

**DECLARATION**

**of**

**COVENANTS, CONDITIONS, AND RESTRICTIONS**

**for**

**CHERRY CREEK CROSSING**

December 1, 1999

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
CHERRY CREEK CROSSING**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CHERRY CREEK CROSSING (“Declaration”) is made this 2nd day of December, 1999, by Colorado Springs 382, an Arizona Limited Partnership (“Declarant”).

**PROLOGUE**

A. The Property: Declarant owns the real property located in El Paso County, Colorado, described in Exhibit A, which is attached and incorporated into this document by reference, hereinafter referred to as the “Property”.

B. Planned Community: Declarant intends to develop the Property as a high-quality, planned community of single-family residential homes and related uses, pursuant to the Planned Unit Development Act of 1972, C.R.S. 24 – 67 – 101, et seq., and the El Paso County Land Development Code. This Declaration imposes on such Property mutually beneficial restrictions and standards, regulations and requirements, under a general plan of improvements for the benefit of the owners of each portion of the Properties, and establishes flexible and reasonable procedures for the overall development, administration, maintenance, and preservation of the Properties. The name of Declarant’s planned community to be developed on the Property is Cherry Creek Crossing. The name of the Association, as defined hereinafter, is Cherry Creek Crossing Property Owners Association, Inc., which has been incorporated under the laws of the State of Colorado as a nonprofit corporation for the purposes of administering and enforcing this Declaration.

C. Purposes of Declaration: This Declaration is executed (a) to further a common and general plan for the development of the Property, (b) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Property, (c) to provide for a property owners association as a vehicle to hold, maintain, care for and manage the Association Properties, including the Association Properties that are in use as internal trails or landscaped areas that benefit all Owners of Lots, (d) to define the duties, powers and rights of the Association; (e) and to define certain duties, powers and rights of Owners of Lots within the Properties.

D. Declaration: Declarant hereby declares that all of the property described in Exhibit “A” and any additional properties subjected to this Declaration by Supplemental Declarations (as defined in Article I) shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, Covenants, provisions, and conditions, all of which shall run with the land and be binding on and inure to the benefit of all parties, their heirs, successors, and assigns, having any right, title, or interest in the Properties or any part thereof.

**ARTICLE I      DEFINITIONS**

The following words, terms, and expressions used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

**1.1 Accessory Building.** “Accessory Building” shall include detached garages, guest houses, servants quarters, decks, patios, swimming pools, covers, enclosures, dressing rooms or other similar structures, spas, hot tubs, gazebos, recreation facilities, and other buildings customarily used in connection with a single-family residence.

**1.2 Association.** Cherry Creek Crossing Property Owners Association, Inc., (“CCPOA”), a Colorado Corporation, its successors and assigns.

**1.3 Board of Directors.** “Board”. The Board of Directors of the Association, the body responsible for administration of the Association.

**1.4 Building Height & Site.** Building height is the vertical distance measured from the average elevation of the finished grade adjoining the building to the highest point of the roof surface, if a flat roof; to the deck line of mansard roofs; and to the mean height level between eaves and ridges for gable, hip and gambrel roofs. The building site is the location within a Lot on which a structure may be erected with the prior written approval of the Design Review Committee.

**1.5 Builder.** Any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers, and/or resale in the ordinary course of such Person’s business.

**1.6 Bylaws.** The Bylaws, which have been or will be adopted by the Board of Directors of the Association.

**1.7 Community-Wide Standard.** The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties as set forth in the Design Guidelines required to preserve the natural beauty of the land, protect wildlife, and to create harmony within the community and among adjacent neighborhoods through education, structure, design, and utility. The Board of Directors and the Design Review Committee shall more specifically determine such standard.

**1.8 Declarant.** Colorado Springs 382, an Arizona Limited Partnership, its agents, employees, contractors, successors, and assigns.

**1.9 Design Guidelines or Standards.** A description of criteria and procedures adopted by the Design Review Committee and applicable to all Lots within the Properties, to ascertain the acceptability of proposed development of individual lots.

**1.10 Development Plan and Guidelines.** The Planned Unit Development (Development Plan) Plan for Cherry Creek Crossing adopted by the Board of County Commissioners of El Paso County, Colorado on September 11, 1997, and recorded in Reception No. 99174859, and the Development Guidelines as recorded in Reception No. 99178565, as they may be amended or supplemented from time to time. The Development Plan may also include subsequent plans approved by El Paso County for the development of all or a portion of the property, which Declarant may from time to time anticipate subjecting to this Declaration.

**1.11 Lot.** A building Lot that is part of any of the subdivided lots in Filings shown on any recorded subdivision plat of the Property, which is recorded now or hereafter.

**1.12 Member.** Owner of a Lot entitled to membership in the Association.

**1.32 Mortgage.** Any mortgage or deed of trust or other form of hypothecation.

**1.33 Mortgagee.** Either a beneficiary under a Deed of Trust, or a mortgagee under a Mortgage, as the case may be, and the assignees of such Mortgagee.

**1.34 Notice.** Written notice sent by the United States mails, either first class or certified mail, return receipt requested, or by hand delivery to the Lot or the Owner at least ten days prior to the action required by the notice, and if applicable, such notice shall also comply with the requirements of the Bylaws.

**1.35 Owner.** One Person, or, if more than one, all persons collectively, including Declarant, who holds fee simple legal title of record to any Lot in the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If more than one person has such title, all such persons are referred to collectively as “Owner” and shall exercise their rights as an Owner through such one of them as they may designate from time to time. A vote of Owners shall be determined on the basis of one vote for each Lot. If a Lot is sold under

a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, but only if the contract specifically so provides.

**1.36 Properties.** The real property described in Exhibit “A”, excepting the tract designated in the Development Plan as Neighborhood Commercial, together with such additional property as is subject to this Declaration.

## **ARTICLE II      PROPERTY**

**2.1 Common Area Subject to Declaration.** Common Area is controlled by this Declaration.

**2.2 Common Area Uses.** Common Area Uses may include, but are not limited to, interior and perimeter trails , cluster mailbox areas, parks, gardens or other open space, detention or retention facilities, ponds, easements, recreation facilities, monuments, artwork, or sculptures. A portion of the Common Area may be transferred by the Declarant or the Association to the County or to a third party or a nonprofit entity, in which case the Owners may or may not be entitled to use the area. Common Areas may also be used, to the extent authorized by the Board, by dues-paying persons who are not Members of the Association.

**2.3 Future Common Areas.** Certain property may be designated by Declarant as Common Area in future Filings, which may include, but are not limited to, various dams and floodplain areas as shown in the Development Plan. Some or all of these areas may be conveyed to the Association or to a third party, a nonprofit corporation, a school, or the County (but only with proper acceptance by the County of such conveyance).

**2.4. Transfer of Owner’s Right of Use.** Any Owner may extend his or her right of use and enjoyment of the Common Area to the members of his or her family, permitted lessees, and social invitees, subject to reasonable Board regulation. An Owner who has the right to and does lease his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; however, such assignment shall not release the owner from the obligations imposed by this Declaration.

## **ARTICLE III      ANNEXATION & WITHDRAWAL OF PROPERTY**

**3.1 Annexation Without Approval of Membership.** Declarant may unilaterally, subject to the provisions of this Declaration, annex all or portions of any real property whose boundaries lie contiguous to the Properties for a period of 10 years after the recording of this Declaration. Declarant may unilaterally expand or contract the Annexable Area in its sole discretion.

**3.2 Transfer of Right.** The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the owner of at least a portion of the real property described in Exhibits “A” or “B” and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any such property in any manner whatsoever and such property shall not be subject to this Declaration until annexed. Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Clerk describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the Owner of such property, if other than Declarant. Any such annexation shall be effective upon the Recording of such Supplemental Declaration unless otherwise provided therein.

**3.3 Annexation With Approval of Membership.** The Board or the Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Voting Members representing 66-2/3% of the Class “A” votes of the Association represented at the meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with this Article III. Such annexation shall be accomplished by Recording a Supplemental Declaration in the Office of the County Clerk describing the property to

be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Board, and by the owner of the annexed property. Any such annexation shall be effective upon Recording unless otherwise provided therein.

**3.4 Withdrawal of Property.** The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties.

**3.5 Amendment.** This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property included in the Properties or includable in the Annexable Area.

#### **ARTICLE IV      EASEMENTS**

**4.1 Association Easement.** Easements over the Properties are reserved to the Association as necessary to enable the Board to fulfill its responsibilities.

**4.2 Utility Easements.** Declarant specifically grants to the local electric company, telephone company, cable TV company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. Declarant, its successors, and assigns reserves within each Lot perpetual, alienable, divisible, and releasable easements, and the right from time to time to grant such easements to others over, under, in, and across a fifteen (15) foot strip along and adjoining each and all Lot Lines of each Lot for use of all or part of such areas for the utilities, for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. All utilities, except lighting standards and customary service devices for meters, transformers, access, control or use of utilities, shall be installed underground.

**4.3 Access & Maintenance.** There are hereby reserved unto Declarant, so long as the Declarant owns any property within the Properties or includable in the Annexable Area, the Association, and the designees of each (which may include, without limitation, El Paso County, Colorado, but only upon proper acceptance by the County of such designation), any utility access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, security and similar systems, roads, walkways, bicycle pathways, trails, dams, irrigation systems, drainage systems, street lights, signage, and all utilities, including, but not limited to, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under, or through any existing dwelling on a Lot. Any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

**4.4 Easements to Serve Flood Plain Areas & Dams.** The flood plain areas as shown by the recorded Plat shall be no-build preservation areas, except that Declarant may convey all or part of it to the Association or some other entity for construction, repair, replacement, maintenance, operation, and use of recreational or other community facilities. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, and El Paso County employees or their agents, easements over the flood plain areas and dams for the purposes of maintenance, enjoyment, use, access and development to the Annexable Area, including without limitation, the property in Exhibit "B", whether or not such property is made subject to this Declaration. These easements include, but are not limited to, a right of ingress and egress over the Common Areas for construction of roads and for connecting and installing utilities, if applicable, on such properties.

**4.5 Drainage Easements for Properties.** Certain areas within the Properties are designated for drainage, including dams and other structures; the Declarant intends to transfer those areas by easements or otherwise to the Association which shall own, construct, use, operate, repair, replace, and maintain the areas and structures, and a general easement is hereby reserved over, across, and upon the Properties for such activities.

**4.6 Drainage Easements for Lots.** Every Lot shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties. No person shall alter the natural drainage on any Lot so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Board and Owners of the affected properties.

**4.7 Right of Entry.** The Board shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any Member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after Due Notice to the Owner. This right of entry shall include the right of the Board to enter upon any Lot to cure any conditions which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after having been requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

**4.8 Trail Easements and Mailboxes.**

- a. Declarant, its successors and assigns, reserves easements as shown by the recorded Plat, including, without limitation, those shown along the perimeter of the Properties for perimeter trails.
- b. Declarant hereby reserves easements of fifty (50) feet along all Lot Lines for the construction, maintenance, use, and replacement of trails within the Properties to be used as pedestrian "Interior Trails." The location of the Interior Trails within this easement shall be determined by the Declarant, which may grant variances, modifications, and releases to the easement. The Interior Trails shall be constructed, maintained, and regulated by the Association. Horses, motorized vehicles, motorized three wheelers, ATV or snowmobiles, or other vehicles prohibited by the Association shall not be permitted on the Interior Trails. The Declarant may create easements for horses on the recorded Plats; however, use of the interior trails shall be restricted to pedestrians, strollers, bicycles, and any vehicle suitable for trail use by disabled persons.
- c. Mailboxes. Mailboxes will be initially installed by the Declarant in accordance with the U.S. Post Office design specifications and may be located on the boundary lines between Lots or as required by the U.S. Post Office. Declarant hereby reserves easements for any mailboxes, cluster mailboxes, or signs located by Declarant upon any Lot.

**4.9 Additional Covenants and Easements.** The Declarant may unilaterally subject any portion of the Properties submitted to this Declaration initially or by Supplemental Declaration to additional Covenants and easements, including provisions obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional Declaration and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

**ARTICLE V      ASSOCIATION FUNCTIONS, MEMBERSHIP, VOTING RIGHTS**

**5.1 Functions.**

- a. Non-Profit Corporation. The Association shall operate as a Colorado non-profit corporation pursuant to its Articles of Incorporation and Bylaws, which may include, without limitation, provisions for the indemnification of officers and directors.
- b. Board of Directors. The Association's Board of Directors may adopt rules and regulations, including without limitation, construction, use and design guidelines and procedures for architectural control, and fines for violations of rules and these Covenants, to supplement and interpret these Covenants. Any rule or

decision of the Board shall be final, conclusive, and binding on all Owners, Members, and other persons or parties.

- c. Management. The Association shall be the entity responsible for management, maintenance, operation, and control of the Common Area. The Board shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Board shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Board shall perform its functions in accordance with this Declaration, the Bylaws, the Articles, and laws of the State of Colorado.

## **5.2 Membership.**

- a. Lot Owner. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If additional Lots are added to the Association, membership shall automatically be expanded.
- b. One Vote per Lot. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth herein and in the Bylaws, and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Owner.
- c. Natural Person. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse.
- d. Legal Entity. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Board.
- e. Right to Vote. Members shall have the right to cast votes on all matters to be voted on by the members, as provided in the Association's Articles of Incorporation and Bylaws.

## **5.3 Classes of Membership.** The Association shall have two classes of membership, Class "A" and Class "B".

- a. Class "A". The Class "A" Members shall be all Owners of Lots, except Class "B" Members.
- b. Class "B". The Class "B" Member shall be the Declarant.

## **5.4 Voting Rights.**

- a. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section III B;
- b. Class "B" Member shall be entitled to fifty one percent (51%) of the voting rights in the Association.

## **5.5 Duration of Class B.** The Class "B" membership shall cease and be converted to Class "A" membership upon the earlier of the following:

- a. When 90% of the Lots permitted under the Development Plan filed with El Paso County have been conveyed by Declarant to Owners, and certificates of occupancy have been issued for residences constructed thereon;
- b. Ten years from the date of the recording of this Declaration; provided that the 10-year period for conversion shall be extended an additional five years unless a majority of the Voting Members representing Class "A" Members at a special meeting held for such purpose at least 30 days, but not more than 90 days, prior to expiration of the 10-year period, vote not to extend the 5-year period, or
- c. When, in its discretion, the Declarant so determines.

## **5.6 Conversion of Class "B" Membership.** From and after the conversion of the Class "B" membership, the Class "B" member shall be deemed to be a Class "A" member entitled to one vote for each Lot in which it holds the interest required for membership hereunder. Notwithstanding the above provision, the Declarant shall have a right to disapprove actions of the Board and committees as provided in the Bylaws.

## **5.7 Transition to the Association.** In the event Class "B" membership has not terminated when more than 80% of the Lots permitted under the Development Plan filed with El Paso County have been conveyed by Declarant, the Board shall form a "Transitional Advisory Committee." No later than when 90% of the Lots are owned as provided in

Section 5.05, the Declarant shall call a meeting for the purpose of turning over administration responsibilities to the Board.

**5.8 Exercise of Voting Rights.** Except as otherwise specified in this Declaration or the Bylaws, the vote for each Lot owned by a Class "A" Member shall be exercised by Voting Members, as described in this Declaration, the Articles, and the Bylaws. In any situation in which a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-owners determine among themselves and advise the Secretary of the Board in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

## **ARTICLE VI    ASSOCIATION: GENERAL POWERS AND AUTHORITY**

**6.1 Authority and Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied there from, or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

**6.2 Enforcement.** The Board may impose sanctions for violations of this Declaration, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Area. In addition, in accordance with the Bylaws, the Board may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due the Association. The Board may seek relief in any court for violations or to abate nuisances. The Board, by contract or other agreement, may enforce county ordinances, if applicable, and permit El Paso County to enforce applicable ordinances on the Properties for the benefit of the Association and its Members.

### **6.3 Indemnification.**

- a. **Expenses of Action.** Except as covered by insurance, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.
- b. **Misconduct or Bad Faith.** The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith.
- c. **Personal Liability.** The officers and directors shall have no personal liability with respect to any contracts or other commitments made or action taken in good faith on behalf of the Association. The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee members may be entitled.
- d. **Directors' Liability Insurance.** The Board shall, as a Common Expense, maintain adequate general liability and Officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.
- e. **Notice to Members.** If the Association indemnifies or advances expenses pursuant to this Section, the Board shall report the indemnification or advance in writing to the Members with or before the notice of the next meeting of the Members.

**6.4 Non-Dedication of Common Areas.** The Association Areas are not hereby dedicated for any public use nor to any public entity, provided however, the Declarant or the Association may dedicate portions of any Common Areas to the County or to any other local, state, or federal governmental entity, or any nonprofit organization, subject to such approval by said governmental entity or nonprofit organization and as may be required hereunder and to recording a deed or other dedication document recorded with the Office of the County Clerk.

**6.5 Services.** The Association may, but shall not be obligated to, provide services related to the safety or protection of persons or property, provided however, NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND DECLARES ITS INTENTION TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES.

## **ARTICLE VII                      ASSOCIATION MANAGEMENT & MAINTENANCE**

**7.1 Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall manage, maintain, and control the Common Areas and all improvements thereon and shall keep them in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard. Such maintenance of the Common Areas may include but are not limited to:

- a. interior pedestrian trails, which the Association shall maintain, and regulate within the Properties;
- b. all landscaping and other flora, parks, signage, dams, structures, and improvements, including any interior streets, pathways/trails, situated upon the Common Area;
- c. landscaping, lights and signage within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easements and easements or drainage no-build zones within the Properties (subject to the terms of any easement agreement relating thereto); provided, however, that it shall be the responsibility of each Owner to landscape, irrigate, and maintain any area within public rights of way between such Owner's Lot and the paved roadway located in rights of way adjacent to such Owner's Lot from the date a certificate of occupancy is issued with respect to improvements on such Lot;
- d. such portions of any additional property included within the Properties as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and
- e. any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Properties and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association;
- f. maintenance, repair, and replacement of detention or retention facilities, ponds, dams, and floodplain areas unless specifically assumed by another entity.

**7.2 Other Property.** The Association may maintain other property which it does not own, including without limitation publicly owned property, conservation easements held by nonprofit entities, perimeter trails, and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

**7.3 Education.** The Board may provide on-going informational programs for its members on subjects, which it deems necessary to protect the natural environment.

**7.4 Property for Common Use.** The Association may acquire, hold, and dispose of tangible and intangible personal property and additional real property. Declarant may convey to the Association improved or unimproved real estate located within the Properties and/or the Annexable Area, personal property, and leasehold and other property interests. Such property shall be accepted by the Board and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed.

**7.5 Repair & Replacement.** Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Common Area shall be a common expense to be allocated among all Lots in the manner of and as part of the Common Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Person (s) responsible for, certain portions of the Common Area pursuant to this Declaration, other recorded Declaration, or agreements with the Owner(s) thereof.

**7.6 Standard of Performance.** Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Association may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable governmental requirements.

**7.7 Owner's Responsibility.** Each Owner shall maintain his or her Lot and all structures, parking areas, landscaping, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable provisions of this Declaration unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with this Declaration. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**7.8 Liability.** Notwithstanding anything to the contrary contained herein, the Association, and/or an Owner, shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property that it does not own.

## **ARTICLE VIII                      ASSESSMENTS**

**8.1. Assessments of Lot Owners.** The Board shall assess the Owners for the costs of common expenses as determined by the Association's Board of Directors. The assessments hereunder shall be imposed equally upon each Lot and each Owner, provided however, notwithstanding any contrary provision, that the Declarant and Lots owned by the Declarant shall not be subject to any assessments hereunder. Assessments shall commence upon the earlier of:

- a. the completion of a residential dwelling unit upon the Lot, as demonstrated by final governmental approval, or
- b. twelve (12) months from the date on which the Lot is conveyed by the Declarant.

**8.2 Purposes.** Assessments may be levied by the Association's Board of Directors for promoting the health, safety, property values, welfare, and convenience of the members, including the enforcement of the Declaration, and to pay for the costs of the ownership, maintenance, watering, mowing, spraying, fertilization, and landscaping of the Common Area, and any other common expenses as determined by the Association's Board of Directors, including without limitation, maintenance, administrative, legal and insurance, insurance on the Common Area and Association activities, which insurance shall, to the fullest extent reasonably available and practical, meet the requirements of this Declaration, as now existing or hereafter amended, monument signs and related landscaping, trails, street signs, maintenance, repair and replacement of drainage and detention or retention facilities, ponds, dams, and flood plain areas within the Common Area, tree inspection and thinning programs, as it may relate to the Board or Design Review Committee, and other activities of the Association. Further, the Association shall perform any obligations required of it under any recorded Maintenance Agreements with El Paso County.

**8.3 Lot Assessment.** The Association's Board of Directors may impose an assessment that shall be applicable only to a particular Lot or particular Owner or both for:

- a. Costs, including overhead and administrative costs, of providing benefits, items, or services to the particular Lot pursuant to a request by its owner for special services which the Association may from time to time offer to Owners, which might include, without limitation, landscaping maintenance, handyman service, weed

control, pest control, etc., which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

- b. Any violations or expenses under these Declarations or under the Association's rules, including without limitation costs incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws, or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying an assessment under this Article VIII.

**8.4 Assessments Are a Lien and Personal Obligation.** Each Owner, for each Lot owned by it, by acceptance of a conveyance of his Lot whether or not it shall be expressed in the conveyance, shall be deemed to covenant and to agree to pay to the Association, annual assessments and other assessments authorized by these Declarations. Each such assessment and charge, together with the interest thereon and costs of collection, shall be a continuing lien upon the Lot against which it is made and shall also be the personal obligation of the person who owned the Lot at the time the assessment or charge fell due.

**8.5 Payment of Assessments.** Assessments shall be payable in advance in annual or other installments as the Association's Board of Directors may fix. The Board may set the annual assessment in any amount that does not exceed the maximum set forth in this Article. The Association's Board of Directors shall give each member written notice of each assessment at least ten (10) days in advance of the due date. Such notice shall state the amount of the assessment and, if the assessment is payable in other than in a single payment, the amount and due dates of each installment as fixed by the Association's Board of Directors. Failure to give such notice shall not affect or impair the assessment, but shall postpone its effective date.

**8.6 Limit on Annual Assessments.** The maximum annual assessments on each Lot for 2000 shall be Fifty Dollars (\$50); the maximum annual assessment for year 2001 shall not exceed One Hundred Fifty Dollars (\$150) and after January 2001, the maximum annual assessment may be increased by the Association's Board of Directors at a rate not to exceed ten percent (10%) per year thereafter, provided however, that, notwithstanding any contrary provision, the annual assessment of each Lot, exclusive of any optional user's fees and any insurance premiums paid by the Association, shall never exceed \$400 per year, except as permitted by C.R.S. 38-33.3-116(2) and (3); Declarant hereby declares and requires that this Declaration and the Properties are exempt from the provisions of the Colorado Common Interest Ownership Act ("CCIOA" C.R.S. 38-33.3-101, et seq.) pursuant to the provisions of C.R.S. 38-33.3-116 which exempt planned communities from the provisions thereof if the annual average common expense liability of each Lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed \$400 per year. Declarant has incorporated that limitation on annual average common expenses in this Section. If the amount of the permissible average annual common expense liability is amended in CCIOA to exceed \$400, then this Section shall be automatically amended to such higher amount, but never to exceed an amount that would subject the Properties to CCIOA. Notwithstanding this exemption, this Declaration and the Properties are subject to the provisions of C.R.S. 38-33.3-105, 38-33.3-106 and 38-33.3-107 of CCIOA.

**8.7 Exemption.** Notwithstanding any provisions hereof, any law, statute or otherwise, the Declarant shall not pay assessments on any Lots owned by it nor shall its Lots be subject to assessment or lien hereunder or otherwise.

**8.8 Collection of Assessments.**

- a. Personal Liability. Any assessment that is not paid when due shall be delinquent, and the Board may impose a late charge for each month any assessment is delinquent, and may also collect the attorneys' fees, costs, and expenses of any collection. Additionally, the Board may bring an action at law against any Owner personally obligated to pay any assessment and, in the event of any lawsuit, the delinquent Owner shall pay all attorneys' fees, court costs, and any expenses of such lawsuit.
- b. Lien. Additionally, any such unpaid assessment, together with all expenses of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment was made. The Board may enforce such lien by Recording with the Clerk of the County a statement of lien with respect to said Lot, setting forth such information as the Board may deem appropriate. Said lien shall run with the land and shall

additionally secure all assessments and expenses that become due after its Recording. Said lien may be foreclosed by the Board in the manner provided for foreclosures of mortgages under the laws and statutes of the State of Colorado. All rights and remedies of the Association are cumulative, and foreclosure of the lien shall not prevent a lawsuit against the Owner personally liable therefore whether taken before, after, or during such foreclosure. Said lien may be released by recording an appropriate document executed by an officer or agent of the Association. Said lien is in addition to any statutory lien allowed to the Association by law. Said lien shall be superior and prior to any homestead rights or similar exemption now or hereafter provided under state or federal law to any Owner, whose acceptance of a deed to a Lot shall constitute a waiver of such homestead or other rights.

**8.9 Protection of Lenders.** The lien for any assessment provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the lien for said assessment except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of any assessment which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof including, without limitation, any deed in lieu of foreclosure. No such sale, transfer, foreclosure, or any above-described proceeding in lieu thereof shall relieve any Lot from liability for any assessment becoming due after such acquisition of title, nor from the lien thereof, nor from the personal liability of the Owner of such Lot for assessments due during the period of his ownership.

**8.10 Additional Fees.** Environmental Fee. Applicable only to new and subsequent occupants residing on the Lots, there shall also be a one-time \$200 fee per Lot, of which \$100 will be refunded upon receipt of a certificate of attendance of courses to be conducted by the Association on subjects such as noxious weed control, understanding the local eco-system, green building, environmental maintenance practices; i.e. fertilizer and pest control. This fee may also be offset by volunteer work or community work credits as determined by the Board. Such volunteer work may include work in a community garden or other projects for the benefit of the Members. In the event the Association fails to conduct any such courses, the Association shall use such fees for environmental projects or common-area amenities beneficial to the Members.

**8.11 Liability.** Except for the Declarant, no Owner may exempt himself or herself from liability for assessments by nonuse of Common Area, abandonment of his or her Lot, assertion of any claim or defense, or by any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

**8.12 Failure to Assess.** Failure of the Board to fix assessment amounts or rates or to deliver or mail to each owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessment. In such event, each Owner shall continue to pay Annual Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Board may retroactively fix the assessment.

**8.13 Exempt Property.** The following property shall be exempt from payment of Assessments:

- a. Any property dedicated to and accepted by any governmental authority or public utility; Lots owned by Declarant.
- b. In addition, the Declarant shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501C status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501C.

**9.1 Responsibility of Association.** The Association is responsible for administering the plan for augmentation and the Northgate Contract as more fully described in this Article. The Association is tasked with administering and enforcing the plan for augmentation for Cherry Creek Crossing; therefore, it is mandated that every Lot Owner in all Properties belong to the Association with its concomitant financial obligations, and that they participate as a collective group. Membership is not optional; it is obligatory and runs with the land; the Owners of all Lots in all Properties comprise the Association.

**9.2 District Court Decrees.** All individual Lot Owners and the Association shall be subject to the decree in District Court Case No. 87CW077 (Water Division 1) (recorded at Book No. 5558 beginning at Page 528 of the records of the Clerk and Recorder of El Paso County, Colorado) (As applicable) and the decree and plan for augmentation in District Court Consolidated Case Nos. 96 CW191 (Water Division No. 2), and 96CW168 (Water Division No. 1) (recorded at Reception No. 098094419 of the records of the Clerk and Recorder of El Paso County, Colorado). Individual Lot Owners and the Association are responsible for carrying out the requirements of the said decrees and plan for augmentation, including the replacement of pumping depletions and possible post-pumping depletions from the subject wells. This includes all costs associated with drilling, equipping, operating, and maintaining any well or wells, and associated infrastructure, that may be required to deliver the Arapahoe Aquifer or Laramie-Fox Hills Aquifer augmentation ground water to the appropriate Arkansas River and/or Platte River Basins. The failure of the Association or the individual Lot Owners to comply with the terms of the decrees and plan for augmentation may result in an order of the State water administration officials to curtail or eliminate pumping from individual wells. Individual Lot Owners and the Association are also responsible for carrying out the requirements of the Northgate Contract (recorded at Reception No. 099045987 of the records of the Clerk and Recorder of El Paso County, Colorado).

**9.3 Northgate Contract Responsibilities.** Declarant entered into a contract with the Northgate Company to purchase 2.0 acre-feet of water annually for a total of 200 acre-feet of water to be used for augmentation purposes. Declarant has assigned to the Association all of its rights, interests, and responsibilities in the Northgate Contract in that certain Assignment of Rights and Responsibilities under Northgate Contract recorded at Reception No. 099045987 of the records of the Clerk and recorder of El Paso County, Colorado. Therefore, the Association and the individual Lot Owners are responsible for carrying out the requirements and responsibilities of the Northgate Contract.

**9.4 Reserved Water and Northgate Contract Water.** In accordance with the Plan for Augmentation, Declarant has conveyed to the Association by Quit Claim Deed recorded at Reception No. 098130023 of the records of the Clerk and Recorder of El Paso County, Colorado, a total of 6,140 acre-feet of non-tributary Arapahoe Aquifer ground water and a total of 11,200 acre-feet of non-tributary Laramie-Fox Hill Aquifer ground water as decreed in Case No. 87CW077 (Water Division No. 1) to be used for augmentation purposes as well as all of its interest, rights, and responsibilities in the Plan for Augmentation in Consolidated Case Nos. 96 CW191 (Water Division No. 2) and 96CW168 (Water Division No. 1), and all of its interest in the Northgate Company replacement water.

**9.5 Conveyance to Lot Owners.** Declarant, its successors, and assigns, or the appropriate person or entity that will be conveying the Lots, at the time of the Lot sales, shall specifically convey sufficient water rights in the not non-tributary Dawson Aquifer underlying each Lot to the individual Lot purchaser(s) to enable the purchaser(s) to obtain a well permit from the State Engineer and to satisfy El Paso County's 300 year water supply requirement. That amount shall be as follows: a total of 117 acre-feet per lot (0.39 acre-feet for 300 years), being 0.27 acre-feet for household use, and 0.12 acre-feet for irrigation use limited to 3,000 square feet.

**9.6 Well Permits.** Each Owner shall be responsible for obtaining a permit for a well to provide a water supply to his dwelling and for constructing, operating, and monitoring the same. Applications for well permits for each lot must be submitted to the Division of Water Resources, Office of the State Engineer, for approval. All wells shall be constructed, operated, and monitored in accordance with applicable court decrees and plan for augmentation, as well as permits for such wells. Each Owner shall submit to the Association a copy of the completed well log made by the well driller as monitoring information necessary to the plan for augmentation.

**9.7 Revisions.** No changes or deletions to this Article IX may be made which may alter or in any manner compromise the water supply, the plan for augmentation, and/or the water rights of either the Declarant or the Association or the individual Lot Owners, except by order of the applicable Water Court.

## **ARTICLE X      PLAN OF DEVELOPMENT**

**10.1 Applicability; Effect.** Declarant has created the Properties as a residential and recreational development and, in furtherance of its and every other Owner's interests, has established a general plan of development for the Properties as a Development Plan community. The Properties are subject to the Development Plan, as well as the Design Guidelines and the Association's rules, all of which may govern land use, individual conduct, and uses of, or actions upon, the Properties. This Declaration and Design Guidelines of the Board may establish affirmative and negative covenants, easements, and restrictions. All provisions of this Declaration and of any Association rules shall also apply to all occupants, tenants, guests, and invitees of any Lot.

**10.2 Purpose of Plan.** Declarant promulgates the Design Guidelines and the Development Plan as part of this Declaration to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties; all are subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the Development Plan community.

**10.3 Purpose of Property Use Guidelines.** Declarant has prepared initial Design Guidelines which contain general provisions applicable to all of the Properties, as well as specific provisions which may vary within the Properties depending upon the location, characteristics, and intended use. Based upon these Design Guidelines, the Board shall adopt the initial rules at its initial organizational meeting.

**10.4 Board Power.** Subject to the terms of this Article X, the Board shall implement and manage the Design Guidelines through rules that adopt, modify, cancel, limit, create exceptions to, or expand the Design Guidelines. Prior to any such action, the Board shall conspicuously publish Due Notice of the proposal at least five business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to action being taken. The Board shall send a copy of any new rule or amendment to each Owner at least 30 days prior to its effective date. The rule shall become effective unless disapproved at a meeting by Voting Members representing at least 66-2/3% of the total Class "A" votes and by the Declarant so long as the Declarant owns property subject to this Declaration, or which may become subject to the Declaration. The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to affect the powers contained in this Declaration. The Board shall provide, without cost, a copy of the Design Guidelines and rules then in effect to any requesting Member or Mortgagee.

**10.5 Members' Power.** The Voting Members, at a meeting duly called for such purpose as provided in the Bylaws, may adopt, repeal, modify, limit, and expand Design Guidelines and implementing rules by a vote of 66-2/3% of the total Class "A" votes and the approval of the Declarant so long as the Declarant owns any portion of the Properties subject to this Declaration or which may become subject to the Declaration.

**10.6 Owners' Acknowledgment.** All Owners are subject to the Design Guidelines and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board may add, delete, modify, create exceptions to, or amend the Design Guidelines in accordance with this Declaration. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Design Guidelines and rules may change from time to time.

**10.6 Rights of Owners.** Except as may be specifically set forth in this Declaration, the Board may not adopt any rule in violation of the following provisions:

- a. Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

- b. Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit.

**10.7 Activities Within Lot.** No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, or that create an unreasonable source of annoyance.

**10.8 Rules by the Board.** The Board may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, animal or pet controls, and noise controls. Nothing in this provision shall prevent the Board from requiring removal of any animal that represents an actual threat to the health or safety of residents or wildlife, or from requiring abatement of any nuisance or unreasonable source of annoyance.

- a. Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use Common Areas among the various Lots shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Board. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate rules of this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided herein.
- b. Rights to Develop. No rule or actions by the Association or Board shall impede Declarant's right to develop in accordance with the Development Plan.

## **ARTICLE XI DESIGN REVIEW COMMITTEE**

**11.1 Design Review Committee.** A design review committee consisting of three or more persons shall be appointed by the Association Board of Directors and shall be responsible to the Board.

**11.2 Purpose.** The Design Review Committee shall regulate the external design, appearance, and location of the properties and of improvements thereon in such manner as to promote those qualities in an environment that brings value to the properties, and in such a manner as to foster the attractiveness and functional utility of the community as a place to live, which includes promoting a harmonious relationship among structures, vegetation, and topography.

**11.3 Requirement.** No Improvement, residence, building, fence, wall, residence sign, structure, or projection from the structure that is temporary, permanent, affixed or not affixed to the ground shall be commenced, erected, maintained, improved, or altered, nor shall any grading, excavation, tree removal, planting, change of exterior color, or other work which in any way alters the exterior appearance of any Lot or improvement be done without the prior written approval of the Design Review Committee. Design approval shall be based on the proposed structure's size and location, exterior design, color and character of its exterior materials, quality of the exterior workmanship, construction time schedule, and provisions for adequate and timely exterior maintenance.

**11.4 Procedures.** If the Design Review Committee fails to approve or disapprove in writing an application within 60 days after written plans and specifications have been submitted, in accordance with adopted procedures, approval will be deemed granted. The applicant may appeal an adverse Design Review Committee Decision to the Association Board of Directors, which may reverse or modify such decision by a two-thirds vote of those Directors present and voting at a meeting at which a quorum is present.

**11.5 No Waiver of Future Approvals.** Each Owner acknowledges that the members of the DRC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other

matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

**11.6 Variance.** The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

**11.7 Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the DRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on, or modifications to, any Unit.

**11.8 Enforcement.** Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Association or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially to the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment unless otherwise prohibited in this Declaration. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Association from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRC.

**11.9 Building Site.** The DRC may establish building areas for each Lot. If so established, construction of a residence shall be restricted to said area, unless the DRC, upon good cause shown by the Lot Owner, shall select another suitable building area. Constructing on such alternate site shall not interfere with the view of any adjacent Lot nor shall it encroach upon any established Lot setback requirement. Notwithstanding the foregoing, the DRC shall mandate for Lots 24-29 and 41-47 of Filing I, the building site locations for the residences, the wells, the septic tanks, and leach fields, in order to ensure compliance with El Paso County Health Department requirements. Any water or waste water systems crossing the flood plain in Lots 42, 43, 44, 45, and 46 shall be designed by a Registered Professional Engineer.

**11.10 Guidelines.** The Design Review Committee shall, subject to the approval of the Board, develop and promulgate procedures for the application of the Design Guidelines in this Declaration. The procedures may include what changes require approval, the basic objective design requirements, the design principles for determining compliance with the basic objective design requirements, and design review procedures. The procedures also may include specific design practices that, though optional, are generally acceptable methods for achieving the required objectives in frequently encountered design problems. The procedures are intended to assist the Design Review Committee and lot Owners in the ongoing process of community design. They may be modified and supplemented from time to time upon Due Notice to the Owners. They are subject to review and approval of the Board.

## ARTICLE XII

## PROPERTY USE GUIDELINES & RESTRICTIONS

**12.1 General.** All real property within the Properties shall be held, used, and enjoyed subject to the following Covenants and restrictions, and subject to exemptions of Declarant set forth in this Declaration. Permitted principal uses, accessory uses, and uses subject to special review shall be those uses as defined in the RR-2 (Rural Residential) Zone District of the El Paso County Land Development Code. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by the Board. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Association.

**12.2 Property Structures.** All structures shall be approved by the Design Review Committee.

- a. Residential Use. All real property within the Properties shall be used exclusively for private residential purposes; therefore, no structure shall be erected within the Properties except single-family dwellings and those accessory buildings, decks and other structures that have been approved by the Design Review Committee. No structure may be placed on any Lot except with the permission of the Design Review Committee after its review and approval of the structure and its location on the Building Site. Each Lot is limited to construction of no more than one dwelling structure, a guest house, a greenhouse, and a private garage for no more than four cars. No Lot shall be subdivided into additional Lots or Building Sites without the prior written approval of the Board. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISIONS OF THIS DECLARATION OR ANY OTHER DOCUMENT, ANY PORTION OF THE PROPERTIES OR OTHER AREA DESIGNATED FOR NEIGHBORHOOD COMMERCIAL OR OTHER NON-RESIDENTIAL PURPOSES SHALL NOT BE SUBJECT TO THIS DECLARATION OR ANY OTHER DOCUMENT OR OBLIGATION IN ANY MANNER WHATEVER AND NO OWNER SHALL OBJECT TO SUCH COMMERCIAL OR NON-RESIDENTIAL USE.
- b. Other Structures. Other than a dwelling, no structure, no accessory buildings or garages, no trailer, tent, or other similar or dissimilar temporary quarters may be used for living purposes, except that the Board may allow unattached guest houses for use by guests, relatives, or a domestic helper, or nurse or health-care provider; however the use of such guest houses shall allow short-term leases to elderly, dependent or disabled parents, but prohibit leases to non-family members. Such uses shall be regulated and restricted by the Association, even after approval of construction, and shall be in compliance with any County and State regulations.
- c. Construction Type. All construction shall be new. No dwelling previously used at another location nor any building or structure originally constructed as a mobile dwelling or manufactured housing, as determined by the Board in its sole discretion, may be moved onto a Lot or Building Site except as expressly hereinafter provided for as temporary buildings. No structure may be placed on any Lot except with the permission of the Design Review Committee after its review and approval of the structure and its location on the Building Site.
- d. Construction Completion. The exterior of all buildings or other structures must be completed within 12 months after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities, or where such completion date has been extended by the Design Review Committee. If not so completed, or if construction shall cease for a period of sixty days without permission of the Design Review Committee, the Design Review Committee will give the Owner thereof Due Notice of such fact, and if construction on such structure is not diligently commenced within thirty days after such notice, the unfinished structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.
- e. Construction of Sales Buildings. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the written permission of the Design Review Committee.
- f. Substantial Completion. A structure shall not be occupied in the course of original construction until substantially completed and approved for occupancy by the appropriate governmental authorities. All work or construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

- g. **Building and Grounds Conditions.** Each Owner shall prevent the development of any unclean, unsightly, or unkempt conditions in buildings on his Lot or grounds, which tend to substantially decrease the beauty of the neighborhood as determined by the Design Review Committee in its sole discretion.
- h. **Storage.** No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or Improvement.

### 12.3 Property Use Restrictions.

- a. **Business Use.** No Business or Trade or any profession, commercial activity, or other activity conducted for gain shall be carried on or within any Lot, except:
  - (i) A home office, as defined by the Board, may be permitted so long as the operation of the activity is not apparent or detectable by sight, sound, or smell, conforms to zoning codes, does not employ more than one person at a time who does not reside on the Lot, does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees, or door-to-door solicitation of residents of the Properties, does not involve business activity which is inconsistent with the residential character of the Properties, does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board, and
  - (ii) Activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots, which it owns within the Property shall be permitted.
- b. **Nuisances.** Noxious or offensive activities shall not be carried on upon any Lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any living unit. No animal that makes an unreasonable amount of noise or generates an odor or constitutes a nuisance as determined by the Board shall be permitted to be kept.
- c. **Lights.** No annoying lights, sounds, or odors shall be permitted to emanate from any living unit. No flood lights, spot lights, or other bright lights shall be allowed; outdoor lighting must point towards the ground and shall be shielded on the top and sides so as not to illuminate the sky or surrounding neighborhood properties. Large sodium or street-type lights are not permitted. Solar or low wattage lights may be allowed on driveways or walkways.
- d. **Sound Devices.** No exterior speakers, horns, whistles, bells, or other sound devices, except for built-in speakers on the rear decks and security devices used exclusively for security purposes, shall be located, used, or placed on any structure or within any Building Site.
- e. **Single Family Occupancy.** Occupancy of a Lot by more than a single family is prohibited. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption, or marriage living with not more than one person who is not so related as a single household unit, or no more than three persons who are not so related living together as a single household unit.
- f. **Firearms.** The discharge of firearms within the Properties is prohibited. The term "firearms" includes B-B guns, pellet guns, bows and arrows, and other firearms of all types, regardless of size.
- g. **Vehicle Repairs.** No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle boat machine, or device may be carried on within the Properties except within a completely enclosed structure.
- h. **Commercial Animals.** No animals shall be kept, bred, or maintained within the Properties for any commercial purposes.
- i. **Domestic Pets.** The Association and/or the Design Review Committee may adopt reasonable rules, in addition to those below, designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, invisible electronic fences, bells on cats' collars, and noise controls. No more than a reasonable number of domesticated household pets may be maintained in or on any Lot within the Properties if in compliance with the Association's rules and restrictions. The number of pets becomes unreasonable when their presence disturbs the peace and tranquility of the neighborhood, results in the release of noxious odors and noise pollution, or threatens the public's health, safety, or the environment. In no event shall any animal whose breed is noted for its viciousness, in particular, a wolf or wolf hybrid, or the American Stratford shire Terrier (Pit Bull Terrier), be permitted within the Common Area, nor shall any animal of any kind that has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, be allowed. Stabling of horses by individual owners is prohibited on the lots of Filing I.

- j. Rules for Pets. The following rules are set forth to protect the tranquility of the community and to protect wildlife from destructive pets.
  - i. Owners shall confine their pets to interior patio walls or fenced areas within the confines of the owner's Lot.
  - ii. Owners shall keep their dogs on leashes when walking them within the Properties and shall clean up after them.
  - iii. Complaints regarding pets may be resolved substantially as follows: Upon receiving a complaint about a pet and after having conferred with the owner of such pet, the Board may conclude in its sole discretion, that the pet is a real threat to the health or safety of the occupants of other Lots; thereupon, the Board may require that the owner of the pet remove it immediately from the Properties. Upon receiving complaints about a pet's behavioral problems that create a nuisance to the occupants of other Lots, the Board may require mediation between the pet owner and the complainant(s) in an effort to resolve the problem amiably.

**12.4 Landscaping.** The Design Review Committee will encourage the retention of the character of open native grasslands, and the placement of trees and other landscaping where they protect and enhance the beauty and microclimate of the dwellings.

- a. Owners shall submit to the Design Review Committee landscaping plans that preserve natural vegetation, and shall maintain such vegetation in accordance with rules adopted by the Association. Landscaping shall comply with the Development Plan and Water Augmentation Plan requirements. Trees planted more than 30 feet from a dwelling shall not be placed so as to block view corridors and shall require approval by the Design Review Committee.
- b. All yards and open spaces and the entire area of every Lot, whether or not a structure has been constructed thereon, shall be kept free from noxious weeds or plants infected with noxious insects or diseases which in the reasonable opinion of the Board are likely to spread to neighboring areas. Such areas also shall be kept free from growth or trash, which in the reasonable opinion of the Board causes danger of fire, pests, or vermin. In order to control pests, insects, weed, and fire dangers and to prevent and remove nuisances, the Board may require the Owner of any Lot, whether or not a structure has been constructed thereon, to cut, prune, clear, and remove from the premises noxious weeds or trees infested with mountain pine beetle, and shall remove any trash which may collect or accumulate on the Lot. All Owners and Builders shall comply with the wildfire mitigation requirements of the Development Plan. Onsite burning of trash, leaves, and weeds shall be prohibited. Alternatively, the Board has the right (but not the duty) to, at its expense, enter any Lot and perform this work after Due Notice to the Owner.
- c. Drainage Patterns. No material change may be made in the ground level, slope, pitch, or drainage patterns of any Lot as fixed by any development or drainage plan approved by El Paso County or the Design Review Committee for said Lot.

**12.5 General Restrictions.**

- a. Fences. The height, location and material of all fences, walls, dog runs and other similar items must be approved by the Design Review Committee.
- b. Split rails of natural wood color or masonry patio walls are encouraged as the primary fencing material. Chain link or similar wire or wire-mesh fencing shall not be allowed as the primary fencing material.
- c. Garage Doors. All garage doors visible to a street or a neighbor's house shall remain closed at all times except when entering or exiting the garage, or when reasonably necessary to be open for short-term maintenance projects.
- d. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed building.
- e. Refuse. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers of said materials, shall be stored, accumulated, or deposited outside the residential dwelling or any Accessory Building so as to be visible from any neighboring property or street, except during refuse collections. The composting of biodegradable materials is permitted so long as such activity

is screened from view of neighboring properties and does not generate noxious odors that would create discomfort to the neighborhood.

- f. Clotheslines. All outdoor clothes poles, clotheslines, or other facilities for drying or airing of clothing or household goods are prohibited unless adequately screened so as not to be visible from neighboring properties or adjoining streets.
- g. Vehicular Parking. Automobiles and small boats shall not habitually be parked overnight outside of garages. No boat, trailer, camper (or supporting vehicles), tractor, commercial vehicle (as defined by the Board in its sole discretion), mobile home, motor home, recreational vehicle, motorcycle, towed trailer unit, or truck shall be parked for more than three days, or as determined by the Board in its sole discretion, on any street or within any Lot or Building Site except in an enclosed structure. All such enclosed structures shall require the approval of the Design Review Committee. If any such vehicle is not removed from the Properties or placed in a completely enclosed structure, within three days after notice is delivered to the Owner of the Lot on or adjacent to which the offending vehicle is parked, then Declarant and/or the Board or both shall have the right, but not the obligation to enter the Lot in question, and remove or cause to be towed the offending vehicle; any expenses thereof, including, without limitation, reasonable attorneys' fees, shall be paid by the owner of the offending vehicle including fees to store such vehicle. Declarant and the Board shall not be liable for any losses, costs, or damages to any Owner of the Lot or the owner of the vehicle on account of such removal of the offending vehicle, except for such loss, cost, or damage caused by Declarant's or the Board's gross negligence or willful misconduct.
- h. Junk Vehicles. No stripped down, abandoned, unlicensed, partially wrecked, or junk motor vehicle or part thereof, as determined by the Board in its sole discretion, shall be permitted to be parked on any street or on any Lot in such a manner as to be visible from any neighboring property or street. Any vehicles violating this Section may be removed as provided by this Declaration.
- i. Signs. The only signs permitted on any Lot or structure shall be: two signs of which one may be a maximum of six (6) square feet, and one a maximum of one square foot for offering the signed property for sale or for rent; one sign of a maximum of one square foot for identification of the occupant and address of any dwelling; multiple signs for information, sale, administration, and directional purposes installed by, or with the permission of Declarant during development and sales of Lots and/or homes, and project identification signs installed by Declarant or builders authorized by Declarant; signs as may be necessary to advise of rules and regulations or to caution or warn of danger; such signs as may be required by law; signs approved by the Design Review Committee.
- j. Banners. Except for permitted signs, there shall not be used or displayed on any Lot or structure any signs or any banners, streamers, flags, lights, or other devices calculated to attract attention, whether for sale or rental or otherwise, unless approval thereof is granted by the Design Review Committee. All permitted signs must be professionally painted, lettered, and constructed.
- k. Renewable Energy Devices. Solar collectors, wind turbines, resource recovery systems, or other similar devices are permitted so long as they are designed and installed to blend in with the overall architecture of other improvements on the Lot. Ground level freestanding solar collectors or devices will be permitted so long as they are designed or screened in a manner accepted by the Design Review Committee so as to be visually compatible with the buildings and landscaping on the Lot involved and do not impact views from adjacent lots. Plans for any such solar collectors or other devices must be submitted to the Design Review Committee for its review and approval prior to installation. If the Design Review Committee disapproves, the party requesting approval may modify its plans to eliminate the Design Review Committee's objections and resubmit them for approval.
- l. Drilling Structures and Tanks. No derricks or other structures designed or used for boring or drilling for oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any oil, natural gas, petroleum, asphalt, or other hydrocarbon substances be produced from any well located upon, in, or under any Lot. No storage tanks or other tanks for oil or natural gas shall be permitted unless approved by the Board.

### **ARTICLE XIII DWELLING SIZE, SETBACK AND DESIGN GUIDELINES**

**13.1 Design Guidelines.** The Association's Board of Directors shall adopt and amend Design Guidelines that shall be followed by the Design Review Committee, except for variances as herein and therein provided. The Design Guidelines may implement and interpret any provision of this Declaration, except Articles VIII, IX and XVIII, including without limitation, setbacks, dwelling areas, decks, fences, landscaping, and height restrictions, and may impose additional restrictions and requirements for design review procedures, fees, remedies, variances, roofs, building materials, yard items, exterior walls, chimneys, driveways, landscaping, and other matters related to construction, use, and appearance of buildings, improvements, landscaping, and other items within the Lots and Properties.

**13.2 Setbacks and Locations.** Structures and buildings, including accessory buildings, shall generally be placed or erected at least ninety (90) feet from any Lot Line fronting a standard roadway. Buildings and structures shall generally be placed or erected at least thirty-five (35) feet from any side Lot Line and thirty-five (35) feet from any rear Lot Line. Varied front setbacks and landscaping will be encouraged in order to provide visual relief and variety throughout the streetscape. Garages or other accessory buildings shall not be erected to dominate the streetscape, and should not be located closer to a road than the main dwellings. Building setbacks may be adjusted during the Plot Plan process for the development of individual lots to reflect more site-specific needs that have been determined at that time due to the more specific site planning work that will be completed. Both the Board and the El Paso County Planning Department must approve variances from the suggested setback guidelines. Setbacks shall be measured perpendicularly from property line to the foundation line for any building. Except with approval of the Board, no building, porch, eave, overhang, projection, or other part of a building shall be located closer to Lot Lines than permitted by these Covenants or governmental requirements. The Design Review Committee's approval is required for (a) fireplace projections integral with the building; (b) eaves and overhangs; and (c) construction which extends less than one foot into the setback area and which the Design Review Committee determines to be minor in nature and to be consistent with the Lot's shape, topography, and in the interest of superior design.

**13.3 Dwelling Area Requirements.** For any dwelling structure constructed, the enclosed living area of the main or ground level, excluding garage and porches, shall not be less than 2200 square feet for a one level ranch style home, unless it has a basement, in which event the ground level area shall not be less than 1600 square feet. For any multilevel home (two stories, contemporary, or other) the enclosed living area of the main or ground level shall not be less than 1300 square feet, and the upper floor(s) shall not be less than 700 square feet. Any home having more than one level shall contain no less than 3000 square feet of enclosed living area (finished or unfinished). In its sole discretion, the Design Review Committee may treat a bi-level or a home with walkout basement as a single or multilevel building depending upon its appearance, size, location, and amount of finished interior space. Garages, required for all houses, shall be of a size to accommodate not less than two full-sized cars. Builders are encouraged to construct garages so that they open to the rear or the side of the dwelling. Notwithstanding the above, the DRC may allow variances for smaller, lower profile homes that blend into the natural setting.

**13.4 Height Restrictions.** The Planned Unit Development (PUD) Plan for Cherry Creek Crossing adopted by the Board of County Commissioners of El Paso County, Colorado on September 11, 1997, and recorded in Reception No. 99174859, and the Development Guidelines as recorded in Reception No. 99178565, as they may be amended or supplemented from time to time, set forth the height restrictions. Height shall not be more than two stories high, but such height and the number of stories may be reduced by the Design Review Committee in its sole discretion, particularly where such dwelling is to be located on ridge lines or in locations where views from adjacent lots might be blocked.

## **ARTICLE XIV LEASEHOLDS**

**14.1 Lease Restrictions.** No structure on a Lot other than the primary residential dwelling shall be leased or otherwise occupied for residential purposes, except for guesthouses leased to family members. Leases shall be restricted to single family residential uses, and the Board may impose reasonable restrictions and requirements upon such Leases. Owners shall be jointly liable with their tenants for compliance with this Declaration and the Association's rules.

**14.1 Leasing.** “Leasing,” for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit, including but not limited to a fee, service, gratuity, or emolument. Lots may be leased only in their entirety. No fraction or portion of a house may be leased. The leasing of a Lot shall not be considered a Business or Trade within the meaning of this section.

**14.2 Lease Requirements.** There shall be no subleasing of Lots or assignment of Leases unless prior written approval is obtained from the Board. All Leases shall be in writing. Any Lease on any Lot shall provide that the lessee and all occupants of the Leased Lot shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association. No transient tenants may be accommodated and all Leases shall be for an initial term of no less than 30 days, except with the prior written consent of the Board.

**14.3 Notice of Lease.** Notice of any Lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the Lease. The Owner must make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations.

**14.4 Leasing Rules.** The Board may adopt reasonable rules regulating leasing and subleasing.

## ARTICLE XV

## INSURANCE AND CASUALTY LOSSES

**15.1 Association Insurance.** The Board shall obtain such insurance as the Board deems appropriate and shall maintain a public liability policy on the Common Area, insuring the Board and its Members for damage or injury caused by the negligence of the Board or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the public liability policy shall have at least a \$1,000,000 combined single limit as respects bodily injury and property damage and at least a \$3,000,000 limit per occurrence and in the aggregate.

**15.2 Premiums.** Premiums for all insurance policies on the Common Area shall be Common Expenses and shall be included in the Common Assessment.

**15.3 Policy.** The policy may contain a reasonable deductible that shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the required coverage. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after Due Notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Lot of such Owner or occupant, pursuant to this Declaration.

**15.4 Coverage.** All insurance coverage obtained by the Board should:

- a. Be written with a company authorized to do business in Colorado which holds a Best’s rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available;
- b. Be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Board and its Members; vest in the Board, exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;
- c. Not be brought into contribution (competition?) with insurance purchased by individual Owners, occupants, or their Mortgagees; and
- d. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Board shall arrange for an annual review of the sufficiency of insurance coverage.

**15.5 Endorsement.** The Board shall use reasonable efforts to secure insurance policies containing endorsements that: waive subrogation as to any claims against the Association’s Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests; preclude cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Board to cure the defect or violation and allowance of a reasonable time to cure; require at least 30 days prior written notice to the Board of any cancellation, substantial modification, or non-renewal.

**15.6 Fidelity Bond.** The Board also may obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, may secure coverage equal to not less than one-sixth of the annual Assessments on all Lots plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least 30 days prior notice to the Board of any cancellation, substantial modification, or non-renewal.

**15.7 Owners Insurance.** By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket “all-risk” property insurance on its Lot(s) and improvements thereon providing full replacement cost coverage less a reasonable deductible.

**15.8 Damage and Destruction.** Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

**ARTICLE XVI                      NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Areas. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

**ARTICLE XVII                      CONDEMNATION**

**17.1 Common Area.** If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on the written direction of Voting Members representing at least 66-2/3% of the total Class “A” votes in the Association, and of the Declarant, as long as the Declarant owns any property (included in the Properties or included in the Annexable Area)) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice.

**17.2 Award.** The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: If the taking involves a portion of the Common Area on which improvements have been constructed, the Board shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, the Declarant, so long as the Declarant owns any property included in the Properties or included in the Annexable Area, and Voting Members representing at least 75% of the total Class “A” votes in the Association, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of this Declaration regarding funds for the repair of damage or destruction shall apply.

**17.3 Net Funds.** If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE XVIII DECLARANT’S RIGHTS**

**18.1 Rights of Declarant.** Notwithstanding any contrary provision of these Covenants, the Declarant, its successors, or assigns, expressly reserves the following rights and privileges, which may or may not be exercised in the Declarant’s sole discretion:

- a. Declarant may amend or change the Plat to add additional property to the Subdivision, change Lot lines or subdivide Lots into more Lots, combine Lots into fewer Lots, grant utility or other easements, or all of the foregoing.
- b. The Declarant, or any builder authorized by Declarant, may construct and maintain sales offices, management offices, advertising signs, model homes, construction yards, and construction materials within the Subdivision.
- c. Declarant may grant easements for utilities, mail box cluster areas, picnic or play areas, gardens, or for other public purposes through the Properties and make improvements or changes necessitated by such easements.
- d. The Declarant may appoint or remove any officer or any director of the Board of Directors of the Association of the Approving Authority or both. Following the relinquishment of control by Declarant, the Owners shall elect the Association’s Board of Directors as provided in this Declaration, the Articles of Incorporation, and the Bylaws.
- e. The Declarant may enter into agreements with the purchaser of any Lot or Lots (without the consent of the purchasers of other Lots or adjoining or adjacent property) to deviate from those conditions, restrictions, limitations, and agreements herein set forth, and any such deviation, which shall be manifested by agreement in writing shall not constitute a waiver of any such condition, restriction, limitation, or agreement as to the remaining Lots in the Subdivision, and the same shall remain fully enforceable on all other Lots located in the Subdivision by Declarant, its successors, or assigns, and the Association or other Owners, except as against the Lot where such deviation is permitted. In addition, the Declarant may adopt and change the Design Guidelines until relinquishing control as provided herein.
- f. The Declarant has made or may make conveyances of water rights and responsibilities under applicable decrees, plans for augmentation, and the Northgate Contract as more fully described in Article IX of this Declaration.

**18.2 Transfer.** Any or all of the rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the County Clerk. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit “B” in any manner whatsoever.

**18.3** No Person shall record any declaration of covenants, conditions, and restrictions affecting any portion of the Properties without Declarant’s review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

**18.4** This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 10 years after the conveyance of a Lot to a Homeowner, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

**ARTICLE XIX DISPUTE RESOLUTION & LIMITATION ON LITIGATION**

**19.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Board, Declarant, Owners, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”) agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation, if at all possible. Accordingly, each Bound Party Covenants and agrees that all claims, grievances, or disputes between such Bound Party and any

other Bound Party involving the Properties, including without limitation claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles of Incorporation (collectively "Claim"), except for those claims authorized in Section 19.2 shall be subject to the procedures set forth in Section 19.3.

**19.2 Exempt Claims.** The following Claims shall be exempt from the provisions of Section 19.3:

- a. Any suit or claim against the Declarant, unless the Declarant otherwise agrees in writing;
- b. Any suit by the Association against any Owner to enforce the provisions of Article VIII;
- c. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX and Articles X, XI, XII, XIII and XIV; and
- d. Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a course of action under the law of the State of Colorado in the absence of a Claim based on the Declaration, Bylaws, Articles, or rules of the Association, if the amount in controversy exceeds \$5,000.
- e. Any Owners having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 19.3, but there shall be no obligation to do so.

**19.3 Mandatory Procedures For All Other Claims.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 19.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

- a. Notice. The Claimant shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely: the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim, and the provisions of this Declaration, the Bylaws, the rules, the Articles of Incorporation, or other authority out of which the Claim arises; the basis of the Claim (i.e., the provisions of the Declaration, Bylaws, rules or Articles triggered by the Claim); what Claimant wants Respondent to do or not do to resolve the Claim; and that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- b. Negotiation. Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.
- c. Mediation. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of a neighborhood mediation center in Colorado Springs, Colorado, or such other independent agency, including internet dispute resolution services, upon which the parties may mutually agree. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, the mediator shall be requested, within five days of the termination of the mediation proceedings, to provide the Parties with a written non-binding recommendation for resolution of the Claim ("Mediator's Recommendation").
- d. Action in Court of Law or Equity. If the Parties do not agree in writing to accept the Mediator's Recommendation within 10 days after receipt of notice thereof, or cannot otherwise settle their dispute, the Claimant may initiate legal proceedings.
- e. Allocation of Costs of Resolving Claims. Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 19.3.1, .2, and .3, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 19.3. Each Party shall bear all of its own costs (including the fees of its attorney or other representative)

incurred after the termination of mediation under Section 19.3 c. All Post Mediation Costs shall be paid by the non-prevailing party.

- f. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 19.3 and any Party thereafter fails to abide by the terms of such agreement, then the other party may file suit without the need to again comply with the procedures set forth in Section 19.3. In such event, the prevailing party shall be entitled to recover all costs, including without limitation the costs of mediation, attorney fees and court costs.

#### **19.4 Enforcement**

- a. Covenants are for the use, convenience and protection of all property owners. The Declarant, Design Review Committee, the Association, or any individual lot owner may act to enforce the covenants; however, none of the foregoing are obligated to do so. Declarant and the Design Review Committee, together or separately, or through authorized agents or employees, whenever there shall have been an apparent violation of one or more of the provisions of these covenants and after ten (10) days notice to owner, further reserve the right to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner; and such entry and abatement or removal shall not be deemed a trespass. Lot owners in Cherry Creek Crossing expressly agree to abide by injunctions without necessity of bond, in order to simplify judicial proceedings to remedy covenant violations. In addition, if a judicial action is necessary to prohibit a covenant violation and a violation is established, the violator(s) shall pay and agree to pay all costs of the enforcement proceeding, including reasonable attorneys fees. The failure to enforce any right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect.
- b. Enforcement Trust Fund. Matching fees of \$200 each shall be paid at CLOSING by the purchaser of each lot and by Declarant, and said funds shall be kept in a trust fund by Declarant to be used for enforcement of the protective covenants of this Declaration. Any penalties that may be collected from time to time shall also be placed in said fund. Said fund shall be used by Declarant, its heirs, successors and assigns, for paying future legal or other expenses involved in enforcing these covenants and said Declarant is hereby authorized to use said fund. In addition, said fund or portions thereof, may be transferred into the Association treasury for purposes outlined in Articles VI and VII, and may be used at the discretion of Declarant for continuing subdivision expenses no longer the responsibility of the developer, such as maintenance of entrance ways and signs, special mailings, etc; however, the fund shall not be depleted to the extent that insufficient funds are available to enforce the covenants. In like manner, the Association may transfer Association funds into the Enforcement Trust Fund if needed to enforce covenants. The Design Review Committee or any individual lot owner desiring to use said fund for the enforcement of these covenants, shall make written request of Declarant for the use of monies in said fund, and Declarant shall be the sole authority to approve or deny any such request. Denial of such request shall not preclude an individual lot owner from bringing suit to enforce these covenants under the provisions of Article 19. Said funds shall be kept by Declarant in an interest-bearing account which may be closed and funds distributed to lot owners after all lots have been built upon, or earlier, at the discretion of Declarant, or be turned over to the control of the Association or Design Review Committee for the uses provided herein.

### **ARTICLE XX**

### **GENERAL PROVISIONS**

**20.1 Term.** This Declaration shall run with and bind the Properties, and shall inure to the benefit of, and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 40 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or

terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein. Notwithstanding the foregoing, the provisions in Article IX shall not terminate except by Order of the Water Court.

**20.2 Amendment By Declarant.** Declarant may unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; necessary to correct typographical or clerical errors or ambiguities; required by an institutional or governmental lender, purchaser, insurer, or guarantor of Mortgage loans, including for example the Department of Veterans Affairs, the Federal Housing Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure, or guarantee Mortgage loans on the Lots; or otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. In addition, Declarant may at any time amend this Declaration without consent of Owners, Board, or Association in connection with any uses pertaining to the tract of the land designated as "Neighborhood Commercial" or any other non-residential Properties, or to any requirements by the El Paso County Planning Department pertaining to any portion of the Properties, or any property includable in the Annexable Area. Notwithstanding the foregoing, the provisions in Article IX shall not be amended or revised or terminated by Declarant except by Order of the Water Court.

**20.3 Amendment by Owners.** Except for the Declarant's right to amend this Declaration in accordance with Section 20.2 and except for those provisions in Article IX, which provisions shall not be amended or revised or terminated except by Order of the Water Court, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of each class of Members. After conversion of the Class "B" membership to Class "A" membership, the Declaration may be amended by the vote or written consent of the Voting Members representing at least (a) 75% of the Members; and (b) 75% of the Members other than the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**20.4 Validity and Effective Date of Amendments.** Amendments to this Declaration shall become effective upon their being recorded in the Office of the County Clerk unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**20.5 Consent.** If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to so consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

**20.6 Restriction.** No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

**20.7 Severability.** Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

**20.8 Perpetuities.** If any of the Declaration, conditions, restrictions, or other provisions of the Declaration shall be unlawful, void, or voidable for violation of the Rule against Perpetuities, then such provisions shall be deemed limited in time so as to comply with said rule.

**20.9 Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Voting Members representing at least a majority of a quorum of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the impositions and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the provisions of Article XIX, if applicable.

**20.10 Use of the Words “CHERRY CREEK CROSSING”.** No Person shall use the words “CHERRY CREEK CROSSING” or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without the Declarant’s prior written consent. However, Owners may use the words “CHERRY CREEK CROSSING” in printed or promotional matter solely to specify that particular property is located within the Common Area and the Association shall be entitled to use the words “CHERRY CREEK CROSSING” in its name.

**20.11 Compliance.** Every Owner and occupant of any Lot shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by an aggrieved Lot Owner(s).

**20.12 Attorneys’ Fees.** In the event of an action instituted to enforce any of the provisions contained in this Declaration, the Articles of Incorporation, or the Bylaws, the Association or the Declarant or both shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys’ fees and costs of such suit.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this \_\_ day of December, 1999.

COLORADO SPRINGS 382 Limited Partnership, an Arizona Limited Partnership  
6070 Camino Almonte  
Tucson, Arizona 85718

By: \_\_\_\_\_  
IBEX Advisors, LLC, General Partner  
Nathan K. Miller, Manager

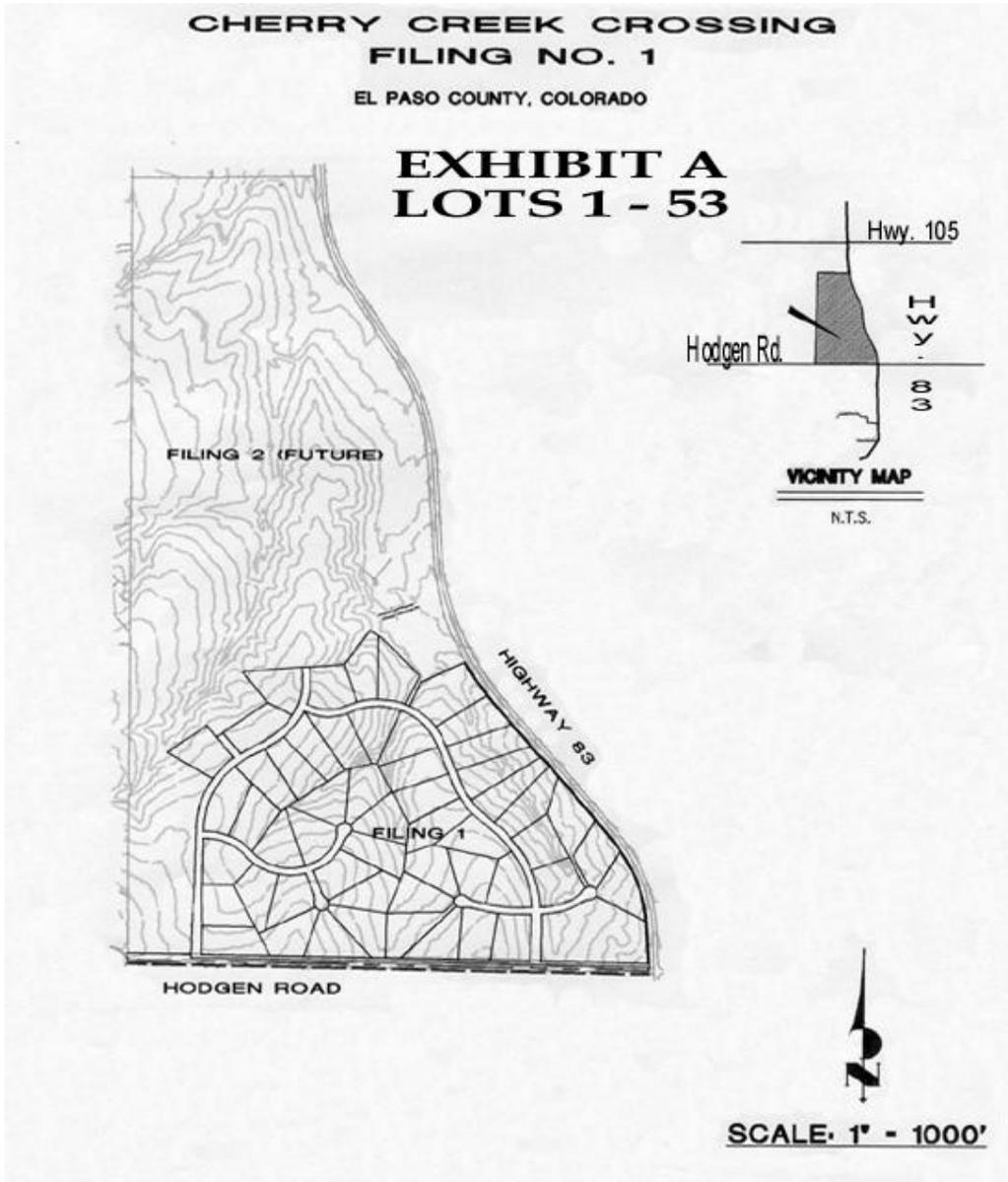
STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF PIMA                    )

On the \_\_\_\_ day of December, 1999, the undersigned, a Notary Public in and for said County and State, personally appeared Nathan K. Miller, known to me to represent the General Partner of the Partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

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

My Commission Expires \_\_\_\_\_

**EXHIBIT A**



## **EXHIBIT B**

The following is the legal description of property owned by Declarant, Colorado Springs 382 Limited Partnership. The property is located in El Paso County, Colorado at the northwest corner of State Highway 83 and Hodgen Road.

The 53 residential lots of Filing I are contained within Parcel B.

### **PARCEL A**

The Southwest of the Southwest Quarter and that portion of the Southeast Quarter of the Southwest Quarter of Section 15, Township 11 South, Range 66 West of the 6th P.M., in El Paso County, Colorado, lying West of the West right of way line of Colorado State Highway 83, as described in Deed to The Department of Highways, State of Colorado, recorded September 21, 1964 in Book 2035 at Page 523 of said County records; AND the Northwest Quarter of the Northwest Quarter and those portions of the Northeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northwest Quarter, and of the Southeast Quarter of the Northwest Quarter of Section 22, Township 11 South, Range 66 West of the 6th P.M., in El Paso County, Colorado, lying West of the West right of way line of Colorado State Highway 83, as described in Deed to The Department of Highways, State of Colorado, recorded September 21, 1964 in Book 2035 at Page 523 of said County records.

### **PARCEL B**

The Northwest Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, and the Southeast Quarter of the Southwest Quarter of Section 22, Township 11 South, Range 66 West of the 6th P.M., and those portions of the Northeast Quarter of the Southwest Quarter, of the Northwest Quarter of the Southeast Quarter, and of the Southwest Quarter of the Southeast Quarter of Section 22, Township 11 South, Range 66 West of the 6th P.M., in El Paso County, Colorado, lying West of the West right of way of Colorado State Highway 83, as described in Deed to The Department of Highways, State of Colorado, recorded September 21, 1964 in Book 2035 at Page 523 of said County records. EXCEPTING THEREFROM the Southerly 30 feet of the Southwest Quarter and of the Southwest Quarter of the Southeast Quarter conveyed to El Paso County for road purposes by Deed recorded April 2, 1985 in Book 3990 at Page 326.