets within the Annexed Property.

7.7. Nuisance and Waste. No noxious or offensive activity shall be permitted in or on any Residential Site nor shall anything be done therein which may be or become an annoyance, disturbance or nuisance to any Owner. No waste shall be committed on any Residential Site.

7.8. Violation of Law. Nothing shall be done or kept in or on any Residential Site or any portion of the Annexed Property which would be in violation of any Applicable Laws.

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

7.10. Unsightliness. No unsightly conditions, structures, facilities, equipment or objects shall be permitted to remain on any Residential Site if they are visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, service areas, storage areas and compost piles shall be appropriately screened from view and no clotheslines shall be permitted on any Residential Site. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept stored or allowed to accumulate on any Residential Site except within an enclosed structure or appropriately screened from view.

7.11. Trash Disposal. No trash, garbage, refuse, rubbish, or cuttings shall be deposited on any street, or on any Residential Site unless placed in a container suitably located, solely for the purpose of garbage pickup and screened from view. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. It is currently anticipated that the Operating District shall contract for trash collection by one or more trash collection companies based upon competitive bids. In order to minimize unsightliness, the Operating District shall have the right to restrict the placement of trash receptacles outside for collection on any day other than the actual day for trash collection.

7.12. Restrictions on Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Residential Site; provided, however, that during the actual, continuous construction, alteration, repair or remodeling of any Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Person doing such work. No camper, tent, trailer, motorhome, mobile home or other temporary structure shall be used as a Residence or other living quarters within the Annexed Property.

7.13. 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) the Declarant may erect and maintain a sign or signs in connection with the construction, development, operation, promotion and sale of the Lots; (b) the patriotic display of flags not exceeding 4' x 6' in size shall be permitted on Memorial Day, Fourth of July and other appropriate holidays; and (c)

signs of customary dimensions, not exceeding 3' x 4' in size, 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 Owner must obtain DRC approval before displaying such a sign on a Lot. Notwithstanding anything herein contained to the contrary, any and all signs, if allowed, shall comply with all sign standards of the applicable governmental authorities which may be applicable to the Annexed Property, as well as the Restrictions.

7.14. Restrictions on Playground Equipment, Trampolines, Basketball Hoops, Pools. No playground equipment, trampolines or trampoline fences, basketball goals, hoops, backboards, nets or similar sport equipment shall be installed on a Residential Site without the prior written approval of the DRC. No above ground swimming pools are allowed on a Residential Site; provided, however, that a reasonably sized, child-appropriate, temporary "kiddy" pool shall be allowed on a Residential Site during those seasons in which such a pool may reasonably be used by children. Except for Public Facilities, play equipment used on the exterior of any Lot must be stored from view when not in use. Temporary, portable basketball backboards and poles shall be made of standard manufacturers materials and may not be used within public streets and shall be stored out of view from adjacent properties and streets except when in use.

7.15. Restrictions on Antennas, Pipes, Utility Lines and Transmitters. Pipes for water, gas, sewer, drainage, or other purposes for a Residential Site, and wires, poles, aerials, antennae, satellite dishes, 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. Any Telecommunication Facility for the transmission or reception of audio, data or video signals (except those located entirely inside a structure) shall first be approved by the DRC. The DRC shall act on applications for approval of satellite dishes and antennas in accordance with the requirements of the Federal Telecommunications Act of 1996, and any applicable regulations adopted pursuant thereto, as such statute and regulations may be amended from time to time. No wind-powered electrical generators shall be permitted.

7.16. Restrictions on Storage Tanks. No tanks for the storage of gas, fuel, oil, or other materials shall be erected, placed, or permitted above or below the surface of any Residential 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).

7.17. Restrictions on Sewage Disposal Systems. No cesspool, septic tank or other sewage disposal system shall be installed on a Residential Site without the prior written consent of the City and the DRC, except a central sewage disposal system installed and maintained by a water and sanitation district or other sanitation agency providing sewage disposal services to a significant portion of the Annexed Property. Any sewage disposal system shall be subject to all Applicable Laws and the regulations and rules of the Operating District.

7.18. Restrictions on Water Systems. No individual water supply or water softener system shall be installed or maintained unless such system is approved in writing by the City and the DRC, and is constructed, designed, equipped, and located in accordance with all

Applicable Laws and the recommendations, requirements, and standards of the City and the Operating District.

7.19. Restrictions on Cooling and Heating Systems. No types of refrigerating, cooling or heating apparatus shall be permitted on the roof of any Residence unless such system is approved in writing by the DRC. Further, no such apparatus shall be permitted elsewhere on a Lot except when appropriately screened and approved by the DRC. Without limiting the foregoing, conventional air conditioning units located on the ground of a Residential Site are permissible when approved in accordance with the preceding sentence.

7.20. Insurance Risks. No Residential Site may be used for any use which would constitute an unusual fire hazard, would result in jeopardizing any insurance maintained on other Residential Sites within or on any other portion of the Annexed 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. This **Section 7.20** shall not be construed as prohibiting the normal use of barbeque grills on outdoor terraces or patios, subject to reasonable regulation by the Operating District pursuant to the Rules.

7.21. Hazardous Activities/Fires. No activities shall be conducted which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged, no exploding fireworks shall be set off and no open fires shall be lighted or permitted except in a contained barbecue unit, indoor or outdoor fireplace or fire pit which is attended. Trash, leaves, and other similar materials shall not be burned.

7.22. Mining or Drilling. No Residential Site within the Annexed Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

7.23. Storage of Explosives, Gasoline, and Similar Substances. No Residential Site shall be used for storage of explosives, gasoline or other volatile or incendiary materials or devices. Gasoline or fuel for a lawn mower, snowblower, and the like may be maintained on an incidental basis on a Residential Site if the amount so kept does not exceed five gallons and is kept in UL approved containers. Gasoline or other volatile or incendiary materials or devices shall be stored only in a manner that strictly complies with all Applicable Laws.

7.24. Restriction on Further Subdivision. No Residential Site shall be further subdivided or separated into smaller Lots by any Owner, and no portion consisting of less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar non-material corrective instruments.

7.25. Leases The Owner of a Residential Site shall have the right to lease such Owner's Residence, subject to the following conditions:

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

(b) The lease and each tenant and his, her or their family members (collectively, "tenant") occupying the Residence shall be specifically subject to this Declaration. Any failure of a tenant to comply with such documents shall be a default under the lease.

(c) 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).

7.26. 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 Operating District. 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. The CEC or the Operating District may establish and enforce penalties for the infraction of such Rules and Regulations including, without limitation, the levying and collecting of Fines.

7.27. 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 7**, then in addition to any enforcement and remedies described in **Section 6.5**, the Operating District may invoke any one or more of the following remedies: (a) levy Fines upon such Owner for each violation; (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 Operating District 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.

7.28. Easement Areas. By taking title to any Residential Site in the Annexed Property, each Owner acknowledges that certain portions of the Annexed 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, and the Metropolitan Districts, among others, pursuant to a Plat or other document creating such easement rights. Notwithstanding any other provision of this Declaration, no Owner shall be allowed to use any portion of the Annexed Property or place any trees, structures, fences or other improvements on any portion of the Annexed Property that would violate any use restrictions contained in any easement, Plat or other document creating easement rights.

ARTICLE 8. DRAINAGE AND SOILS CONDITIONS.

8.1. Acknowledgment. The soils within Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of a Residence or other Improvement (residential, commercial or industrial) if the Residence, the other Improvement 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.

8.2. Disclaimer. The Declarant, the Operating District, any Metropolitan District, the DRC and the CEC, and their respective officers, directors, managers, members and shareholders shall not be liable for any loss or damage to any Residence or other Improvement (residential, commercial or industrial) 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. Owners should carefully consider the risk of planting any vegetation within three (3) feet of the Residences or other Improvement, as watering of this vegetation could result in loss or damage to a Residence or other Improvement due to expansive or low-density soil.

8.3. Moisture. Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Residence or other Improvements constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence and other Improvements.

8.4. Grading. Each Owner of a Lot shall maintain the elevation, grading, and drainage patterns of the Residential Site as shown on the subdivision plans on file with the City.

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

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

(a) Not to install any Improvements which will change the grading of the Lot.

(b) To fill with additional soil any back-filled areas adjacent to the foundation of a Residence or any other Improvement and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.

(c) Not to water the lawn or other landscaping on the Lot excessively.

(d) Not to plant turf grass, flower beds (especially annuals) or vegetable gardens adjacent to or within three (3) feet of the foundation and slabs of a Residence or any other Improvement.

(e) To minimize the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs.

(f) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn, or otherwise.

(g) Not to install a moisture barrier (such as polyethylene) under any gravel.

(h) 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.

(i) To re-caulk construction joints opening up between portions of the exterior slabs and garage slabs to seal out moisture.

(j) 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 Annexed Property pursuant to established drainage plans.

8.7. Radon Gas; Naturally Occurring Radioactive Materials. Elevated levels of naturally occurring radioactive materials or radon gas may be present in or adjacent to some residential and other structures in Colorado. Governmental authorities have voiced concerns about the possible adverse effects on human health from long term exposure to high levels of radon gas and naturally occurring radioactive materials. Each Owner is responsible to conduct such Owner's own investigation and consult with such experts as such Owner deems appropriate with respect to the presence or absence of radon gas or naturally occurring radioactive materials in the soil on that Owner's Lot. Furthermore, each Owner shall be solely responsible for the mitigation of any radon gas or naturally occurring radioactive materials on such Owner's Lot. The Declarant, the Operating District, any Metropolitan District, the DRC and the CEC, and their respective officers, directors, members, managers and shareholders, and the builder of the initial Residence on a Residential Site shall not be liable for the existence of radon gas or naturally occurring radioactive materials in any Residence or other Improvement, or elsewhere on the Annexed Property, for any loss or damage to any Residence or other Improvement on the Annexed Property, or for any injury to any Person caused by, or resulting from, or in any way connected with the existence of radon gas or naturally occurring radioactive materials on the Annexed Property.

ARTICLE 9. IMPOSITION OF A TRANSFER FEE.

9.1. Imposition of a Transfer Fee; Purpose.

(a) Imposition of a Transfer Fee. Except as hereinafter provided, the Declarant hereby imposes a Transfer Fee upon all Transfers made during the Transfer Period. Each Owner of a Residential Site, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, agrees and covenants and shall be personally obligated to pay to the Foundation the Transfer Fee, with such Transfer Fee to be collected as hereinafter provided. The obligation for the payment of the Transfer Fee by each Transferor and each Transferee is an independent covenant with all amounts due, from time to time, payable in full when due without deduction or set-off. All Owners of each Residential Site shall be jointly and severally liable to the Foundation for the payment of the Transfer Fee, and each Transfer Fee shall also be the personal obligation of the Transferor and the Transferee at the time a Residential Site was transferred.

(b) Purpose. The Foundation will use the Transfer Fee for the public purposes of promoting community involvement, clubs and volunteer organizations, community newsletters, artistic programs, cultural events, education and youth programs, environmental programs (for example, recycling, tree planting conservation), and health and wellness programs, directly and indirectly benefiting Owners living within the Annexed Property and the surrounding community. The board of directors of the Foundation shall be responsible for the manner and time of the disposition of the Transfer Fee in accordance with articles of incorporation and bylaws of the Foundation.

9.2. Collection and Payment of Transfer Fee. The Transfer Fee shall be payable in full at the time of each Transfer of a Residential Site. In the absence of an agreement between the Transferor and the Transferee to the contrary and without limiting their joint and several liability therefor, one-half (1/2) of the Transfer Fee shall be paid by the Transferor and one-half (1/2) of the Transfer Fee shall be payable by the Transferee.

9.3. Effect of Nonpayment of Transfer Fee. If a Transfer occurs with respect to which a Transfer Fee is due but not paid, then the unpaid Transfer Fee shall be a lien upon the transferred Residential Site that will bear interest at a rate equal to the prime rate of interest described in the "Money Rates" section of The Wall Street Journal (or, if The Wall Street Journal ceases to be published or ceases to publish a prime rate of interest or comparable rate in its "Money Rates" section or ceases to publish a "Money Rates" section, then a comparable index selected by the Declarant) from the date of the transfer until the date of payment. The Declarant or the Operating District, or both of them, on behalf of the Foundation, may foreclose upon the lien of the Transfer Fee in the same manner that a mortgage is foreclosed upon in the State of Colorado, may file an action against the Transferor or the Transferee, or both of them, to collect the Transfer Fee in the same manner that actions are brought to collect sums due on account, or may pursue such other remedies and rights as they may have at law, in equity, or otherwise under Applicable Laws. If an action is brought to collect all or part of a Transfer Fee, then the Declarant or the Operating District or both of them, as the case may be, shall also be entitled to an award of its court costs and reasonable attorneys' fees incurred in the collection of the Transfer Fee.

9.4. Certificate of Status of Transfer Fee. The Declarant or the Operating District, from time to time, may issue certificates evidencing the amount of unpaid Transfer Fees due with respect to a particular Residential Site. At the end of the Transfer Period, the Declarant or the Operating District shall Record a notice stating that the Transfer Period has expired and that Residential Sites within the Annexed Property are no longer subject to the imposition of the Transfer Fee.

9.5. Restriction on Amendment of Transfer Fee. Notwithstanding anything to the contrary contained herein, the provisions of this Declaration regarding the payment of a Transfer Fee may not be amended, modified, repealed, terminated, or waived without the prior written consent of the Declarant.

9.6. Exclusions from Imposition of Transfer Fees. Notwithstanding anything to the contrary contained herein and subject to the terms of this **Section 9.6**, the following Transfers of a Residential Site shall be exempt from and not subject to the imposition of a Transfer Fee: (a) a Transfer from a Transferor to a Transferee who is the spouse of, or co-

owner with, a Transferor; (b) a Transfer from a Transferor to a Transferee resulting from an order of court, a dissolution of a marriage, or by operation of law; (c) a Transfer from a Transferor to a Transferee resulting from a devise, bequest, or other transfer made in connection with a probate proceeding involving a Transferor; (d) a Transfer from a Transferor to a Transferee that is either a gift or otherwise does not involve consideration; (e) a Transfer of any Residential Site that has been re-designated as a Commercial Site or an Industrial Site; or (f) a Transfer resulting from foreclosure or a deed in lieu of foreclosure, but not a subsequent Transfer to a bona fide purchaser. To be entitled to the foregoing exemption from the Transfer Fee, the Transferor and the Transferee must (i) claim the foregoing exemption from the Transfer Fee at least five (5) days prior to the proposed Transfer; and (ii) provide such evidence as the Declarant or the Operating District may reasonably require to confirm and evidence such exemption. The foregoing exemption from the Transfer Fee will apply only to the specific Transfer of a Residential Site that is exempt from the imposition of the Transfer Fee pursuant to this **Section 9.6**, and subsequent Transfers of such Residential Site will be subject to the Transfer Fee provided for in this **ARTICLE 9**.

ARTICLE 10. SPECIAL DECLARANT RIGHTS.

10.1. Special Declarant Rights. The 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 rights:

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

(b) Exercise of Development Rights. The right to exercise any right reserved in **ARTICLE 11** of this Declaration or any other rights reserved by the Declarant in this Declaration.

(c) Sales, Management and Marketing. The right within the Annexed Property to maintain sales offices, construction offices, management offices, model homes, and signs, flags and other on-site marketing and sales promotion materials advertising the Annexed Property. Specifically, the Declarant may maintain one or more sales offices within the Annexed Property. The Declarant shall have the right to determine the number of model homes and the size and location within the Annexed Area of any sales offices, management office, and model homes. The Declarant shall also have the right to relocate any sales offices, management offices, and model homes from time to time at its discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales offices and management offices. No structure used by the Declarant for a sales office, construction office, management office or model home shall be deemed the property of any party other than the Declarant unless specifically assigned, conveyed or dedicated by the Declarant to such other party. In addition to Declarant, all Builders shall also have the rights specified in this subsection (c).

(d) Project Management. The right to select and hire a third-party manager for the management, administration and operation of the Annexed Property or any

lesser portion thereof. In addition to Declarant, the Operating District shall also have the rights specified in this subsection (d).

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

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

10.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, the 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 11**) 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. The 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 Annexed Property, 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 Annexed 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 Annexed Property for the benefit of the Lot Owners.

(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 Annexed 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 Annexed 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 the 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.

10.3. Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this **ARTICLE 10** for the benefit of the 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 the Declarant and the transferee.

ARTICLE 11. RESERVATION OF DEVELOPMENT RIGHTS.

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

(a) Expansion Rights. The 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, the Declarant reserves the right to subject all or any portion of any such additional real property to such other covenants, conditions and restrictions as the 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 the Declarant in accordance with the provisions hereof. The consent of the existing Lot Owners shall not be required for the exercise of these rights, and the Declarant may proceed to exercise such rights without limitation, at its sole option.

(b) Exercise of Rights. The 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 the Declarant, in its sole discretion, may determine.

11.2. 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 Annexed Property for all purposes, or for such limited purpose 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 Annexed Property. Reference to this Declaration in any instrument shall be deemed to include all supplements and amendments to this Declaration without specific reference thereto.

11.3. Utilities Easement. The Declarant hereby reserves for itself and for the Operating District a blanket easement upon, across, over and under the Annexed Property, specifically including the Tracts and the Metropolitan District Property, for Utilities and the

installation, use, replacement, repair and maintenance of Utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect, use and maintain the necessary facilities, equipment and appurtenances on the Annexed Property, specifically including the Tracts and the Metropolitan District Property, and to affix, use, repair and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Declarant reserves and is hereby given the absolute right and authority to grant such easement upon, across, over or under any part or all of the Annexed Property, specifically including the Tracts and the Metropolitan District Property, provided, however, that such right and authority of the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in **ARTICLE 10** of this Declaration, at which time such reserved rights shall vest in the Operating District. The easement provided for in this **Section 11.3** shall in no way void, extinguish or modify any other Recorded easement(s) on the Annexed Property, specifically including the Tracts and the Metropolitan District Property. Notwithstanding the foregoing, the reservation of such easement and the grant of the same to a utility or quasi-utility company furnishing a service covered by the general easement created herein shall be limited to those areas of the Annexed Property which will not materially and adversely impair (a) a Builder's construction of a Residence on a Lot and the construction of buildings on Residential Sites, Commercial Sites or Industrial Sites, or (b) the use by any Owner of a Residence.

11.4. Drainage Easement. The Declarant hereby reserves to itself and to the Operating District easements for drainage or drainage facilities across the ten (10) rear and five (5) side feet of each Lot and, if necessary, an easement across each Lot in order for Declarant to access such drainage easement areas; provided, however, that such easement shall not be reserved over any of the areas described in this sentence if and to the extent a Residence is located upon any such areas, which was previously approved by the Declarant or by the DRC. Except for Residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot, nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. The Declarant reserves to itself and to the Operating District the right to enter in and upon each ten (10) foot rear and five (5) foot side yard drainage easement at any time to construct, repair, replace or change drainage structures or to perform such grading, draining or corrective work as the Declarant or the Operating District may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in **ARTICLE 10** of this Declaration, at which time such reserved right shall vest solely in the Operating District.

11.5. Transfer of Development Rights. Any right created or reserved under this **ARTICLE 11** for the benefit of the 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 the transferor, the Declarant and the transferee.

ARTICLE 12. PARTY WALLS.

12.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residences or other Improvements and placed on the boundary line separating any Lots shall constitute a "Party Wall," and, to the extent not inconsistent with the provisions of this **ARTICLE 12**, the general rules of Applicable Law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply. The term "Party Wall" is not intended to apply to walls designated as common elements in any condominium regime established under any Neighborhood Association.

12.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots divided by the Party Wall, however each Owner is responsible for painting and repainting the side of any Party Wall facing such Owner's Lot.

12.3. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot abuts the Party Wall may restore it, and the Owner of the other Lot(s) abutting the Party Wall shall contribute equally to the cost of restoration thereof, subject, however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

12.4. Damage and Repair. Notwithstanding any other provision of this **ARTICLE 12**, an Owner who by his, her or its negligence or willful acts causes a Party Wall to be damaged shall bear the entire cost of repairing such damage. Within ten (10) days after the occurrence of such damage, the Owner causing such damage shall commence to repair or reconstruct the damaged Party Wall to its original condition and shall diligently complete all such repairs and reconstruction. If such Owner shall fail to do so, then the Owner of the Lot abutting such Party Wall may do so at the sole cost and expense of the Owner causing such damage.

12.5. Right to Contribution Runs with Lot. The right of any Lot Owner to contribution from any other Owner under this **ARTICLE 12** shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

12.6. Arbitration. In the event of a dispute arising concerning the provisions of this **ARTICLE 12**, the parties shall resolve such dispute in accordance with the terms of **Section 16.11**.

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 Annexed Property, (b) additional easements (the "Easements") that are declared, established, granted, and reserved hereby as more particularly set forth in **Sections 13.2 through 13.5** hereof, and (c) the limitations on the Easements (**Section 13.6** hereof).

13.2. Easements for Access. The Declarant hereby declares, establishes, grants, and reserves Easements over each Lot in favor of the Declarant and the Operating District,

including their respective agents, contractors, and employees thereof, for performing maintenance, repair, or replacement or other services as provided in this Declaration, including, without limitation, maintenance, repair, or replacement pursuant to **ARTICLE 4** hereof. If damage is inflicted on a Tract, any Lot or any other property, then (a) the Owner or Owners responsible for such damage will be responsible for the cost and expense of repairing or avoiding such damage, and (b) the Operating District may, at its option, take steps necessary to avoid or mitigate damage and, if an Owner or Owners are responsible for such damage, then such Owner or Owners will reimburse the Operating District for the cost and expense of avoiding or repairing such damage. Further, the rights to access Easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner or Owners or occupant or occupants 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 or Owners or occupant or occupants of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any Residence located on a Lot shall not be subject to the Easements provided for in this Section.

13.3. Retention Ponds and Detention Ponds. In furtherance of developing the Annexed Property, retention ponds and/or detention ponds may be constructed within 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. The Operating District will be responsible for maintaining any retention ponds or detention ponds within the Annexed 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 Annexed Property. Neither the Operating District the Declarant, nor any Builder, their 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 Annexed Property.

13.4. Easements and Disclosures Regarding Public Facilities and the Golf Course. The following disclosures are made and easements established with respect to the Public Facilities, the Golf Course and the Golf Course Facilities:

(a) Easement for Operation of Public Facilities. The Declarant hereby declares, establishes, grants, and reserves to itself, to the City, to the Operating District, and to any Neighborhood Association allocated the responsibility of operating a Public Facility, and to their respective assigns, concessionaires, licensees, and representatives, a nonexclusive Easement over the Annexed 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 the Public Facilities for their intended uses and purposes, and (iv) overspray in connection with the watering or fertilizing of the Public Facilities.

(b) Easement for Flight of Golf Balls. The Declarant hereby declares, establishes, grants, and reserves, to itself, to the Operating District and their respective assigns, concessionaires, licensees, and representatives, a nonexclusive Easement over each Lot or portion of a Lot located within three hundred (300) yards of a boundary of a Golf Course Site for the flight, passage, and landing of golf balls on such Lot.

(c) Easement for Operation of Golf Course. The Declarant hereby declares, establishes, grants, and reserves, to itself and to the Operating District and their respective assigns, concessionaires, licensees, and representatives, a nonexclusive Easement over the Annexed Property for the purpose of permitting (i) the performance of every act necessary and proper for the playing of golf on a Golf Course Site, (ii) the effect on each Lot of one or more of the risks disclosed hereby as one of the Golf Course Risks, (iii) light, noise, and sound emanating from the operation and use of the Golf Course Site and the Golf Course Facilities as a golf course, and (iv) overspray in connection with the watering or fertilizing of a Golf Course Site.

(d) Proximity to the Public Facilities; Acceptance and Acknowledgment of Risks. Portions of the Annexed 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 Residence or other Improvement within the Annexed Property, as applicable, is hereby deemed to have assumed and agreed to accept the Public Facilities Risks.

(e) Proximity to the Golf Course; Acceptance and Acknowledgment of Risks. Portions of the Annexed Property may adjoin, be adjacent to, border, or are otherwise in the vicinity of a Golf Course Site and Golf Course Facilities, and are subject to the Golf Course 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 Residence or other Improvement within the Annexed Property, as applicable, is hereby deemed to have assumed and agreed to accept the Golf Course Risks.

(f) Release by Owner of Claims Relating to Risks. Each Owner agrees that, by acceptance of a deed to a Lot within the Annexed Property, and each family member, guest, invitee or tenant of an Owner, by use or occupancy of a Residence or other Improvement within the Annexed Property, hereby (i) discharges and releases the Declarant, the Metropolitan Districts and their Boards of Directors, the DRC and the CEC, the City, the County, any Builder, any Neighborhood Association, any party operating the Public Facilities, a Golf Course, or any Golf Course Facilities as a concessionaire or otherwise, 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 Residence or other Improvement within the Annexed 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 13.4(f)** and in **Section 13.4(g)** hereof, 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 Golf Course, the Golf Course Facilities, the Golf Course Risks, and the Golf Course Site, whether caused by the negligent conduct of the Benefited Parties (including, without limitation, the negligent design, development, construction, operation, or use of the Public Facilities, the Golf Course, or the Golf Course Facilities) or otherwise.

(g) Covenant Not to Sue. Each Owner, by acceptance of a Lot, and each family member, guest, invitee or tenant of an Owner, by the use or occupancy of a Residence or other Improvement within the Annexed 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.

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

(a) Easement. The Declarant hereby declares, establishes, grants, and reserves for the benefit of itself and the Operating District a blanket Easement (the "Telecommunication Facilities and Utilities Easement") upon, across, over, and under the Annexed 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 the Declarant, the Operating District, and their respective assignees or designees to (i) erect and maintain the necessary appurtenances, equipment, lines, and other facilities on the Annexed 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. Notwithstanding the foregoing, the reservation of such Telecommunication Facilities and Utilities Easement shall be limited to those areas of the Annexed Property which will not materially and adversely impair (a) a Builder's construction of a Residence on a Lot and the construction of buildings on Residential Sites, Commercial Sites or Industrial Sites, or (b) the use by any Owner of a Residence.

(b) Reserved Rights. The Declarant declares, establishes, grants, and reserves the right for itself and the Operating District 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 Annexed 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, the Declarant declares, establishes, grants, and reserves the right to grant such easement upon, across, over, or under any part or all of the Annexed Property without conflicting with the terms hereof.

13.6. 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 Annexed Property, (b) may be amended, limited, modified, restricted, or terminated by the Declarant by means of a Recorded instrument, and (c) shall not be interpreted or construed as preventing, precluding or materially adversely affecting 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 the Declarant or the Operating District.

13.7. Delegation and Termination of Rights. The duties, Easements, responsibilities, and rights that are reserved and granted pursuant to **Sections 13.2 through 13.5** hereof may be delegated in whole or in part by the Declarant or the Operating District to (a) an agent or management company that is acting on behalf of the Operating District with respect to all or part of the Annexed Property, or (b) a Neighborhood Association with respect to a portion of the Annexed Property; provided, however, that any such delegation shall not relieve the Operating District of its obligations and rights hereunder. The right and authority of the Declarant pursuant to **Sections 13.2, 13.3, 13.5, and 13.7** hereof shall automatically cease upon expiration of the Development Period at which time the foregoing reserved rights shall vest solely in the Operating District.

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

13.9. Acknowledgment of Inconvenience. Each of the Lot Owners have acknowledged and agreed that there are inconveniences which will accompany the construction of this Annexed 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 Lot Owner, by taking title to any Lot, shall be deemed to have waived any claims associated with the inconveniences, nuisance and hazards associated with such construction.

ARTICLE 14. PUBLIC FACILITIES.

14.1. General. Use of any Public Facilities shall be subject to the Restrictions. The Operating District shall have the right and authority to restrict use of the Public Facilities, establish and charge use fees, guest fees and other fees as deemed necessary or desirable by the Operating District at any time and from time to time.

ARTICLE 15. EXEMPTION FOR THE DECLARANT AND BUILDER

15.1. Exemption. Notwithstanding anything in this Declaration to the contrary, neither the Declarant nor any of the Declarant's activities shall in any way be subject to the control of, or under the jurisdiction of the Operating 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 Operating District, the DRC or the CEC for any construction or other work to be performed by or on behalf of the Declarant in the Annexed Property. The Declarant, in its sole discretion, may also exempt any Builder from the provisions of (a) **ARTICLE 5**, as long as Builder has received written design approval under the Design Guidelines from the Declarant, and (b) **ARTICLE 7**, for activities which the Declarant deems to be incidental to the Builder's development activities, in the Declarant's sole and absolute discretion. This exemption shall terminate upon expiration of the Development Period

ARTICLE 16. MISCELLANEOUS PROVISIONS.

16.1. 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 an Owner or the Operating District or its designated committee. 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 Operating District may levy Fines against a Lot Owner, or such Owner's lessee, due to a violation of the terms of this Declaration. Reasonable notice and the opportunity for a hearing shall be provided to the affected Lot Owner, or such Owner's lessee, before any such Fines are charged. The unpaid Fines shall be added to the taxes and fees charged against the Lot of such Lot Owner by the Operating District or the Finance District. 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 Operating District shall not be liable to reimburse any Lot Owner for attorneys' fees or costs incurred in any suit brought by a Lot Owner to enforce or attempt to enforce this Declaration.

16.2. Neighborhood Associations. Nothing in this Declaration shall prohibit the organization or creation of any Neighborhood Association in accordance with Applicable Laws in which the membership is comprised of Owners of Lots within all or part of an area covered by a Supplemental Declaration. Such Neighborhood Associations 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.

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

16.4. Duration. The covenants, conditions and restrictions contained in this Declaration shall run with the Annexed Property, and, except as otherwise specifically set forth in a Supplemental Declaration pursuant to **Section 2.5**, shall be binding on all Lot Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration.

16.5. Amendment. Except as otherwise provided in this Declaration, this Declaration may be amended (by (a) either modifying or deleting any existing provisions, or (b) adding new provisions) or terminated at any time by a written and recorded instrument containing the consents of the then record Owners of at least sixty-seven percent (67%) of the Lots subject to this Declaration; provided, however, that at any time that the Declarant owns a Lot or any other real property subject to this Declaration, any amendment to this Declaration shall be strictly conditioned on the Declarant's written consent. Furthermore, to the extent the Annexed 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 Annexed Property.

16.6. 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.

16.7. Limited Liability. Neither the Declarant, 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 Operating District for any costs and expenses, including reasonable attorneys' fees, incurred by them with the prior approval of the Operating District (which approval shall not unreasonably be withheld) as a result of the threatened or pending litigation pertaining to the Annexed Property or this Declaration in which they are or may be named as parties.

16.8. Disclaimer Regarding Safety. THE DECLARANT AND THE METROPOLITAN DISTRICTS AND THEIR OFFICERS, DIRECTORS, MANAGERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE ANNEXED PROPERTY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE ANNEXED PROPERTY, EACH OWNER ACKNOWLEDGES THAT THE DECLARANT AND THE METROPOLITAN DISTRICTS AND THEIR 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 ANNEXED PROPERTY.

16.9. No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, the Metropolitan Districts, or by any of their officers, directors, shareholders, managers, members, partners, agents or employees in connection with any portion of the Annexed 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 16.10** shall apply to this Section.

16.10. Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives and discharges the Declarant 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.

16.11. Waiver of Trial to a Jury or Trial to a Judge. BY ACCEPTING A DEED TO ANY LOT, 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.


IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first written above.

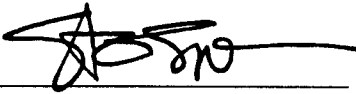
DECLARANT:

Banning Lewis Ranch Development I & II, LLC,
a Delaware limited liability company

By: The Banning Lewis Ranch Company, LLC
a Delaware limited liability company,
its Manager

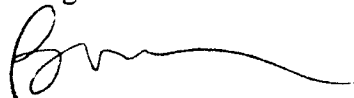
By: Banning Lewis Ranch Management Company,
LLC, a Delaware limited liability company, its
Co-Managing Member

By: 
Donald E. Moe
Senior Vice President

By: 
Steven O. Spelman, Jr.
Chief Financial Officer

By: Greenfield BLR Partners, L.P., a Delaware limited
partnership, its Co-Managing Member

By: Greenfield BLR Manager, LLC,
a Delaware limited liability company, its
General Manager

By: 
Barry P. Marcus
Senior Vice President

STATE OF California)
) ss.
COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 19th day of December, 2006, by Donald E. Moe as Vice President and Steven J. Spelman as Chief Financial Officer of Banning Lewis Ranch Management Company, LLC, a Delaware limited liability company, co-managing manager of The Banning Lewis Ranch Company, LLC, a Delaware limited liability company, manager of Banning Lewis Ranch Development I & II, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: 5-29-2010



Ana Marie Galvez
Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Barry P. Marcus, as Senior Vice President of Greenfield BLR Manager, LLC, a Delaware limited liability company, general manager of Greenfield BLR Partners, L.P., a Delaware limited partnership, co-managing member of The Banning Lewis Ranch Management Company, LLC, a Delaware limited liability company, manager of Banning Lewis Ranch Development I & II, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____ as _____ and _____ as _____ of Banning Lewis Ranch Management Company, LLC, a Delaware limited liability company, co-managing manager of The Banning Lewis Ranch Company, LLC, a Delaware limited liability company, manager of Banning Lewis Ranch Development I & II, LLC, a Delaware limited liability company.

Witness my hand and official seal.
My commission expires: _____

Notary Public

STATE OF Connecticut)
) ss.
COUNTY OF Fairfield)

The foregoing instrument was acknowledged before me this 20th day of December, 2006, by Barry P. Marcus, as Senior Vice President of Greenfield BLR Manager, LLC, a Delaware limited liability company, general manager of Greenfield BLR Partners, L.P., a Delaware limited partnership, co-managing member of The Banning Lewis Ranch Management Company, LLC, a Delaware limited liability company, manager of Banning Lewis Ranch Development I & II, LLC, a Delaware limited liability company.

Witness my hand and official seal.
My commission expires: _____



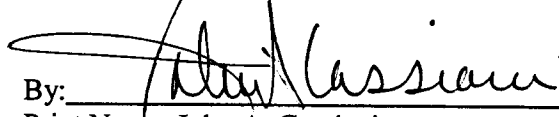
BARBARA GERWIEN
Notary Public
Fairfield City, CT
My Commission Expires 4-30-2007

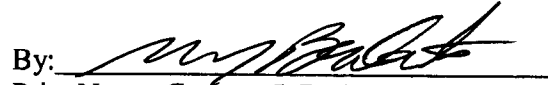
Barbara Gerwien
Notary Public

ACKNOWLEDGEMENT AND CONSENT

By execution below, Banning Lewis Ranch Metropolitan District No. 1 hereby acknowledges and assumes its rights, duties and obligations as provided herein.

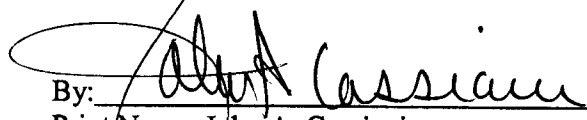
BANNING LEWIS RANCH METROPOLITAN
DISTRICT NO. 1


By: 
Print Name: John A. Cassiani
Title: President

By: 
Print Name: Gregory J. Barbuto
Title: Secretary

By execution below, Banning Lewis Ranch Metropolitan District No. 2 hereby acknowledges and assumes its rights, duties and obligations as provided herein.

BANNING LEWIS RANCH METROPOLITAN
DISTRICT NO. 2

By: 
Print Name: John A. Cassiani
Title: President

By: 
Print Name: Gregory J. Barbuto
Title: Secretary

Attachments:

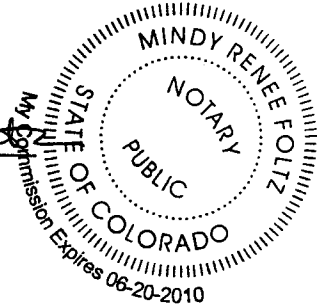
Joinder of Lender
Exhibit A – Legal Description of Annexed Property

STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 8 day of February, 2007, by John A. Cassiani as President and Gregory J. Barbuto as Secretary of Banning Lewis Ranch Metropolitan District No. 1.

Witness my hand and official seal.
My commission expires: 6-20-2010

Mindy Renee Foltz
Notary Public

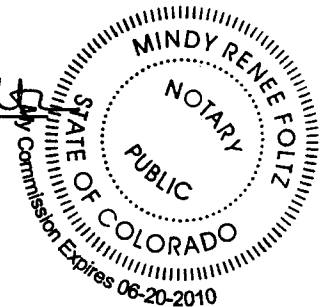


STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 8 day of February, 2007, by John A. Cassiani as President and Gregory J. Barbuto as Secretary of Banning Lewis Ranch Metropolitan District No. 2.

Witness my hand and official seal.
My commission expires: 6-20-2010

Mindy Renee Foltz
Notary Public



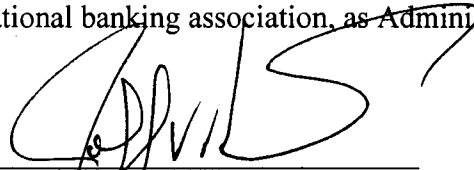
JOINDER OF LENDER

The undersigned, as beneficiary under that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Banning Lewis Ranch Development I & II, LLC, a Delaware limited liability company, as grantor ("Developer"), to The Public Trustee of El Paso County, Colorado for the benefit of KeyBank National Association, a national banking association, as Administrative Agent for itself and the other Lenders ("Mortgagee") from time to time a party to the Credit Agreement referenced therein (the "Deed of Trust"), recorded on the 4th day of April, 2005, at Reception No. 205047082 in the real property records of El Paso County, Colorado, does hereby join in the foregoing Master Declaration for the purpose of consenting to such Master Declaration; however, such consent shall not affect in any way the lien and priority of the Deed of Trust, and all terms and provisions of such Deed of Trust shall otherwise remain in full force and effect.

Notwithstanding the execution of this consent, nothing herein shall be construed to render the Mortgagee responsible or liable for the performance of any of the covenants or undertakings of the Developer under the foregoing Master Declaration.

Dated this 22nd day of December, 2006.

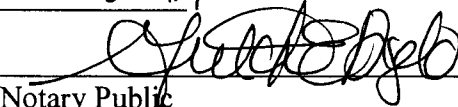
KEYBANK NATIONAL ASSOCIATION,
a national banking association, as Administrative Agent

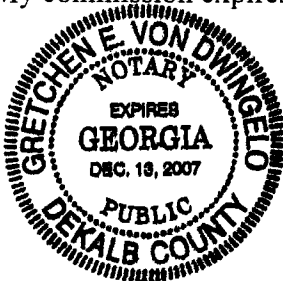
By: 
Name: Jeff V. Aycock, CFA
Title: Vice President

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

Acknowledged before me this 22nd day of December, 2006, by Jeff V. Aycock as Vice President of KeyBank National Association, a national banking association.

Witness my hand and official seal.

My commission expires: December 13, 2007

Notary Public



**EXHIBIT A
TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BANNING LEWIS RANCH**

Legal Description of the Annexed Property

PARCEL 1:

A PORTION OF THE SECTION 9, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 34, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH P.M., BEING MONUMENTED AS SHOWN HEREON, BEARING N 01 DEGREES 13 MINUTES 51 SECONDS E, 2,648.58 FEET.

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 34; THENCE N 25 DEGREES 21 MINUTES 09 SECONDS W A DISTANCE OF 24,950.47 FEET TO THE 1/16TH CORNER OF SAID SECTIONS 8 AND 9 AND THE POINT OF BEGINNING;

THENCE N 89 DEGREES 51 MINUTES 40 SECONDS E ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 286.50 FEET TO THE WESTERLY RIGHT-OF-WAY OF MARKSHEFFEL ROAD OF RECORD IN BOOK 2896 AT PAGE 769;

THENCE LEAVING SAID NORTH LINE THE FOLLOWING TWO (2) COURSES ALONG THE WESTERLY RIGHT-OF-WAY:

1. S 32 DEGREES 25 MINUTES 14 SECONDS W A DISTANCE OF 161.04 FEET TO A POINT OF CURVATURE;
2. ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1697.02 FEET, A CENTRAL ANGLE OF 16 DEGREES 54 MINUTES 02 SECONDS AND AN ARC LENGTH OF 500.57 FEET TO THE WEST LINE OF SAID SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 9;

THENCE N 00 DEGREES 14 MINUTES 20 SECONDS E ALONG SAID WEST LINE A DISTANCE OF 591.00 FEET TO THE POINT OF BEGINNING;
CONTAINING 72,625 SQUARE FEET (1.667 ACRES).

PARCEL 2:

A PORTION OF THE SECTION 9, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 34, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH P.M., BEING MONUMENTED AS SHOWN HEREON, BEARING N 01 DEGREES 13 MINUTES 51 SECONDS E, 2,648.58 FEET.

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 34; THENCE N 25 DEGREES 21 MINUTES 09 SECONDS W A DISTANCE OF 24,950.47 FEET TO THE 1/16TH CORNER OF SAID SECTIONS 8 AND 9; THENCE N 89 DEGREES 51 MINUTES 40 SECONDS E ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 428.88 FEET TO THE EASTERLY RIGHT-OF-WAY OF MARKSHEFFEL ROAD OF RECORD IN BOOK 2896 AT PAGE 769 AND THE POINT OF BEGINNING;

N 89 DEGREES 51 MINUTES 40 SECONDS E CONTINUING ALONG SAID NORTH LINE A DISTANCE OF 412.43 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD OF RECORD IN COURT STIPULATION AS TO POSSESSION AND USE OF REAL PROPERTY, COURT CASE NUMBER 03CV2630;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES:

1. S 48 DEGREES 58 MINUTES 34 SECONDS W A DISTANCE OF 718.88 FEET TO A POINT OF CURVATURE;
2. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS POINT BEARS S 41 DEGREES 01 MINUTES 27 SECONDS E, HAVING A RADIUS OF 1060.00 FEET, A CENTRAL ANGLE OF 17 DEGREES 33 MINUTES 06 SECONDS AND AN ARC LENGTH OF 324.71 FEET TO A POINT OF COMPOUND CURVATURE ON THE EASTERLY LINE OF MARKSHEFFEL ROAD OF RECORD IN BOOK 2896 AT PAGE 769;

THENCE THE FOLLOWING TWO (2) COURSES ALONG SAID EASTERLY LINE:

1. ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS S 77 DEGREES 59 MINUTES 16 SECONDS E, HAVING A RADIUS OF 1577.02 FEET, A CENTRAL ANGLE OF 20 DEGREES 24 MINUTES 29 SECONDS AND AN ARC LENGTH OF 561.71 FEET;
2. N 32 DEGREES 25 MINUTES 14 SECONDS E A DISTANCE OF 237.68 FEET TO THE POINT OF BEGINNING;

CONTAINING 148,524 SQUARE FEET (3.410 ACRES)

PARCEL 3:

A PORTION OF THE SECTIONS 9, 10, 11, 13, 14, 15, 16 AND 22, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 34, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH P.M., BEING MONUMENTED AS SHOWN HEREON, BEARING N 01 DEGREES 13 MINUTES 51 SECONDS E, 2,648.58 FEET.

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 34; THENCE N 25 DEGREES 21 MINUTES 09 SECONDS W A DISTANCE OF 24,950.47 FEET TO THE 1/16TH CORNER OF SAID SECTIONS 8 AND 9; THENCE N 89 DEGREES 51 MINUTES 40 SECONDS E ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 1,019.43 FEET TO THE EASTERLY RIGHT-OF-WAY OF MARKSHEFFEL ROAD OF RECORD IN COURT STIPULATION AS TO POSSESSION AND USE OF REAL PROPERTY, COURT CASE NUMBER 03CV2630 AND THE POINT OF BEGINNING; THENCE THE FOLLOWING EIGHT (8) COURSES THROUGH SAID SECTIONS 9, 10, AND 11:

1. N 89 DEGREES 51 MINUTES 40 SECONDS E ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 1,638.57 FEET TO THE NORTHEAST CORNER OF SAID SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 9;
2. N 89 DEGREES 53 MINUTES 40 SECONDS E ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 2,652.62 FEET TO THE NORTHEAST CORNER OF SAID SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SECTION 9;
3. N 89 DEGREES 57 MINUTES 52 SECONDS E ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTH ONE-HALF OF SAID SECTION 10 A DISTANCE OF 1,453.38 FEET;
4. S 00 DEGREES 13 MINUTES 26 SECONDS E A DISTANCE OF 394.31 FEET;
5. N 89 DEGREES 51 MINUTES 27 SECONDS E A DISTANCE OF 3,954.65 FEET;
6. S 89 DEGREES 08 MINUTES 12 SECONDS E A DISTANCE OF 3,884.02 FEET;
7. S 00 DEGREES 08 MINUTES 13 SECONDS W A DISTANCE OF 145.14 FEET;
8. S 89 DEGREES 08 MINUTES 14 SECONDS E A DISTANCE OF 1,119.97 FEET TO THE WESTERLY LINE OF THE PUBLIC SERVICE COMPANY OF COLORADO PARCEL OF RECORD IN BOOK 2194 AT PAGE 154;

THENCE THE FOLLOWING FIVE (5) COURSES ALONG THE WESTERLY LINE, SOUTHERLY AND EASTERLY LINES OF SAID PUBLIC SERVICE COMPANY OF COLORADO PARCEL:

1. S 00 DEGREES 08 MINUTES 13 SECONDS W A DISTANCE OF 761.74 FEET;

2. S 00 DEGREES 08 MINUTES 29 SECONDS W A DISTANCE OF 2,627.56 FEET;
3. S 00 DEGREES 06 MINUTES 57 SECONDS W A DISTANCE OF 1,692.62 FEET TO A POINT OF CURVATURE;
4. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS POINT BEARS N 31 DEGREES 29 MINUTES 52 SECONDS W, HAVING A RADIUS OF 5679.64 FEET, A CENTRAL ANGLE OF 02 DEGREES 42 MINUTES 21 SECONDS AND AN ARC LENGTH OF 268.22 FEET;
5. N 00 DEGREES 06 MINUTES 57 SECONDS E A DISTANCE OF 1546.09 FEET TO THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 14;

THENCE N 89 DEGREES 49 MINUTES 47 SECONDS E ALONG SAID NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SECTION 14 A DISTANCE OF 100.00 FEET TO THE NORTHEAST CORNER OF SAID SECTION 14;

THENCE S 89 DEGREES 18 MINUTES 34 SECONDS E ALONG THE NORTH LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 13 A DISTANCE OF 1,328.02 FEET;

THENCE S 00 DEGREES 07 MINUTES 50 SECONDS W A DISTANCE OF 1,342.80 FEET;

THENCE S 89 DEGREES 34 MINUTES 42 SECONDS E A DISTANCE OF 350.20 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY 24 (RIGHT-OF-WAY VARIES);

THENCE S 28 DEGREES 28 MINUTES 31 SECONDS W ALONG SAID NORTHWESTERLY RIGHT-OF-WAY A DISTANCE OF 3,744.50 FEET TO THE INTERSECTION OF SAID NORTHWESTERLY RIGHT-OF-WAY AND THE EASTERLY LINE OF SAID PUBLIC SERVICE COMPANY OF COLORADO PARCEL OF RECORD IN BOOK 2194 AT PAGE 154;

THENCE THE FOLLOWING FIVE (5) COURSES ALONG THE EASTERLY, NORTHERLY AND WESTERLY LINES OF SAID PUBLIC SERVICE COMPANY OF COLORADO PARCEL OF RECORD IN BOOK 2194 AT PAGE 154;

1. N 00 DEGREES 08 MINUTES 25 SECONDS E A DISTANCE OF 1955.02 FEET;
2. N 00 DEGREES 06 MINUTES 57 SECONDS E A DISTANCE OF 1030.90 FEET TO A POINT OF CURVATURE;
3. ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS N 33 DEGREES 31 MINUTES 46 SECONDS W, HAVING A RADIUS OF 5779.64 FEET, A CENTRAL ANGLE OF 02 DEGREES 38 MINUTES 23 SECONDS AND AN ARC LENGTH OF 266.28 FEET;
4. S 00 DEGREES 06 MINUTES 57 SECONDS W A DISTANCE OF 888.48 FEET;
5. S 00 DEGREES 08 MINUTES 25 SECONDS W A DISTANCE OF 2213.90 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY 24 (RIGHT-OF-WAY VARIES) OF RECORD IN THE PETITION IN CONDEMNATION IN COURT CASE NUMBER 02CV3978;

THENCE S 28 DEGREES 29 MINUTES 00 SECONDS W ALONG SAID NORTHWESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY 24 (RIGHT-OF-WAY VARIES) OF RECORD IN THE PETITION IN CONDEMNATION IN COURT CASE NUMBER 02CV3978 A DISTANCE OF 468.54 FEET TO THE INTERSECTION OF SAID NORTHWESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY 24 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF PROPOSED STETSON HILLS BOULEVARD (RIGHT-OF-WAY VARIES);

THENCE THE FOLLOWING FORTY-TWO (42) COURSES ALONG SAID SOUTHERLY RIGHT-OF-WAY OF PROPOSED STETSON HILLS BOULEVARD:

1. N 61 DEGREES 30 MINUTES 03 SECONDS W A DISTANCE OF 829.01 FEET TO A POINT OF CURVATURE;
2. THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS POINT BEARS S 28 DEGREES 30 MINUTES 41 SECONDS W, HAVING A RADIUS OF 1917.00 FEET, A CENTRAL ANGLE OF 26 DEGREES 59 MINUTES 07 SECONDS AND AN ARC LENGTH OF 902.87 FEET;
3. S 45 DEGREES 27 MINUTES 20 SECONDS W A DISTANCE OF 42.01 FEET;
4. S 00 DEGREES 07 MINUTES 17 SECONDS E A DISTANCE OF 10.81 FEET;
5. S 89 DEGREES 52 MINUTES 43 SECONDS W A DISTANCE OF 99.00 FEET;
6. N 45 DEGREES 07 MINUTES 17 SECONDS W A DISTANCE OF 42.43 FEET;
7. S 89 DEGREES 52 MINUTES 43 SECONDS W A DISTANCE OF 224.09 FEET;
8. N 86 DEGREES 37 MINUTES 40 SECONDS W A DISTANCE OF 180.51 FEET;
9. S 89 DEGREES 52 MINUTES 43 SECONDS W A DISTANCE OF 171.65 FEET;
10. S 89 DEGREES 44 MINUTES 56 SECONDS W A DISTANCE OF 1731.79 FEET;
11. S 44 DEGREES 46 MINUTES 18 SECONDS W A DISTANCE OF 42.44 FEET;
12. S 00 DEGREES 13 MINUTES 00 SECONDS E A DISTANCE OF 11.04 FEET;
13. S 89 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 123.00 FEET;
14. N 45 DEGREES 13 MINUTES 00 SECONDS W A DISTANCE OF 42.43 FEET;
15. S 89 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 232.95 FEET;
16. N 86 DEGREES 43 MINUTES 11 SECONDS W A DISTANCE OF 180.34 FEET;
17. S 89 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 796.16 FEET;
18. THENCE ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1917.00 FEET, A CENTRAL ANGLE OF 37 DEGREES 00 MINUTES 00 SECONDS AND AN ARC LENGTH OF 1237.94 FEET;
19. S 52 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 79.00 FEET;
20. S 07 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 42.43 FEET;
21. S 37 DEGREES 13 MINUTES 00 SECONDS E A DISTANCE OF 11.00 FEET;
22. S 52 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 96.00 FEET;
23. N 82 DEGREES 13 MINUTES 00 SECONDS W A DISTANCE OF 42.43 FEET;
24. S 52 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 240.76 FEET;
25. S 56 DEGREES 16 MINUTES 37 SECONDS W A DISTANCE OF 180.52 FEET;
26. S 52 DEGREES 47 MINUTES 00 SECONDS W A DISTANCE OF 150.01 FEET TO A POINT OF CURVATURE;

27. THENCE ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1083.00 FEET, A CENTRAL ANGLE OF 20 DEGREES 27 MINUTES 04 SECONDS AND AN ARC LENGTH OF 386.57 FEET;
28. S 73 DEGREES 14 MINUTES 04 SECONDS W A DISTANCE OF 88.44 FEET TO A POINT OF CURVATURE;
29. THENCE ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 733.00 FEET, A CENTRAL ANGLE OF 14 DEGREES 10 MINUTES 50 SECONDS AND AN ARC LENGTH OF 181.42 FEET TO A POINT OF COMPOUND CURVATURE;
30. ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS N 02 DEGREES 35 MINUTES 06 SECONDS W, HAVING A RADIUS OF 1094.00 FEET, A CENTRAL ANGLE OF 10 DEGREES 09 MINUTES 56 SECONDS AND AN ARC LENGTH OF 194.10 FEET;
31. N 82 DEGREES 25 MINUTES 09 SECONDS W A DISTANCE OF 322.65 FEET;
32. S 58 DEGREES 55 MINUTES 15 SECONDS W A DISTANCE OF 38.42 FEET;
33. N 82 DEGREES 25 MINUTES 09 SECONDS W A DISTANCE OF 811.86 FEET;
34. N 35 DEGREES 40 MINUTES 25 SECONDS W A DISTANCE OF 32.95 FEET;
35. N 82 DEGREES 25 MINUTES 09 SECONDS W A DISTANCE OF 201.09 FEET;
36. N 78 DEGREES 25 MINUTES 01 SECONDS W A DISTANCE OF 301.09 FEET;
37. N 82 DEGREES 26 MINUTES 11 SECONDS W A DISTANCE OF 48.63 FEET;
38. S 52 DEGREES 11 MINUTES 00 SECONDS W A DISTANCE OF 42.02 FEET;
39. S 06 DEGREES 47 MINUTES 10 SECONDS W A DISTANCE OF 5.08 FEET;
40. N 82 DEGREES 25 MINUTES 19 SECONDS W A DISTANCE OF 117.05 FEET;
41. N 37 DEGREES 48 MINUTES 47 SECONDS W A DISTANCE OF 32.75 FEET;
42. N 82 DEGREES 25 MINUTES 09 SECONDS W A DISTANCE OF 236.64 FEET TO THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 22;

THENCE N 00 DEGREES 14 MINUTES 02 SECONDS E ALONG SAID WEST LINE OF THE NORTHWEST ONE-QUARTER A DISTANCE OF 235.83 FEET TO THE NORTHWEST CORNER OF SAID SECTION 22;

THENCE N 00 DEGREES 20 MINUTES 14 SECONDS E ALONG THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 15 A DISTANCE OF 2,646.65 FEET TO THE WEST ONE-QUARTER CORNER OF SAID SECTION 15;

THENCE N 00 DEGREES 20 MINUTES 14 SECONDS E ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 15 A DISTANCE OF 2,646.40 FEET TO THE NORTHWEST CORNER OF SAID SECTION 15;

THENCE N 89 DEGREES 55 MINUTES 08 SECONDS W ALONG THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 2,680.60 FEET TO THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 9;

THENCE S 00 DEGREES 15 MINUTES 04 SECONDS W ALONG THE EAST LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 16 A DISTANCE OF 30.00 FEET;

THENCE S 89 DEGREES 40 MINUTES 52 SECONDS W ALONG A LINE 30 FEET SOUTH OF AND PARALLEL TO (AS MEASURED AT RIGHT ANGLES) THE NORTH LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 16 A DISTANCE OF 2,620.32 FEET TO THE EASTERLY RIGHT-OF-WAY OF MARKSHEFFEL ROAD (RIGHT-OF-WAY VARIES);

THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID EASTERLY RIGHT-OF-WAY OF MARKSHEFFEL ROAD:

1. N 00 DEGREES 10 MINUTES 42 SECONDS E ALONG A LINE 60 FEET EAST OF AND PARALLEL TO (AS MEASURED AT RIGHT ANGLES) THE WEST LINE OF SAID NORTHWEST ONE-QUARTER OF SECTION 16 A DISTANCE OF 30 FEET TO THE NORTH LINE OF SAID NORTHWEST ONE-QUARTER OF SECTION 16;
2. N 00 DEGREES 14 MINUTES 20 SECONDS E ALONG A LINE 60 FEET EAST OF AND PARALLEL TO (AS MEASURED AT RIGHT ANGLES) THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 2,654.91 FEET TO THE NORTH LINE OF SAID SOUTHWEST ONE-QUARTER OF SECTION 9;
3. N 00 DEGREES 14 MINUTES 20 SECONDS E ALONG A LINE 60 FEET EAST OF AND PARALLEL TO (AS MEASURED AT RIGHT ANGLES) THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 9 A DISTANCE OF 61.84 FEET TO A POINT OF CURVATURE AT THE SOUTHEAST CORNER OF SAID MARKSHEFFEL ROAD RIGHT-OF-WAY OF RECORD IN COURT STIPULATION AS TO POSSESSION AND USE OF REAL PROPERTY, COURT CASE NUMBER 03CV 2630;

THENCE CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY OF MARKSHEFFEL ROAD AND ALONG SAID EASTERLY RIGHT-OF-WAY OF RECORD IN COURT STIPULATION AS TO POSSESSION AND USE OF REAL PROPERTY, COURT CASE NUMBER 03CV2630 THE FOLLOWING THREE (3) COURSES:

1. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 940.00 FEET, A CENTRAL ANGLE OF 48 DEGREES 44 MINUTES 14 SECONDS AND AN ARC LENGTH OF 799.59 FEET;
2. N 48 DEGREES 58 MINUTES 33 SECONDS E A DISTANCE OF 768.54 FEET TO A POINT OF CURVATURE;
3. ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1060.00 FEET, A CENTRAL ANGLE OF 04 DEGREES 35 MINUTES 57 SECONDS AND AN ARC LENGTH OF 85.09 FEET TO THE POINT OF BEGINNING;

CONTAINING 115,991,979 SQUARE FEET (2,662.809 ACRES).

AND

DISTRICT NO. 1 PARCEL:

A PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 34, TOWNSHIP 13 SOUTH, RANGE 65 WEST, 6TH P.M., BEING MONUMENTED AS SHOWN HEREON, BEARING N 01 DEGREES 13 MINUTES 51 SECONDS E, 2,648.58 FEET.

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 34; THENCE N 29 DEGREES 51 MINUTES 40 SECONDS E A DISTANCE OF 21,367.81 FEET TO THE NORTH RIGHT-OF-WAY LINE OF FALCON HIGHWAY (RIGHT-OF-WAY VARIES) FROM WHENCE THE SOUTHEAST CORNER OF SAID SECTION 12 BEARS S 44 DEGREES 09 MINUTES 22 SECONDS E A DISTANCE OF 42.32 FEET, AND THE POINT OF BEGINNING;

THENCE N 89 DEGREES 18 MINUTES 23 SECONDS W ALONG SAID NORTH RIGHT-OF-WAY LINE AND 30 FEET NORTH OF AND PARALLEL TO (AS MEASURED AT RIGHT ANGLES) THE SOUTH LINE OF SAID SOUTHEAST ONE-QUARTER OF SECTION 12 A DISTANCE OF 2,659.99 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 24 (RIGHT-OF-WAY VARIES);

THENCE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES ALONG THE EASTERLY AND SOUTHERLY LINES OF U.S. HIGHWAY 24;

1. N 28 DEGREES 27 MINUTES 37 SECONDS E A DISTANCE OF 4.40 FEET;
2. N 26 DEGREES 55 MINUTES 23 SECONDS W A DISTANCE OF 102.86 FEET;
3. N 28 DEGREES 28 MINUTES 37 SECONDS E A DISTANCE OF 13.87 FEET TO A POINT OF CURVATURE;
4. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2815.00, A CENTRAL ANGLE OF 13 DEGREES 15 MINUTES 24 SECONDS AND AN ARC LENGTH OF 651.31 FEET;
5. N 50 DEGREES 06 MINUTES 15 SECONDS E A DISTANCE OF 1,078.12 FEET;
6. N 89 DEGREES 23 MINUTES 58 SECONDS W A DISTANCE OF 46.15 FEET;
7. N 50 DEGREES 06 MINUTES 21 SECONDS E A DISTANCE OF 851.34 FEET;

THENCE S 39 DEGREES 53 MINUTES 39 SECONDS E ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF 8TH STREET (60 FOOT RIGHT-OF-WAY) A DISTANCE OF 1,030.76 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1,560.00 FEET, A CENTRAL ANGLE OF 08 DEGREES 56 MINUTES 40 SECONDS AND AN ARC LENGTH OF 243.53 FEET TO THE WEST RIGHT-OF-WAY LINE OF MERIDIAN ROAD (RIGHT-OF-WAY VARIES);

THENCE S 05 DEGREES 26 MINUTES 23 SECONDS E ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 924.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 72.26 ACRES.

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