

RCPTN # 95053426 08/29/95 14:19:00 # PAGES - 49 FEE - \$246.00  
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**MASTER DECLARATION  
OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**MCWHINNEY HOLDING COMPANY L.L.C  
a Colorado Limited Liability Company**

**("Declarant")**

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**LIST OF EXHIBITS**

Exhibit A	Site Plan for the Project
Exhibit B	Legal Descriptions for the Property
Exhibit C	McWhinney Second Subdivision

**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Master Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") is made and entered into as of the 29<sup>th</sup> day of August, 1995, by MCWHINNEY HOLDING COMPANY, L.L.C., a Colorado limited liability company ("**Declarant**"), and Derek C. McWhinney ("Derek") upon the following terms and conditions:

**RECITALS:**

A. Declarant is the owner of approximately 345 acres of land and Derek owns approximately 5 acres of land all of which are depicted on the Site Plan for the Project as set forth on Exhibit A. The legal descriptions for said Property are set forth on Exhibit B. In addition to the Property, Declarant and/or Derek own or may acquire certain additional property adjacent to or in the vicinity of the Property, which they may wish to annex to this Declaration. The exact description of the Future Parcels will be identified by appropriate legal description at such time as Declarant elects to annex such Parcel(s) to this Declaration.

B. Declarant and Derek desire to enter into certain covenants, conditions, restrictions, and agreements to evidence their common and general plan for those portions of the Property which are annexed hereto, to protect and enhance the quality, value and desirability of all Property which becomes subject hereto and to provide for the consistent development, maintenance, and improvement of all portions of the Property which become subject hereto.

C. Declarant and Derek desire to initially subject a portion of the Property, known as the Phase I Parcel, more particularly described on Exhibit C hereto, consisting of approximately 30 acres and known as McWhinney Second Subdivision, to the terms and provisions hereof, and to reserve the right to annex other portions of the Property and the Future Parcel(s) to this Declaration from time to time.

D. Declarant and Derek desire that the Phase I Parcel be improved, held, used, and occupied, leased, sold, or conveyed subject to this Declaration.

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

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth, Declarant and Derek declare and grant, as follows:

## ARTICLE I

### General

A. Property. Declarant and Derek are the owners of the Property. Declarant intends to develop the Property as a planned community for the purposes contemplated and permitted by the General Development Guide, as the same may be amended from time to time.

B. Purpose of Declaration. Declarant desires to further a common and general plan for development of the portions of the Property (and Future Parcels) which are subjected to the terms and provisions hereof as hereafter provided and to protect and enhance the quality, value and desirability of all such Property. Declarant further desires to create a Master Association for the purposes of maintaining, caring for and managing all Project Common Areas from time to time, and to perform certain functions for the benefit of the Parties. The Master Association may also be delegated certain responsibilities and rights under Supplemental Declarations as hereafter provided. This Declaration shall also define certain duties, powers and rights of Owners.

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

D. Phase I Parcel. Declarant for itself, its successors and assigns hereby declares that the Phase I Parcel is hereby made subject to the terms and provisions of this Declaration and that the same shall be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations and other provisions set forth herein for the Term.

## ARTICLE II

### Definitions

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

A. Annexed Property. "Annexed Property" shall mean any portion of the Property or Future Parcels which is annexed to this Master Declaration by means of a Supplemental Declaration.

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B. Building Site. "**Building Site**" shall mean that portion of a Lot which is designated by Declarant on the Plat or other approved site plan for the Lot as suitable for location of improvements thereon

C. Common Area. "**Common Area**" shall mean and include all land, improvements, and other properties not within the boundaries of a Lot which are heretofore or hereafter owned or in the possession of Declarant, the Master Association, any Sub-Association, or dedicated to the City of Loveland ("City") or Larimer County, Colorado, or the public or a quasi-public authority for use by the general public which are required to be maintained by the Master Association pursuant to the provisions hereof (or any Sub-Association), the cost of which is to be included in Common Assessments or Operating Expenses of any Sub-Association. Common Areas shall include all common drainage or storm water collection facilities and ditches which are located on, traverse or otherwise benefit any portion of the Property, whether located within or off of the Property, all open space, parking areas, incidental and interior roadways, perimeter sidewalks and walkways, curbs, parking islands and landscaped areas, easements, facilities and structures to be used by more than one Owner and all other areas outside the boundaries of a Lot which are not exclusively appropriated for the use of any single Occupant. Declarant shall have the right to designate which lands, improvements and other properties are Common Areas in an instrument duly recorded in the Clerk and Recorder's records of Larimer County, Colorado. The Master Association shall have the right to transfer all or any part of its ownership rights and/or the maintenance responsibilities with respect to any Common Area to any quasi-public authority established for such purpose.

D. Common Area Easements. "**Common Area Easements**" are the reciprocal nonexclusive easements granted pursuant to Article IV of this Declaration over the Common Areas and Lot Common Areas.

E. Common Assessments. "**Common Assessments**" shall mean the amounts assessed for the purpose of covering the annual costs of operating the Master Association, including expenses incurred in connection with any authorized function of said Association which are to be paid by each Owner. Common Assessments shall not include any expenses associated with the performance by the Master Association of any duties or obligations delegated to it by a Sub-Association, which amounts shall be specifically allocated to and paid by the Owners of Lots within said Sub-Association.

F. Declarant. "**Declarant**" means McWhinney Holding Company, L.L.C., a Colorado limited liability company and its successors in accordance with Article III.

G. Declaration. "**Declaration**" means this Master Declaration of Covenants, Conditions, and Restrictions.

H. Dedicated Easements. "**Dedicated Easements**" shall mean the utility easements granted through the Property to the appropriate governmental entity or public utility for providing utility service to the Property.



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I. Default Rate. "**Default Rate**" shall mean the greater of fifteen percent (15%) per annum or four (4) percentage points over the "prime rate" as the same may be announced by the Key Bank of Colorado, or its successor as its prime rate of interest, but not to exceed eighteen percent (18%) per annum.

J. Development Plan. "**Development Plan**" shall mean a development plan that is recorded as to any portion of the Property or Future Parcels.

K. Future Parcels. "**Future Parcels**" shall mean and refer to any real property subsequently acquired by Declarant adjacent to the Property or in its vicinity which the Declarant elects to annex to this Declaration as hereafter provided.

L. General Development Plan. "**General Development Plan**" shall mean the Gateway General Development Plan for the Property, as approved by the City of Loveland as amended, from time to time.

M. Gross Floor Area. "**Gross Floor Area**" shall mean gross square footage of all buildings constructed within the Property from time to time as permitted by the General Development Plan, or otherwise, as said square footage is computed by the City of Loveland for comparable developments.

N. Gross Floor Area Permitted to be Constructed. "**Gross Floor Area Permitted to be Constructed**" shall mean as to all unimproved Lots, the maximum Gross Floor Area permitted to be constructed on said Lot by the Development Plan, plat or other subdivision document as approved by the City of Loveland which designates a maximum allowable square footage. Following issuance of a building permit for any Lot, the Gross Floor Area for said Lot shall be determined by reference to the number of square feet in the Improvements contemplated by the building permit.

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

P. Lot. "**Lot**" shall mean any lot, tract, or other designated parcel shown on any subdivision or resubdivision plat that includes all or any part of the Property or, with respect to those parts of the Property that are not platted, any Parcel. Each part of any Lot which is resubdivided pursuant to an exemption or resubdivision process shall be included in the definition of Lot following each such division.

Q. Lot Common Area. "**Lot Common Area**" shall mean all portions of a Lot other than the portion thereof occupied by any building constructed thereon, including, without limitation, all open and landscaped areas, parking areas, sidewalks, curbs, parking islands.

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

S. Master Association. "**Master Association**" shall mean that nonprofit corporation known as Rocky Mountain Village Master Association, caused to be incorporated by Declarant under the laws of the State of Colorado for the purpose of performing certain functions with respect to Common Areas and Common Area Easements, and includes as members all Owners. References herein to Association shall mean and refer to the Master Association unless the context requires otherwise.

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

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

V. Owner. "**Owner**" shall mean and refer to any Person from time to time entitled to the use and occupancy of any portion of the Property as record owner of fee simple title.

W. Parcel. "**Parcel**" shall mean any unplatted portion of the Property designated by Declarant (and legally described) as a separate and distinct parcel from other land for purposes of sale, use or otherwise. As applicable, the Property is identified as Lots or Parcels on Exhibit B attached hereto.

X. Parking Area. "**Parking Area**" shall mean any portion of a Lot or Common Area which the Owner thereof, from time to time designates or otherwise sets aside for use of vehicular parking. The Master Association or Sub-Association, as the case may be, shall have the right at all times to control the upkeep, maintenance and repair of all Parking Areas.

Y. Party. "**Party**" shall mean Declarant, its grantees, successors, or assigns and all Owners.

Z. Permittee. "**Permittee**" shall mean and include all Occupants and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees, subtenants and concessionaires.

AA. Person. "**Person**" shall mean and include individual natural persons, partnerships, firms, associations, corporations, trusts, limited liability companies, or any other form of business or government entity.

AB. Phase I Parcel. "**Phase I Parcel**" shall mean the real property described on Exhibit C.

AC. Pro Rata Share. "**Pro Rata Share**" shall mean the proportional share of Common Assessments payable by the Parties as provided herein set forth as a percentage of all Common Assessments payable by the Parties. The Pro Rata Share of a given Lot will be computed by dividing the total square footage of such Lot, as depicted on the Plat for such Lot, by the total square footage of all Lots which have been annexed to the Property. Any annexation of additional real property into this Declaration, shall proportionately reduce the respective Pro Rata Shares of each Lot governed by this Declaration by substituting the denominator of the fraction used for determining each Lot's Pro Rata Share with a number computed by adding the total square footage of all Lots within the Property plus the total square footage of all such Lots being annexed to the Property. In the event that any Lot within the Property is resubdivided into two or more separate Lots, the Pro Rata Share for each such resubdivided Lot shall be calculated by dividing the total square footage of each resubdivided Lot by the total square footage of all Lots within the Property. Notwithstanding the foregoing, a Supplemental Declaration may provide for the exclusion of certain Lots within it for the purpose of computing the Pro Rata Share of obligations thereunder, and if it so states, such Lots will also be excluded from the obligation to pay Common Assessments and the computations set forth herein.

AD. Project. "**Project**" shall mean the retail centers, food court building, hotel and motel(s), apartments, multi family residential projects, service stations, restaurants, free standing fast food facilities, office buildings and all other improvements now or hereafter constructed on the Property as permitted by the General Development Plan, or any other document of general applicability to the Project.

AE. Project Common Areas. "**Project Common Areas**" shall mean those Common Areas that are not specifically identified in any Supplemental Declaration for the exclusive use by the Owners of Lots within the property annexed thereby, for example general entry ways, areas and monuments for the entire Project or which serve several parts of the Project.

AF. Property. "**Property**" shall mean and refer to any portion of the real property described on Exhibit B which has been annexed hereto by a Supplemental Declaration, or as the context may require the real property described on Exhibit B and any Future Parcels which may be annexed hereto. It shall also include any portion of the Future Parcel(s) that is annexed into this Declaration in the manner provided in Article XIII. Initially Property shall mean and refer to the Phase I Parcel. At such time as any additional parcels are annexed to this Declaration the term Property shall automatically be construed to mean and include all of the real property at that time which is covered by the terms of this Declaration.

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

AH. Special Assessment. "**Special Assessment**" shall mean a charge against each Owner and its Lot representing its Pro Rata Share of the costs to the Master Association for the

purpose of funding a major capital repair, maintenance, replacement or improvement to Project Common Areas, pursuant to Article V below.

AI. Sub-Association. "**Sub-Association**" shall mean any association created with respect to less than all of the Property pursuant to a Supplemental Declaration which contains certain additional covenants, conditions and restrictions which affect only the portion of the Property encumbered thereby. Said Sub-Association may be authorized by the Supplemental Declaration which creates it to exercise the rights of Owners under this Declaration, in which event all references herein to Owners shall be construed to mean and refer to the Sub-Association, which shall have the same number of votes as the aggregate number of votes to which its constituent Owners would otherwise be entitled.

AJ. Supplemental Declaration. "**Supplemental Declaration**" shall mean a declaration recorded by Declarant, with respect to any portion of the Property or Future Parcels which establishes additional covenants conditions and restrictions applicable to such portion of real property. The Supplemental Declaration may establish a Sub-Association and contain such other terms, provisions and restrictions as are appropriate for such real property. All obligations established by a Supplemental Declaration shall be in addition to and not in lieu of those contained herein.

AK. Utility Easements. "**Utility Easements**" shall mean the reciprocal, nonexclusive easements granted pursuant to Article IV of this Declaration.

### ARTICLE III

#### Parties

##### A. Parties.

1. At such time as any Person becomes an owner of any portion of the Property, such Person shall automatically become a "Party" and shall be conclusively presumed to have taken subject to and assumed all of the obligations, duties, and burdens set forth in this Declaration, to be entitled to all the rights and benefits of this Declaration, to have joined in any restrictions of use in this Declaration, and to have automatically granted and conveyed all easements described in this Declaration to all other Parties, their successors and assigns, immediately upon such Party's acceptance of delivery of a deed granting and conveying any portion of the Property, to such Party. The presumption that all Parties have received all rights and benefits, joined in any exclusions and restrictions on use, and taken subject to and assumed all of the obligations, duties, and burdens created by this Declaration, or by any subsequently recorded amendment or annexation documents more particularly describing any such easements and appurtenances, shall be as conclusive as if such Party had personally subscribed this Declaration and any amendments to it, and executed written easement agreements granting all easements created by this Declaration, immediately upon such Party's receipt of a deed conveying any portion of an interest in the Property to such Party.

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

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

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

(1) the name and notice address of the transferee;

(2) the legal description of the portion of the Property transferred; and

(3) the transferee's acknowledgement that it is bound by this Declaration and agreeing to perform all obligations imposed under this Declaration with respect to the portion of the Property acquired.

3. Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien placed upon the transferred portion of the Property prior to receipt of the notice and statement.

B. Declarant. Any and all of the rights, powers, and reservations of the Declarant herein contained may be assigned (in whole or in part) by the Declarant to any person, corporation, or association which has succeeded to Declarant's interest the Property, or any portion thereof. Such assignee will assume any or all of the duties of the Declarant hereunder and. Upon any such person, corporation, or association evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume the Declarant's duties hereunder, have the same rights and powers, and be subject to the same obligations and duties as are given to and assumed by the Declarant herein. Declarant shall have the right to maintain its position as Declarant hereunder so long as it owns any portion of the Property, whether or not the same has been annexed hereto by way of a Supplemental Declaration. Following the date Declarant ceases to own any portion of the Property, it shall be deemed to have relinquished its position as Declarant and the provisions set forth in Section B.2. below shall apply. Upon a full and proper accounting by Declarant, and upon such assignment, and to the extent thereof, the Declarant shall be relieved from all liabilities, obligations, and duties hereunder after the date of such assignment. The term "Declarant" as used herein includes all such assignees and their heirs, successors, and assigns. For purposes hereof "Declarant" shall automatically be deemed to include any and all partnerships, ventures, limited liability companies

or other entities in which the herein named Declarant owns, either directly or indirectly, a controlling interest.

1. If at any time the Declarant ceases to exist and has not made an assignment, successor to the Declarant shall be the owner of the Property, and if there be more than one, then the Declarant shall be deemed to have relinquished its duties hereunder.

2. If at any time during the time a Declarant has the right to exercise powers hereunder, Declarant relinquishes its rights in writing, (or is deemed to have relinquished its rights) then a successor Declarant may be appointed by a vote of the Majority of Owners if one entity owns a significant enough portion of the Property that the Owners so determine it is appropriate for such entity to hold the position of Declarant. Alternatively, at such time, a Majority of Owners shall have the right to determine that the Declarant's rights shall be exercised by the Master Association rather than selecting a successor declarant. Nothing in this paragraph 2 shall be deemed to limit Declarant's right to assign the rights, duties, powers, and reservations of Declarant as set forth in this Article III.B. so long as it owns any portion of the Property and such assignment is made to an entity which is also an Owner.

3. Declarant shall have the right at any time while it is entitled to retain its position as such to exercise any and all rights, duties and powers granted herein to the Master Association and to act on its behalf directly with respect to any rights, duties or obligations that may be delegated to the Master Association by any Sub-Association pursuant to any Supplemental Declaration that is recorded. Such right shall be automatic, without any need for formal action being taken to evidence the same. Inasmuch as Declarant shall control the Master Association for so long as it has the right to retain its position as Declarant hereunder, all references herein to Master Association shall, to the extent appropriate be construed to mean and refer equally to Declarant during such period of control. Following the relinquishment (or deemed relinquishment) of its position as Declarant, all references herein (or in any Supplemental Declaration) to Declarant shall mean and refer to either the Master Association, acting by and through its duly elected officers and directors or the appropriate Sub-Association acting by and through its duly elected officers and directors.

4. Notwithstanding anything set forth herein to the contrary, Declarant hereby reserves the right during any period that it has the right to exercise its powers hereunder to place and operate such temporary and permanent structures, signage and advertising devices on the Property as it deems necessary or appropriate for the purpose of conducting sales activities.

#### ARTICLE IV

##### Easements

A. Reciprocal Easement for Ingress, Egress, Interior Property Travel, and Parking.

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1. Each Party hereby grants and conveys to each other Party for such other Party's respective use, and for the use of the respective Permittees in the regular and ordinary course of said other Party's business, in common with all others entitled to use the same, perpetual, non-exclusive easements over the Lot Common Area of its respective Lot and as to Declarant, the Common Area not included within a Lot, for the following:

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

b. For the entrance of motor vehicles, bicycles, and pedestrians onto the Parking Areas;

c. For the passage and parking of vehicles on such respective portions of such Lot or other Common Area as are, or are to be, set aside, maintained and authorized for such use as Parking Areas;

d. For access to and from one Parcel to all other Parcels; and

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

2. The easements set forth in Article IV.A.1. above are Common Area Easements and are for the benefit of and are appurtenant to each Parcel of the Property. To the extent they are for the benefit of all Owners they shall be deemed Project Common Areas, to the extent they are for the benefit of Owners within any Annexed Property only, they shall be deemed to be Common Areas appurtenant to such Annexed Property only.

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

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

5. Without limiting the ability of any Party to pass on some or all of their Pro Rata Share of Common Assessments to an Occupant, no Party or Permittee shall be charged for the right to use the Common Area Easements located on the Property, unless the Parties approve such action. Each Party shall use its best efforts to cause the Occupants of its Parcel, and the employees of such Occupants to park their vehicles only in the area specifically designated on said Party's Parcel for such Occupant parking and such Party shall use its best efforts to prevent such Party's Occupants from parking their vehicles on any other Party's Parcel. Nothing in this subparagraph 5 shall prohibit Declarant from adopting rules and regulations regarding employee parking of any Occupant. No Party shall have any liability to any other Party based on excessive use of parking facilities by the Permittee of any Occupant.

B. Reciprocal Easements for Utilities.

1. Declarant has established, for the benefit of the Property, the Dedicated Easements for providing utility service to the Property, which have already been dedicated to the appropriate governmental entity or public utility (the "Dedicated Easements"). Each Party hereby grants and conveys to each other Party a nonexclusive perpetual Utility Easement in, to, over, and under the Lot Common Area on its respective Lot, and Declarant so grants and conveys Utility Easements in, to, over and under the Common Area, for the installation, maintenance, repair, and replacement of utilities (including, but not limited to, storm sewers and drains, water and gas mains, telephone lines, cable facilities, electrical power lines, other pipes, ducts, conduits and facilities for utilities), to permit each party to connect to the Dedicated Easements, and for Declarant to locate such other utilities as are required for the operation of the Common Areas. Declarant shall give reasonable notice to the Owners, with a right of comment but not a right of approval, if Declarant is intending to modify a Dedicated Easement or Utility Easement through any Lot. Declarant will take into account said comments to the extent it will not materially increase the cost to Declarant and will not impede the intended purpose of the utility easement.

2. All of such utility lines or systems within the Utility Easements shall be underground, except as may be necessary during periods of repair or temporary service. Any Party installing utilities pursuant to the provisions of this Section B. shall pay all costs and expenses with respect thereto, shall obtain the approval of the Party on whose



Parcel the work is going to occur, and shall cause all work in connection therewith to be completed, including general clean-up and surface restoration, as quickly as reasonably practicable. Such Party may impose reasonable conditions upon such approval, including but not limited to, the posting of a performance and completion bond in an amount estimated to be one hundred fifty percent (150%) of the cost of such work.

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

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

## ARTICLE V

### Duties and Powers of Master Association

#### A. Master Association Properties and Project Common Areas/ Maintenance and Repair/Common Assessments.

1. Subject to its right to be reimbursed for all costs associated with maintenance, repair and replacement of Improvements on Master Association Properties or Project Common Areas, and except as hereafter provided to the contrary, Declarant shall cause to be maintained and kept all Master Association Properties and Project Common Areas in good condition and state of repair, and in compliance with all laws, rules and regulations, orders and ordinances of governmental agencies exercising jurisdiction thereover, and the provisions and standards of this Declaration. Each Party, in consideration therefor, covenants and agrees to pay to Declarant, semi annually, a sum equal to its Pro Rata Share of the Common Assessments. Common Assessments shall be estimated annually pursuant to a budget prepared by Declarant, a copy of which shall be provided to each Owner on or about December 1 of each year. One-half of each Owner's Pro Rata Share shall be paid by such Owner on January 1 and July 1 of each year, subject to adjustment periodically if the actual costs differ from the estimate. If Declarant fails to fix an assessment in any year, each Owner shall continue to pay the amount owed for the prior year until such amount is fixed in the manner provided herein. Failure to so fix an assessment in any year shall not be deemed a waiver of the right to do so or to collect such amounts for prior years when so fixed. Notwithstanding the foregoing, to the extent Declarant determines that any portion of the Master Association Properties or Project Common Areas benefit only a portion of the Property, Declarant shall have the right to allocate all costs and expenses associated with the maintenance, repair and

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replacement thereof specially to the benefited portions of the Property and such amounts shall be deemed Special Assessments.

2. Any amounts due to Declarant pursuant to this Article V shall be paid within ten (10) days following receipt of the billing. Interest at the Default Rate shall accrue on any payment not received by the date due.

3. Within 120 days of the end of each calendar year, Declarant shall prepare and furnish to each of the Parties a reconciliation setting forth the actual Common Assessments incurred, for the prior calendar year. Such reconciliation shall also set forth the amount of adjustment, if any, arising from a difference between the actual Common Assessment compared to the estimates from which the Party's Pro Rata Share was determined and paid. In the event that the actual Common Assessments exceeded the estimate that was utilized, the reconciliation shall invoice the Party for the necessary adjustment to the Party's Pro Rata Share and the Party shall pay same within 30 days. In the event that the actual cost and expense for the Common Assessment was less than the estimate utilized, then the reconciliation shall set forth the amount of overpayment made by each Party and such amount shall be deducted from the next due installment of such Party's Pro Rata Share. Further, if at any time during the year Declarant is required to incur an unanticipated expense, or determines that any amounts expended by it are to be deemed Special Assessments as provided in Section A.1. above or B below, Declarant shall be entitled to establish a Special Assessment and each Owner's Pro Rata Share thereof and each such Owner responsible therefor shall be billed immediately and said amount shall be due and payable not later than thirty (30) days following receipt of such billing. Any failure to pay an Owner's Pro Rata Share of Common or Special Assessments shall entitle Declarant to a lien against the Lot of the defaulting Owner as hereafter provided.

B. Special Assessments. In addition to Common Assessments or Special Assessments contemplated by Section A.1. above, Declarant, subject to the provisions hereof, may levy Special Assessments for the purpose of raising funds, not otherwise provided under the then current budget to construct, reconstruct, repair or replace any capital improvements on Master Association Property. Any Special Assessments which are for the benefit of fewer than all of the Owners shall be levied only against such Owners who will benefit therefrom. Upon establishment of a Special Assessment, Declarant shall advise the Owners, specifying the amount and purpose of such Special Assessment, those against whom it is being levied, the manner in which and the dates on which it is payable.

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

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

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E. Power to Borrow Money and Mortgage Property. The Master Association shall have the power to borrow money and, with the approval of the Majority of the Owners, to encumber Master Association Properties as security for such borrowing.

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

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

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

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

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## ARTICLE VI

### Regulation on Improvements

No Improvements shall be constructed on any Lot unless constructed strictly in compliance with the Development and Landscape Guidelines in effect, from time to time, copies of which may be obtained from Declarant or the Design Review Committee, and until all such Improvements have been approved as set forth in Article VII below.

## ARTICLE VII

### Design Review Committee and Approval of Plan

A. Design Review Committee. A Design Review Committee (the "Committee") shall be established pursuant to this Article VII. The purpose of the Committee shall be to maintain a style and nature of building design that is in harmony with the physical setting and characteristics of Rocky Mountain Village and surrounding development. The Committee shall consist of not less than three (3) nor more than five (5) members (the "Committee Members"), all of whom shall be appointed by Declarant. In the event of death or resignation of a Committee Member, Declarant shall have full authority to designate a successor. At such time as the Declarant shall have divested itself of ownership of one hundred percent (100%) of its interest in the Property, or relinquished (or be deemed to have relinquished) its role as Declarant, the Committee Members shall be appointed from time to time upon a majority vote of the Owners (in accordance with the voting rights set forth in Article IX). The Committee Members need not be Owners or Members of the Master Association or employees or agents of an Owner.

The Committee shall adopt reasonable rules and regulations, fix the time and place of its meetings, appoint a chairman and secretary, and keep minutes of the meetings which shall be open for inspection by any Owner upon request to a Committee Member.

All decisions of the Committee shall be by majority vote provided that a majority of the Committee may designate a representative to act for it.

B. Approval of Plans.

1. No Improvements shall be constructed, erected, placed, altered, maintained, or permitted on any Lot, nor shall any construction or excavation whatsoever be commenced nor any materials, equipment, or construction vehicles be placed on any Lot until plans, specifications, and a Site Plan with respect thereto in manner and form satisfactory to the Committee as set forth below has been submitted to and approved in writing by the Committee. In all events except as otherwise provided herein, all improvements must be located within a building site. In no event shall an Owner have the right to construct any improvements on any Common Area appurtenant to its Lot without Declarant's prior written approval and otherwise complying with the terms and provisions hereof.

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2. To secure the Committee's approval, the Owner shall deliver to the Committee the number of complete sets hereinafter set forth of:

(a) The site plan showing, among other things, the location and dimension of all intended improvements, including (a) building(s), (b) other structures, (c) the number and size of parking spaces, (d) loading and storage facilities and areas, (e) areas to be landscaped, (f) signs, (g) light fixtures, (h) means of ingress and egress, (i) curb cuts, (j) traffic patterns, and (k) drives and driveways;

(b) Drawings and specifications of all exterior surfaces showing elevations, and including the color, quality and type of exterior construction materials;

(c) Grading and drainage plans, including the invert elevation of all sanitary and storm sewer connections and the location of all utility connections;

(d) A landscaping plan;

(e) The type, style, size and candle power of all outdoor lighting fixtures;

(f) Drawings and design specifications of all proposed signs, including the colors thereof and the quality and materials to be used in the manner of elimination;

(g) Proposed use of Building(s) and the Building Site; and

(h) All such other information as may be reasonably required which will enable the Committee to determine the location, scale, design, character, style and appearance of the Owner's intended improvements.

All of the foregoing (hereinafter collectively called "Plans and Specifications") shall conform to the applicable provisions of this Declaration.

The Owner shall supply three (3) sets of items (a) through (d) plus a mylar reproducible of such items, and three (3) sets of all other required items.

3. All the Plans and Specifications shall be submitted in writing over the signature of the Owner of the Building Site or the Owner's authorized agent. The Committee shall have the right to charge persons submitting such Plans, other than Declarant, or the Master Association, a reasonable fee for reviewing each application for approval of the Plans and Specifications in an amount established by Declarant or the Master Association, as the case may be, from time to time, which fee may include the actual amounts charged by professional consultants to the Committee. Such fee shall be payable at the time of submission by an Owner or his agent of Plans and Specifications to the Committee.

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4. Approval by the Committee shall be based on, among other things, conformity and harmony of exterior design, colors, and materials with neighboring structures; relation of the proposed Improvements to the natural topography; relation of grade and finished ground elevation of the Building to that of neighboring Buildings and natural features of the Property; and conformity of the site Plan and the Plans and Specifications to the purpose, general plan, and intent of this Declaration.

5. If the Committee fails either to approve or to disapprove the Plans and Specifications within thirty (30) days after the same have been submitted to it by an Owner or his agent (provided that all required information has been submitted), it shall be conclusively presumed that the Plans and Specifications have been approved; provided, however, that the aforesaid presumption shall not be deemed to be a waiver of the applicable provisions of Articles VI and VIII or be deemed to be the prior written approval of the Committee under any specific provisions of Articles VI or VIII or any approval thereof by the Committee. Any disapproval shall set forth the reason or reasons for such disapproval. The Committee shall notify the Owner in writing upon receipt of all required Plans and Specifications.

6. If the Committee disapproves any part of the Plans and Specifications submitted, the Owner shall revise its Plans and Specifications to incorporate such changes and shall deliver the required number of complete sets of Plans and Specifications to the Committee and the Committee shall have thirty (30) days in which to review such revised Plans and Specifications to determine Owner's compliance with the Committee's request for changes. If the Committee fails to advise Owner in writing of whether or not such revised Plans and Specifications are in compliance with suggested changes within the thirty (30) day period, then the Committee's approval shall be conclusively presumed to have been granted, subject to the conditions provided for in Section B.6 of this Article VII applicable to such assumption.

7. An Owner shall secure the approval of the Committee to any change or revision in approved Plans and Specifications in the manner provided in this Article for approval of Plans and Specifications. The Committee shall endeavor to review such changes or revisions within a shorter period of time than the thirty (30) day period provided in Section B.6 above, but shall not be required to do so.

8. If the Owner believes that the disapproval of any Plans and Specifications is arbitrary or capricious, Owner must, as its sole remedy, submit the matter to final and binding arbitration pursuant to the provisions of the American Arbitration Association. The fees of such arbitrator and court reporter shall be divided equally between the Owner and the Declarant or the Master Association, as the case may be. All other costs shall be borne by the party incurring same. In determining any questions, matter of dispute for such arbitrator, the arbitrator shall apply the provisions of this Declaration without varying therefrom in any respect and shall not have the power to modify or change any of the provisions of this Declaration. The parties to the arbitration agree to fully cooperate and to obtain the cooperation of their respective employees, agents and contractors and to use their respective best efforts to supply as witnesses any former

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employee, agent or contractor, and to produce relevant documents which may be requested by the other.

9. Upon written request of any Owner and Committee may waive any of the requirements for obtaining approval of Plans and Specifications upon good cause shown. Any waiver issued by the Committee pursuant to this Section B.9 of this Article VIII must be in writing.

C. No Liability/Indemnity. Neither the directors nor the officers of the Committee, nor the Committee Members, shall be personally liable to the Owners, anyone submitting Plans and Specifications, Declarant, or the Master Association for any mistake of judgment, negligence or nonfeasance or for any other acts or omissions of any nature whatsoever as such directors, officers or Committee Members, arising out of or in connection with the performance of any of its rights, duties or obligations hereunder, including, without limitation, the approval or disapproval or failure to approve any Plans and Specifications. The Master Association shall indemnify and hold harmless the directors and officers of the Committee, the Committee Members, and their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or acts of such directors, officers and Committee Members on behalf of the Owners or the Master Association or arising out of their status as directors, officers or Committee Members unless such contract, act or omission constitutes willful misconduct relating to an action other than the approval, disapproval or failure to approve Plans and Specifications. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer or Committee Member may be involved by virtue of being or having been such director, officer, Committee Member; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for such willful misconduct in the performance of his duties as such director, officer or Committee Member; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in any manner determined by the Declarant or the Master Association, there is no reasonable ground for such person adjudged liable for willful misconduct in the performance of his duties, as such director, officer or Committee Member. Every Owner or agent who shall submit Plans and Specifications to the Committee for approval hereby agrees, by submission of such Plans and Specifications, that he will not bring any action or suit against the Declarant, the Master Association or the Committee to recover any such damages. Approval by the Committee or Declarant shall not be deemed to constitute compliance with the requirements of any local building codes, and it shall be the responsibility of the Owner or Owner's agent submitting Plans and Specifications to the Committee to comply therewith. Approval in writing of all Plans and Specifications and amendments thereto must be obtained from the Committee prior to the issuance of any building permits.

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## ARTICLE VIII

### Operation

#### A. Uses.

1. During the term of this Declaration, the Property shall only be used for commercial, hotel, motel, restaurant, residential purposes, fast food facilities, parks, visitor center, offices, and/or wholesale and retail sales and services and appurtenant uses. If any portion of the Property is to be used for residential purposes and the Colorado Common Ownership Interest Act applies, the terms of the Supplemental Declaration relating to such portion shall comply therewith and may provide that to the extent inconsistencies exist between the provisions hereof and such Act, the Act will control, including matters of control to the extent they relate to such residential parcel. Notwithstanding the foregoing, no use, effect or operation will be made, conducted or permitted on or with respect to all or any part of the Property which use, effect or operation is obnoxious to a first-class multi-use center, including the following:

- a. any public or private nuisance;
- b. any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- c. any noxious or offensive odor;
- d. any noxious, toxic, caustic or corrosive fuel or gas, except reasonable amounts thereof contained in safe and lawful containers as necessary for, or incidental to, activities permitted hereunder;
- e. any dust, dirt or ash in excessive quantities;
- f. any uses other than specifically enumerated above or consistent, in the opinion of Declarant, therewith;
- g. any dumpings, disposal, incineration or reduction of garbage or refuse;
- h. any adult bookstore which sells or maintains pornographic material as a significant part of its inventory; or
- i. any removal or extraction of minerals, oil, gas or other subsurface substances, or any drilling or other work related to such removal or extraction, other than as necessary and normal excavation in connection with construction of improvements and other than slant or other methods of drilling designed to leave the surface of the Parcels undisturbed.



2. Except as provided elsewhere herein and subject to compliance with the applicable provisions hereof, the prohibitions set forth in subparts (a), (b), (c), (d), (e), and (g) above shall not apply to any incidental consequences of work of construction, improvement or maintenance of any part of the property.

B. Insurance.

1. a. Liability Insurance; Indemnification for Liabilities. Each Party, with respect to its Lot and also with respect to the operations thereon, shall, at all times during the term of this Declaration, maintain in full force and effect comprehensive public liability insurance. Initially the limits of such insurance shall be not less than \$1,000,000 for personal or bodily injury or death to any one person, and not less than \$2,000,000 for personal or bodily injury or death to any number of persons arising out of any one occurrence. Such insurance shall include the Master Association, any applicable Sub-Association. Declarant or the Master Association may from time to time increase the limits set forth in this subparagraph, by written notice to all parties so that adequate and commercially reasonable limits are always carried by each Party.

b. Casualty Insurance. Each Party shall at all times during the term of this Declaration, maintain fire, hazard and casualty insurance, in extended coverage forms insuring to the full replacement value, all primary structures on the Parcel of such Party and all other improvements, including, without limitation, all improvements on the Lot Common Area.

2. Policy Requirements. All policies of insurance hereunder shall:

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

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

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

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

4. Evidence of Insurance. Within 15 days following request by any Party or the Master Association, the requested Party shall provide to the requesting Party (or Master Association) evidence of its compliance with the requirements of insurance hereunder, which evidence shall include a current and valid certificate of insurance or

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original policy of insurance, and if either of the same are expressly contingent upon payment of premiums, then the requested Party shall provide proof of such payment.

5. Changes in Policy Types or Amounts of Coverage. Other than the change in limits, which Declarant shall have the right to modify itself from time to time, as provided above, the types of coverage required hereunder may be changed from time to time in the same manner as this Declaration may be amended.

C. Taxes. Each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments upon its Lot, and the buildings, improvements and personalty located on such Lot, provided that if the taxes or assessments, or any part thereof, may be paid in installments, the Party may pay each such installment as and when the same becomes due and payable, and in any event, prior to the delinquency thereof. If any Party fails to make any payment of such taxes or assessments, and any such failure results in the scheduling of a tax sale of any land or improvements within the Property, then any Party may make such payment for the account of the said responsible Party within 30 days prior to the sale, or redeem the land or improvements from said tax sale within the time allowed by law, in which case the responsible Party shall reimburse the paying Party for the amount of such payment, plus interest thereon, at the Default Rate from the date of such payment by the paying Party until full reimbursement. The Paying Party shall have a lien upon the Parcel to which such taxes arose in the amount of such payment and any interest accrued thereon and all costs and legal fees incurred in connection therewith. Such lien may be enforced and foreclosed in the manner set forth hereinafter in Article IX.

## ARTICLE IX

### Master Association

A. Incorporation. The Declarant shall incorporate the Master Association prior to the assignment of the designated Common Areas and the obligation of maintenance as herein provided.

B. Membership. Every Owner of a Lot shall be a member ("Member") of the Master Association. Membership shall be appurtenant to and may not be separate from the ownership of a Lot. The Declarant shall also be a Member. An Owner may assign its rights as a Member, but not its obligations, to any Permittee legally entitled to occupy and use any part or portion of a Lot.

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

Class A: Class A Members shall be all of the Owners as defined in Article II above. Class A members shall be entitled to one (1) vote for each 100 square feet of real property within such Owner's Lot.

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When more than one (1) person shall hold an ownership interest or interests in any Lot all such persons shall be Members, and the vote(s) provided for herein as a result of such joint ownership shall be exercised among themselves as they shall determine.

Class B: Declarant shall be the sole Class B member and shall be entitled to five (5) votes for each 100 square feet of real property within any Lot(s) owned by Declarant. The Class B membership shall cease and terminate upon the first to occur of the following:

(a) When Declarant or any affiliate or subsidiary of Declarant no longer owns or occupies any portion of the Property; or

(b) At such time as Declarant voluntarily relinquishes or is deemed to have relinquished its role as Declarant.

D. Voting Representatives. If so provided in a Supplemental Declaration the Sub-Association shall have the right, as a representative of its members, to exercise their right to vote. The Sub-Association shall have a number of votes in the Master Association equal to the number of votes its members would have had they exercised their individual right to vote. The number of votes must be voted for in a block and may not be split within an issue. Accordingly, the Bylaws of the Sub-Association shall provide the mechanism for exercising of such representative right to vote, and shall set forth the manner in which the delegation of such right may be exercised.

## ARTICLE X

### Enforcement

#### A. Enforcement of Covenants.

1. These conditions, covenants, reservations, and restrictions may be enforced as provided herein by the Declarant acting for itself, and as trustee on behalf of all of the Parties. Each Party by acquiring an interest in the Property shall appoint irrevocably the Declarant as his attorney-in-fact for such purposes; provided, however, that if a Party notifies the Declarant of a claimed violation of these conditions, covenants, restrictions, and reservations and the Declarant fails to act within thirty (30) days after receipt of such notification, then, and in that event only, a Party may separately, at his own cost and expense, enforce the conditions, covenants, restrictions, and reservations herein contained.

2. Violation of any condition, covenant, restriction, or reservation herein contained shall give to the Declarant the right to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove at the expense of the violating Party any structure, thing, or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the Party, Occupants, or other Persons who have violated or

are attempting to violate any of these conditions, covenants, restrictions, and reservations to enjoin or prevent them from doing so, to cause said violation to be remedied, or to recover damages for said violation.

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

4. Within 10 days of billing therefor, the Party violating this Declaration shall reimburse Declarant (or other party enforcing this Declaration) for any sum reasonably expended to enforce this Declaration and for fees, costs and legal expenses. Any amount not so reimbursed shall accrue interest at the Default Rate.

B. Enforcement of Monetary Obligations.

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

2. Failure to pay any amount required by this Declaration shall constitute a lien, in the unpaid amount together with interest, costs and expenses and reasonable attorney's fees, upon the property of the nonpaying Party in the manner set forth below, in favor of the Party to whom the amount is owed.

3. Any right to a lien hereunder shall be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens and encumbrances thereafter encumbering the Parcel or portion thereof involved, except for general taxes and special assessment liens, and except any first mortgage of record covering the Parcel. To evidence such lien, the Party entitled thereto shall cause to be prepared a written notice ("Lien Notice") setting forth: (i) the amount owing and a brief statement of the nature thereof; (ii) the legal description of the Parcel or portion thereof to be encumbered thereby; (iii) the name of the Party or reputed Parties owning the Parcel involved; and (iv) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be duly executed and acknowledged by the Party entitled thereto, and shall be recorded in the records of the Clerk and Recorder of the City and County of Loveland. A copy of such Lien Notice shall be mailed to the Party or reputed Party whose Parcel is so encumbered within 30 days after such recording. Any such lien may be enforced by judicial foreclosure in like manner as a mortgage on real property is judicially foreclosed under the laws of the State of Colorado. In any foreclosure, the non-prevailing party shall be required to pay the reasonable costs, expenses, attorney and expert witness fees of the prevailing party. In any foreclosure action in which judgment or foreclosure is entered, such costs,

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fees and expenses shall include those incurred in preparation of the Lien Notice, and all causes of the action therein joined arising out of the default resulting in such foreclosure, and the lien being foreclosed shall secure all of the same without the necessity of further demand. Any additional amounts owing under this Declaration which are unpaid and established in accordance with the provisions of this Article may be added as a claim in the foreclosure proceeding by an amendment of the complaint in foreclosure. The Party filing such Lien Notice shall have the right to bid on and purchase the Parcel or portion thereof or interest therein being foreclosed. The Party filing such Lien Notice shall, before commencement of the foreclosure action, notify any encumbrancer of the Parcel being foreclosed, if such encumbrancer has notified such Party of the encumbrancer's name and address. Any encumbrancer holding a lien on the Parcel may, but shall not be required to, pay any unpaid amounts and, upon such payment, said encumbrancer shall have a lien on the Parcel for the amount paid of the same rank as the lien created by the Lien Notice.

C. Remedies. This Declaration may be enforced against any Person violating or attempting or threatening to violate any provision of the same, which enforcement may occur by self-help, or by legal proceeding to restrain or enjoin any such violation or to compel specific performance of any obligation hereunder, or to recover damages for any breach or default hereof, or any other remedy available at law or in equity, or by any combination of any of the foregoing, all remedies in connection herewith, being cumulative and non-exclusive, except as otherwise provided by law. Without in any manner limiting Declarant's right to take any action deemed necessary in an emergency, any enforcement by self-help shall be limited to violations of this Declaration which are minor in nature, and shall not be available for any major violations. Examples of minor violations would include matters such as a failure to store trash and garbage in adequate containers; any obnoxious odor; dust, dirt, or ash in excessive quantities; or dumpings of garbage or refuse. Examples of major violations would include matters such as the expansion or modification of a structure without Design Review Committee approval or the use of a Parcel for purposes in violation of Article VIII.A.1.h. The obligations set forth herein are to be performed continuously and periodically throughout the term hereof and, therefore, no action brought or judgment obtained for any breach or default hereunder, or any attempted or threatened breach or default shall limit or preclude any other action against the same, or any other default by reason of any other or subsequent breach or default or attempted or threatened breach or default, whether or not arising pursuant to the obligation being the subject of the former action. Suit to recover a money judgment for such unpaid amounts may be maintainable without foreclosing or waiving the lien securing same. In the event, however, that any monetary judgment is entered against said Party on such debt, said judgment may only be satisfied by proceeding against said Party's Lot, and said Party shall have no liability for any deficiency or portion of said judgment not satisfied by the proceeds from said Lot. Any liability hereunder of a Party prior to transfer of all or any portion of said Party's Lot shall remain a liability of the affected property, notwithstanding such transfer.

D. Attorneys' Fees and Expenses. In the event any Party shall institute any action or proceeding against another Party relating to the provisions of this Declaration hereunder, or to collect any amounts owing hereunder, then in and in such event the unsuccessful litigant, in such action or proceeding, agrees to reimburse the successful litigant therein for the reasonable

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expenses of legal fees, expert witness fees and disbursements incurred therein by the successful litigant, including such costs and expenses incurred in connection with any such action or proceeding, and any appeals therefrom. In addition, if Declarant incurs any reasonable attorneys fees or expenses by reason of a breach or alleged violation of this Declaration, or for enforcement of any provision hereof, or to interpret or advise regarding such breach or enforcement, or otherwise regarding the enforcement of this Declaration, Declarant shall be entitled to reimbursement from the Party or Occupant alleged to have violated or breached this declaration, if such fees and expense result in such Party or Occupant ceasing any such breach or violation, provided that Declarant cannot recover such reimbursement from a third party.

## ARTICLE XI

### General Provisions

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

1. Replace Lot Common Area improvements, other than Parking Areas, so taken;
2. Replace the Parking Area, so taken, on such Party's Lot, to the extent required to bring the Parking Area to the minimum parking ratios required by governmental regulation; and
3. Replace, on such Party's Lot, the Parking Area so taken so as to maintain the parking ratio existing on the Party's Parcel prior to the taking, including the construction of a parking structure if it is possible to construct such a structure on such Party's Lot and if the portion of such award is sufficient to construct such a structure without any other contribution from the owner of the Lot. No such construction will be commenced until Declarant and the Owner of the Lot have approved both its location and architecture.
4. Any portion of such award not necessary for items 1 through 3 above shall be the sole and separate property of the Owner of such Lot.

B. Mechanics' Liens. Wherever under the terms of this Declaration any Party is permitted to perform any work upon the Lot of another Party, it is expressly understood and agreed that such Party will not permit any mechanics', materialmen's, or other similar liens to

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stand against the parcel on which such labor or material has been furnished in connection with any work performed by any such Party. Should any liens be filed and recorded against any Lot or any action commenced affecting title as a result of such work, the Party causing such work to be performed shall cause any such lien to be removed of record within 10 days after notice of the existence of such lien. The Party may bond and contest the validity of any such lien, but on final determination of the validity and the amount of such lien, the Party will immediately pay any judgment rendered, with all proper costs and charges, and will have the lien released at such Party's expense.

C. Hazardous Substances.

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

2. Each Party shall be responsible for, and shall promptly commence and complete, the remediation and clean up of any Hazardous Substances which it has caused to be generated, stored, spilled, or otherwise placed on any portion of the Property.

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

E. General Restrictions Applicable to Property. All Property shall be held, used and enjoyed subject to the limitations and restrictions set forth herein, and subject to the exemptions of Declarant set forth in this Master Declaration. The strict application of the limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee if such strict application would be unreasonable or unduly harsh under the

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circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated in the Design Review Committee.

F. Maintenance of Property. No portion of the Property shall be permitted to fall into disrepair, and all Property, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair. maintenance, repair and upkeep of each Privately Owned Site shall be the responsibility of the Owner of the Privately Owned Site. Maintenance, repair, and upkeep of Project Common Areas, and any other areas upkeep, maintenance and repair of which has been delegated to the Master Association by a Sub-Association, shall be the responsibility of the Master Association. Violation of this provision by an Owner shall permit the Master Association, to enter on the Site, after reasonable notice and failure of the Owner thereof to respond and take corrective action are required by such notice, and cure the violation or cause compliance with this provision and to levy and collect an Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement without the consent of the Owner thereof unless a clear emergency exists.

G. Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Site except within an enclosed structure or appropriately screened from view.

H. No Temporary Structures. Except for construction trailers used during active construction of Improvements on any Lot, no tent, shack, temporary structure or temporary building shall be placed upon any property within the Property except with the prior written consent of the Design Review Committee obtained in each instance. Location and placement of such construction trailers or structures shall be submitted to the Design Review Committee at such time as plans for any Improvements are submitted.

I. Restrictions on Antennae, Pipes and Utility Lines. Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antennae of any type shall be erected or maintained on the Property except that, an Owner may erect an antenna if such antenna is necessary to carry on the business conducted by Owner on the Site and the Design Review Committee gives its consent to the erection of such antenna in accordance with the provisions of Article VII hereof.

J. Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view except signs as may be approved in writing by the Design Review Committee. A sign advertising a Lot for sale or for lease may be placed on such Lot for sale or for lease, provided, however, that standards relating to dimensions, color, style and location of such sign may be determined from time to time by the Design Review Committee.



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

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

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

N. Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on any portion of the Property which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Master Association.

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

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

## ARTICLE XII

### Duration, Amendment and Termination

A. Duration. The terms, covenants, provisions and conditions of this Declaration shall be effective for a period of 75 years from the date of recordation hereof, and thereafter shall be automatically extended for successive 10 year periods unless terminated by the vote of

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

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

1. No such amendment, modification, extension, or termination will affect the rights of any first mortgagee under a mortgage or the beneficiary under any deed of trust constituting a lien on any Lot at the time unless the mortgagee or beneficiary consent to such. Neither will any amendment, modification, extension, or termination be effective against such mortgagee or beneficiary subsequent to its securing title to its encumbered parcel by foreclosure, trustee's deed, or deed in lieu of foreclosure, unless the mortgagee or beneficiary have consented in writing. Such consent shall not be required of the mortgagee if the owner of the Lot consents and if the mortgagee's collateral is not impaired.

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

3. So long as Declarant is the owner of Lots on which 10% or more of the total square footage of real property contained within the Property, Declarant may amend or modify the provisions of this Declaration without the consent of any other Owners or their mortgagees, if such amendment or modification does not have a material and adverse affect on the use of and operation of the businesses conducted on the other Lots or impair the collateral of any such mortgagee or an Owner or materially increase the monetary obligation of any Lot. If any Owner of any portion of the other Parcels has not commenced an action in a court of competent jurisdiction challenging an amendment or modification within forty-five (45) days after receiving notice of the same, the amendment or modification shall be presumed not to have a material or adverse effect.

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4. No amendment or modification shall be effective without the consent of Declarant so long as it retains the right to hold such position, regardless of the amount of property owned by it.

### ARTICLE XIII

#### Annexation

Declarant hereby reserves unto itself, for a period commencing with the date hereof and continuing for twenty-five (25) years thereafter, the right to annex into the Property governed by this Declaration and entitled to the rights, duties and benefits and subject to all of the burdens, duties, restrictions and obligations arising out of this Declaration all or any part of the Property not theretofore included within this Declaration, by one or more annexations, just as if such annexed portion or portions of the Property was originally included within the Phase I Parcel. Such annexation, or multiple annexations, shall each be evidenced by a written amendment hereto adding such Parcel, recorded in the real property records of the Clerk and Recorder of the County where the Property is located. Upon each such annexation, wherever herein the word "Property" is used, it shall mean and refer to the real property described both on Exhibit C and the legal description of all of such portion of the remainder of the Property as is annexed. Upon such annexation, wherever the word "Parcel" or "Lot" is used herein, it shall also mean and refer to the Lots included within the Annexed Property which may, at the option of Declarant, be treated as one or more separate additional Parcels or Lots. Thereafter, the Pro Rata Shares of the Parties shall be readjusted in the manner described under the definition herein for "Pro Rata Share." In addition to the foregoing right, Declarant reserves the right during said twenty five (25) year period, to amend the description of the real property described on Exhibit B which may be annexed hereto to include any portion of the Future Parcels. At such time as Declarant acquires an interest in any one or more parcels which it deems appropriate for possible annexation hereto, Declarant may record a notice of amended description which notice shall specifically reference this Declaration and the provisions of this Article and shall set forth the legal description(s) of any Future Parcel(s) which from and after the date of recordation of such notice shall be deemed to be part of the real property which may be annexed hereto in the manner provided herein.

### ARTICLE XIV

#### Miscellaneous

A. Estoppel Certificate. Each Party hereby severally covenants that within 20 days following written requests from time to time of another Party or the Master Association, it will issue to such other Party, the Master Association, or to any prospective mortgagee of such other Party, an estoppel certificate stating: (i) whether the Party to whom the request had been directed knows of any default by the requesting Party under this Declaration, and if there are known defaults, specifying the nature thereof; (ii) whether, to its knowledge, this Declaration has been assigned, modified or amended in any way (or, if it has, then stating the nature thereof); and (iii) whether to the Party's knowledge, this Declaration, as of that date, is in full force and effect. If any Party shall request and receive from any other Party more than two such estoppel

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certificates during any period of 12 successive months, then the requesting Party shall reimburse the other Party, upon demand, for the reasonable costs and expenses, incurred in connection with each additional certificate, by the requested Party. Statements in the estoppel certificate shall constitute and give rise to a waiver and estoppel of any claim or defense by the Party furnishing it to the extent such claim or defense is based upon facts contrary to those asserted in the statement which were known to the furnishing Party, and to the extent the claim is asserted against the Person to whom the certificate is addressed, and such Person, in reasonable reliance upon the certificate, has become a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement. However, such statement shall, in no event, subject the Party furnishing it to any liability whatsoever (except by preclusion of a defense), notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information.

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

MCWHINNEY HOLDING COMPANY  
Bank One Building  
200 E. 7th Street Suite 314  
Loveland, Colorado 80537  
Attention: Chad C. McWhinney

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

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

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

F. Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Parties and their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint

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enterprise. This Declaration is not intended, nor shall it be construed to create any third-party beneficiary rights to any person who is not a party hereto, unless expressly provided otherwise.

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

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

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

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

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

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

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

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

O. Rules and Regulations. Each Party may adopt reasonable rules and regulations and further covenants, conditions and/or restrictions and may grant to other Persons exclusive rights of use pertaining to the use of its Lot, provided the same do not violate this Declaration. As to the use and operation of the Common Area, Declarant may from time to time adopt

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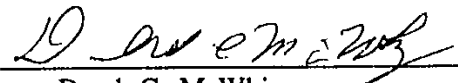
reasonable rules and regulations pertaining to the use of the Common Area (including those Areas located within any Lot), including but not limited to rules regarding employee parking, provided such rules and regulations will generally apply equally to all Permittees and Occupants and shall not violate this Declaration.


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

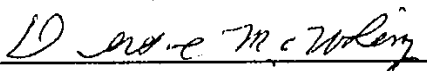
**IN WITNESS WHEREOF**, Declarant and Derek have caused this Declaration to be executed effective as of the day and year first-above written.

"DECLARANT"

MCWHINNEY HOLDING COMPANY, L.L.C.,  
a Colorado limited liability company

By:   
Name: Derek C. McWhinney  
Title: Manager

By:   
Name: Chad C. McWhinney  
Title: Manager

  
Derek C. McWhinney, individually

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STATE OF COLORADO )  
COUNTY OF Larimer ) ss.

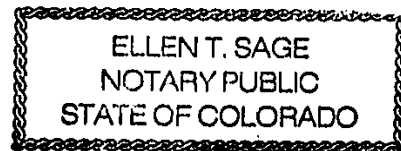
The foregoing document was acknowledged before me this 29<sup>th</sup> day of August, 1995, by Derek C. McWhinney and Chad C. McWhinney, each as Manager, on behalf of MCWHINNEY HOLDING COMPANY L.L.C., a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

8-6-97

Ellen T. Sage  
Notary Public



STATE OF COLORADO )  
COUNTY OF Larimer ) ss.

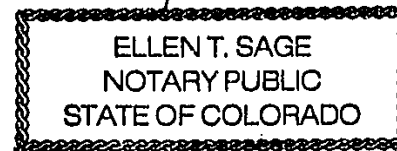
The foregoing document was acknowledged before me this 29<sup>th</sup> day of August, 1995, by Derek C. McWhinney, individually.

WITNESS my hand and official seal.

My commission expires:

8-6-97

Ellen T. Sage  
Notary Public



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**EXHIBIT A**

**General Development Plan**

**THE PROJECT**

[See separate document attached]

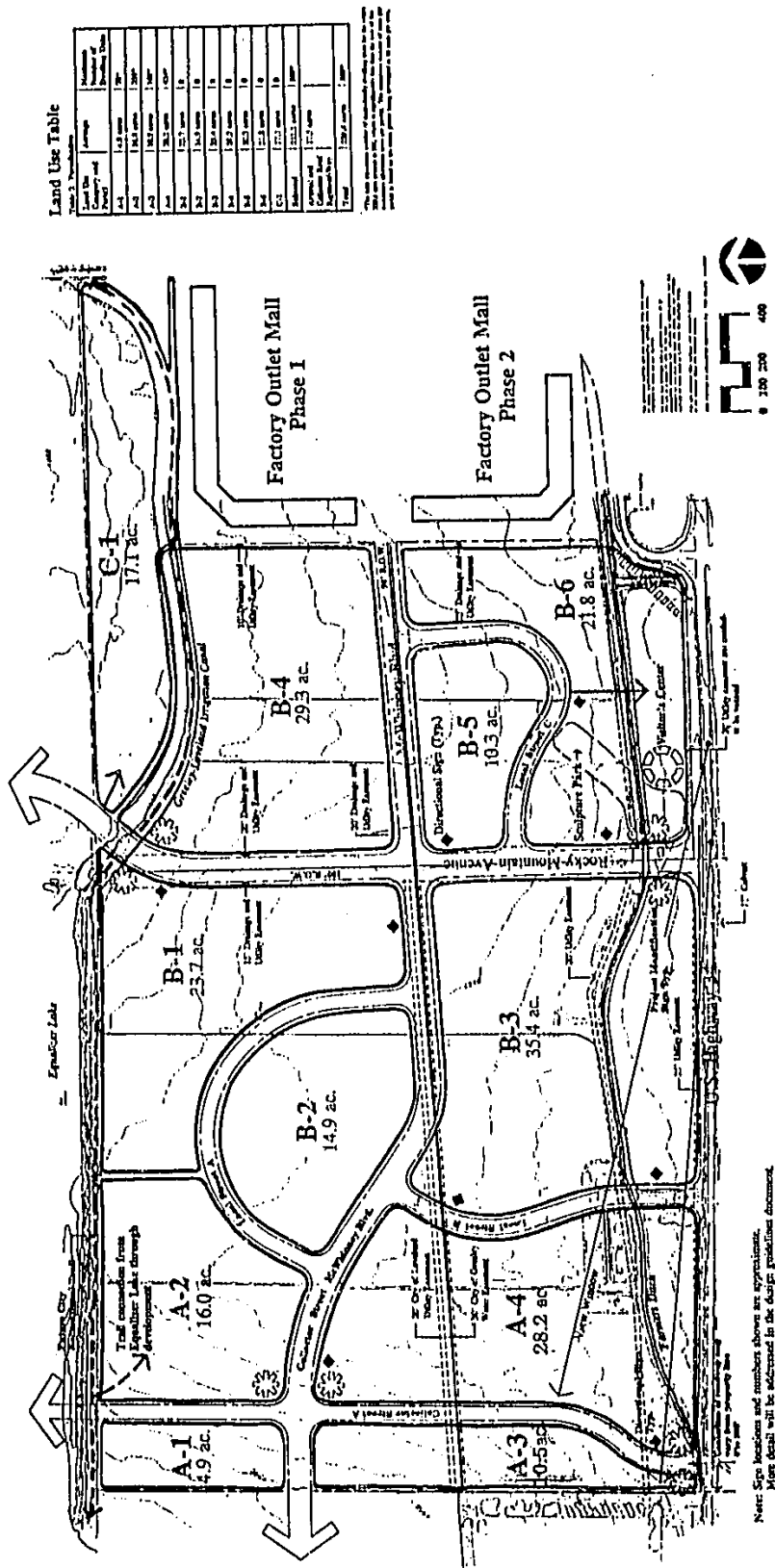


Exhibit "A"

# The Gateway Planned Unit Development General Development Plan

EDAW  
February 24, 1984

## Master Plan



Sheet 3

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**EXHIBIT B**

**Legal Descriptions**

**THE PROPERTY**

[See separate document attached]

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**McWhinney Gateway F.U.D.  
Legal Description**

Lot 4, Block 1 and Tract B of McWhinney Addition to the City of Loveland, County of Larimer, State of Colorado according to the plat on file in the office of the clerk and recorder, records of said County; Lots 1, 2, 3, 4, 5, 6 and Tract A, Block 1; Lot 1, Block 2; and Lot 1, Block 3 McWhinney Second Subdivision to the City of Loveland according to the plat on file in the office of the clerk and recorder, records of said County containing 226.325 acres more or less and is subject to all easements, agreements and rights-of-way of record.

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**EXHIBIT C**

**Legal Description**

PHASE I PARCEL AND PRO RATA SHARES OF EACH LOT THEREIN



ENGINEERING Ltd.

January 30, 1995

Project No. MCWCH-94048B-01-216A1

**EXHIBIT C**  
**(McWhinney Second Subdivision)**

Legal Description of a tract of land being a portion of Lots 4 and 5, Block 2 McWhinney Addition to the City of Loveland, Colorado located in a portion of the Southwest Quarter of Section 10, Township 5 North, Range 68 West of the 6th Principal Meridian, Larimer County, Colorado being more particularly described as follows:

Beginning at the Southwest Corner of said Section 10 and considering the South line of the Southwest Quarter of said Section 10 as bearing North 89°25'17" East and with all bearings contained herein relative thereto; thence North 01°39'24" West 113.20 feet to a point on the Northerly right-of-way line of U.S. Highway 34; thence along said Northerly right-of-way line North 05°49'54" East 18.19 feet; thence North 89°29'02" East 149.43 feet to the beginning of a curve concave to the Northeast having a central angle of 89°48'03" and a radius of 100.00 feet; thence Northwesterly along the arc of said curve 156.73 feet to the end of said curve; said end of curve being a point on the East right-of-way line of Rocky Mountain Avenue; thence along said East right-of-way line North 00°42'55" West 962.30 feet to the beginning of a tangent curve concave to the Southeast having a central angle of 87°07'06" and a radius of 75.00 feet; thence Northeasterly along the arc of said curve 114.04 feet to the end of said curve; said end of curve being a point on the South right-of-way line of East 18th Street; thence departing said curve and along said South right-of-way line North 86°24'11" East 1247.43 feet to the TRUE POINT OF BEGINNING; said TRUE POINT OF BEGINNING being the Northeast Corner of said Lot 4; thence along the East line of said Lot 4 South 00°00'00" East 856.22 feet to the Southeast Corner of said Lot 4; said point being a point on the North line of said Lot 5; thence along the North line of said Lot 5 North 84°25'37" East 769.89 feet to the Eastmost corner of said Lot 5; said point also being a point on the right-of-way line of Interstate 25 frontage road; said point also being a point on a curve concave to the Northwest having a central angle of 23°49'26" and a radius of 586.70 feet; a radial line passing through said point bears South 29°14'45" East; thence Southwesterly along the arc of said curve 243.95 feet to the end of said curve; a radial line passing through said end of curve bears South 05°25'19" East; thence departing said curve South 84°25'25" West 474.48 feet to the beginning of a curve concave to the Southeast having a central angle of 85°00'15" and a radius of 204.30 feet; a radial line passing through said point bears North 05°56'51" West; thence Southwesterly along the arc of said curve 303.10 feet to the end of said curve; a radial line passing through said end of curve bears South 89°02'54" West; said end of curve also being the beginning of a reverse curve concave to the Northwest having a central angle

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**EXHIBIT C (continued)**

Page 2

of 70°00'20" and a radius of 112.20 feet; a radial line passing through said point bears South 89°36'08" East; thence Southwesterly along the arc of said curve 137.09 feet to the end of said curve; a radial line passing through said end of curve bears South 19°35'48" East; thence departing said curve and along the Northerly right-of-way line of U.S. Highway 34 North 87°03'34" West 87.69 feet; thence continuing along said Northerly right-of-way line South 89°29'02" West 148.39 feet; thence departing said Northerly right-of-way line North 00°30'58" West 110.38 feet; thence North 26°25'37" West 100.00 feet to a point on a curve concave to the North having a central angle of 51°44'36" and a radius of 221.00 feet; thence Westerly along the arc of said curve 199.58 feet to the end of said curve; a radial line passing through said end of curve bears North 25°15'14" East; said end of curve to be known hereafter as Point A; said end of curve also being the beginning of a compound curve concave to the Northeast having a central angle of 33°35'31" and a radius of 280.00 feet; thence Northwesterly along the arc of said curve 164.16 feet to the end of said curve; a radial line passing through said end of curve bears North 58°31'26" East; thence departing said curve South 84°41'16" West 392.10 feet; thence South 88°15'21" West 125.12 feet to a point on the East right-of-way line of Rocky Mountain Avenue; thence along said East right-of-way line North 00°42'55" West 788.44 feet to the beginning of a curve concave to the Southeast having a central angle of 87°07'06" and a radius of 75.00 feet; thence Northeasterly along the arc of said curve 114.04 feet to the end of said curve; thence tangent from said curve North 86°24'11" East 1247.43 feet to the POINT OF BEGINNING;

Excepting therefrom a portion of said Lots 4 and 5 more particularly described as follows:

Beginning at the aforementioned Point A; thence North 24°53'53" East 60.00 feet to the TRUE POINT OF BEGINNING; said TRUE POINT OF BEGINNING being the beginning of a curve concave to the Northeast having a central angle of 88°25'14" and a radius of 220.00 feet; thence Northwesterly along the arc of said curve 339.51 feet to the end of said curve; said curve being subtended by a chord that bears North 20°54'39" West 306.81 feet; said end of curve being the beginning of a compound curve concave to the Southeast having a central angle of 86°49'34" and a radius of 45.00 feet; thence Northeasterly along the arc of said curve 68.19 feet to the end of said curve; said curve being subtended by a chord that bears North 66°11'47" East 61.85 feet; said end of curve being the beginning of a reverse curve concave to the North having a central angle of 38°33'37" and a radius of 250.00 feet; thence Southeasterly along the arc of said curve 168.25 feet to the end of said curve; said curve being subtended by a chord that bears South 89°40'15" East 165.09 feet; said end of curve being the beginning of a reverse curve concave to the Southwest having a central angle of 75°19'12" and a radius of 45.00 feet; thence Southeasterly along the arc of said curve 59.16 feet to the end of said curve; thence tangent from said curve South 33°37'51" East 70.09 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 149°01'03" and a radius of 161.00 feet; thence Southwesterly along the arc of said curve 418.74 feet to the end of said curve; said curve being subtended by a chord that bears South 40°52'40" West 310.30 feet; said end of curve also being the TRUE POINT OF BEGINNING.

02/01/05 08:40

303 887 8208

LANDMARK ENG.

008/008

**EXHIBIT C(continued)**

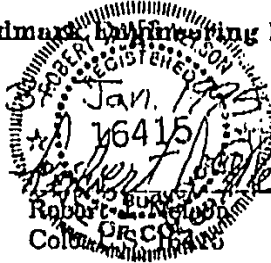
Page 3

The above described tract of land contains 27.992 acres.

The above described tract of land will be known as Lot 1, Block 3; Lot 1, Lot 4, Tract A, Lot 5 and Lot 6 of Block 1; and all of Foxtail Drive and Stonecreek Circle, McWhinney Second Subdivision.

Landmark Engineering Ltd.

By:



RJN/ej

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## EXHIBIT C

Legal description of a tract of land owned individually by Derek C. McWhinney, described as Lot 2, Block 1, McWhinney Second Subdivision, consisting of approximately 122,785 square feet or 2.819 acres and Lot 3, Block 1, McWhinney Second Subdivision, consisting of approximately 95,403 square feet or 2.190 acres.



26.  
49

**EXHIBIT C****MCWHINNEY 2ND SUBDIVISION**

			PRORATA
<u>LEGAL DESC.</u>	<u>ACRES</u>	<u>SQ.FT.</u>	<u>RATIO</u>
LOT 1, BLOCK 2	2.163	94,242	8.3%
LOT 1, BLOCK 3	9.932	432,643	37.9%
LOT 1, BLOCK 1	4.034	175,700	15.4%
LOT 2, BLOCK 1	CITY - EXEMPT		
LOT 3, BLOCK 1	CITY - EXEMPT		
LOT 4, BLOCK 1	3.059	133,259	11.7%
LOT 5, BLOCK 1	3.736	162,748	14.3%
LOT 6, BLOCK 1	<u>3.263</u>	<u>142,119</u>	<u>12.5%</u>
TOTALS	<u>26.187</u>	<u>1,140,711</u>	<u>100.0%</u>