

RESOLUTION NO. 2018-04- 

**RESOLUTION OF STONE CREEK METROPOLITAN DISTRICT  
ACKNOWLEDGING AND ADOPTING THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF STONE CREEK RANCH**

1. Stone Creek Metropolitan District (the “**District**”) is a duly and regularly created, established, organized, and existing metropolitan district, existing as such under and pursuant to Title 32, Article 1 of the Colorado Revised Statutes, as amended (“**C.R.S.**”).

2. Choke Cherry Investors, LLC, a Colorado limited liability company (the “**Developer**”), the master developer of the Stone Creek Ranch project (the “**Property**”) has caused to be recorded the Declaration of Covenants, Conditions, and Restrictions of Stone Creek Ranch recorded on March 7, 2018 at Reception No. 2018013714 of Douglas County, Colorado real property records, as the same may be amended from time to time (the “**Declaration**”) applicable to the real property within the District.

3. The Declaration declares that the Property is and shall be subject to the Declaration and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained, altered and otherwise enjoyed in accordance with and subject to the covenants and use restrictions contained therein.

4. The Declaration provides that Stone Creek Metropolitan District shall enforce each of the provisions provided therein.

5. Section 32-1-1004(8), C.R.S. authorizes Title 32 metropolitan districts to furnish covenant enforcement and design review services within the district if the declaration, rules and regulations, or similar document containing the covenants to be enforced for the area within the metropolitan district name the district as the enforcement or design review entity.

6. The Declaration assigns to the District all duties, rights and obligations to enforce the Declaration and to promulgate the Guidelines with respect to real property within the boundaries of the District that is subject to the Declaration.

7. The Board of Directors of the District (the “**Board**”) wishes to adopt the Declaration as an official policy of the District and to acknowledge the duties, obligations and rights assigned to the District pursuant to such Declaration.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE STONE CREEK METROPOLITAN DISTRICT, DOUGLAS COUNTY, COLORADO, AS FOLLOWS:

A. The foregoing Recitals are incorporated into and made a substantive part of this Resolution.

B. The Board hereby determines that it is in the best interests of the District and its property owners and users for the District to accept the assignment of all duties, rights and

obligations under the Declaration and to provide the covenant enforcement and design review services established thereby.

C. The Board hereby authorizes and directs the officers of the District and District staff to take all actions necessary to execute the duties, rights and obligations assigned to the District by the Declaration.

D. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase, or word hereof, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Resolution, which shall be given effect in accordance with the manifest intent hereof.

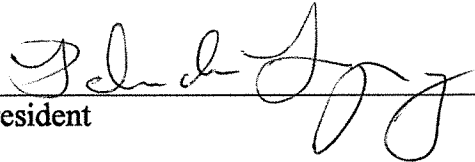
E. This Resolution shall be effective upon recording of the Declaration in the Office of the Clerk and Recorder of Douglas County, Colorado.

**[SIGNATURE PAGE FOLLOWS]**

[SIGNATURE PAGE TO RESOLUTION NO. 2018-04-02]

APPROVED AND ADOPTED on April 19, 2018.

**STONE CREEK METROPOLITAN  
DISTRICT**, a quasi-municipal corporation and  
political subdivision of the State of Colorado

By:   
\_\_\_\_\_  
President

Attest:

  
\_\_\_\_\_  
Secretary

After recording, please return to:

Kristin N. Schelwat  
Schelwat Law, LLC  
16350 E. Arapahoe Road, Suite 108-102  
Foxfield, CO 80016

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
OF STONE CREEK RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF STONE CREEK RANCH (this "Declaration") is made this day of March, 2018 by Choke Cherry Investors, LLC, a Colorado limited liability company ("Declarant"), whose address is 6700 E. Scott Avenue, Parker, Colorado 80134, and the Stone Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("District").

**RECITALS**

A. Declarant is the owner of the real estate in the County of Douglas, State of Colorado comprised of the residential lots legally described on Exhibit A (collectively, the "Lots").

B. District is the owner of certain common area tracts benefitting the Lots, which tracts are legally described on Exhibit B attached hereto and incorporated herein by reference (the "Tracts"). District as the owner of such Tracts desires to encumber the Tracts pursuant to the terms and conditions of this Declaration, and hereby joins Declarant in executing this Agreement. The Lots and the Tracts are collectively referred to herein as the "Property".

C. The Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions.

D. This Declaration does not create a Common Interest Community, as defined by the Colorado Common Interest Ownership Act at C.R.S. §38-33.3-103(8); because there are no mandatory assessments created under this Declaration, and there is no obligation to pay for real estate taxes, insurance premiums, maintenance or other real estate or common area created under this Declaration; therefore, the covenants, conditions and restrictions set forth herein (collectively, "Covenants") shall not be governed by the Colorado Common Interest Ownership Act.

E. Pursuant to C.R.S. § 32-1-1004(8), and other provisions of Title 32 of C.R.S. (the "Special District Act"), it is the intention of the Declarant to empower the District (as hereinafter defined) to provide certain services to the residents of the District (collectively, the "Services," as hereinafter more fully defined), which may include

covenant enforcement, architectural design review, and trash collection.

F. Declarant hereby declares that the Property shall be held, sold, and conveyed, subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions, as set forth herein.

## **Article I GENERAL**

### Section 1.1 Purposes

(a) This Declaration is executed (i) in furtherance of a common and general plan for the development of the Property as a community; (ii) to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Property; (iii) to set forth the District's responsibilities and authority to govern and manage the Property; (iv) to define certain duties, powers, and rights of the Owners; and (v) to define certain duties, powers, and rights of Declarant.

Section 1.2 Submission of Property. Declarant declares that all of the Property shall be held and/or conveyed subject to this Declaration. This Declaration is made for the purpose of protecting the value and desirability of the Property.

Section 1.3 Covenants Running with Property. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.

Section 1.4 Binding Upon and Inure to the Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of Declarant, all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assignees. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, district, or other entity, including the District.

## **Article II DEFINITIONS**

Capitalized terms not otherwise defined herein have the meanings set forth in this Article II.

Section 2.1 "Administrative Registration Fee" means the fee payable by an Owner upon acquisition of a Unit or any refinancing of such Unit as set forth in Section 8.2 below.

Section 2.2 "Builder" means any Person who: (i) acquires one or more Lots for

the purpose of constructing at least one residence on each such Lot for sale, and/or rental, to the public, and/or (ii) is designated as a "Builder" under these Covenants in a written designation that is signed by the then-Declarant and recorded in the office of the Clerk and Recorder of Douglas County, Colorado.

Section 2.3 "Common Elements" shall mean the Tracts.

Section 2.4 "Community" or "Property" means real estate, Improvements, and Common Elements described on the attached Exhibits A, B, and C as supplemented and amended, as the same may now or hereafter be improved, and as the Declarant or other person may now or hereafter subdivide or re-subdivide any portion thereof; provided, however, that the "Property" shall not include any property that has been withdrawn as provided in this Declaration or as may be permitted by law. The name of the Community is Stone Creek Ranch.

Section 2.5 "Covenants" means the covenants, conditions and restrictions set forth in this Declaration, as amended and supplemented.

Section 2.6 "Design Guidelines" are those certain requirements for Improvements on a Lot relating to design, color, materials, landscaping, etc. that must be adhered to when constructing any initial Improvement on a Lot or making any subsequent changes or additions to existing Improvements on a Lot.

Section 2.7 "Design Review Committee" or "DRC" shall be a subcommittee of the Board which shall have at least three (3) members appointed by the Board to implement and enforce the Design Guidelines adopted by the Board from time to time. The Design Review Committee shall be appointed by the Declarant until conveyance of all of the Units to the first Owners thereof, other than the Declarant or any Builder or any other Person who acquires one or more Units for the purpose of constructing at least one residence on each such Unit, and thereafter appointed by the District. The DRC shall review, consider and approve, or disapprove, requests for architectural approval, as more fully provided in these Covenants.

Section 2.8 "District" means Stone Creek Metropolitan District, and/or any other metropolitan district(s), to which the then-District may transfer or assign any or all of the rights and duties of the District under these Covenants. Each such assignment or transfer, if any, shall be effective upon recording in Douglas County, Colorado, of a document of transfer or assignment, duly executed by the then-District. In addition to the authority to provide the Services (as defined herein), the District has such other authority with respect to the provision of services as may be permitted by the Special District Act.

Section 2.9 "Board" means the board of directors of the District.

Section 2.10 "Governing Documents" means the Service Plan (as defined herein), the plat of Stone Creek Ranch, the Rules and Regulations, and this Declaration, and any other documents now or hereafter adopted by the District or DRC, as any of the

same may be supplemented or amended from time to time.

Section 2.11 "Improvement(s)" means all structures and improvements located upon the Property and any appurtenances thereto of every type or kind including, but not limited to, patio covers, awnings, the painting of any exterior surfaces of any visible structure, roofing, trash containers, mailboxes, satellite dishes, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, parking spaces, garages, driveways, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, plantings, trees and shrubs, poles, signs, exterior tanks, solar equipment, grading, filling, or similar disturbance to the surface of the land, exterior air conditioning, and utility lines and facilities – all as the same may be constructed, repaired, renovated, or replaced from time to time.

Section 2.12 "Lot" means each residential lot that is platted within the Property described on the attached Exhibit A, which is subject to this Declaration, or a residential or commercial lot platted and subsequently annexed into the Community and subjected to this Declaration with the exception of any property publicly dedicated on a recorded plat.

Section 2.13 "Owner" means each fee simple title holder of a Unit, including Declarant, any Builder and any other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation.

Section 2.14 "Permitees" means any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors, of an Owner.

Section 2.15 "Person" means a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated District, or any other entity or any combination thereof, and includes each Owner, the Declarant, each Builder, the DRC, the District, and the Board.

Section 2.16 "Residence" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence

Section 2.17 "Rules and Regulations" has the meaning set forth in Section 4.6 below.

Section 2.18 "Security Interest" means an interest in one or more Units, real estate or personal property, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

Section 2.19 "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest or any

successor to the interest of any such Person under such Security Interest.

Section 2.20 "Service Plan" means the Stone Creek Metropolitan District Service Plan approved by Douglas County, Colorado on September 23, 2014, as it may be amended from time to time.

Section 2.21 "Services" means the services that the District is empowered to provide pursuant to its Service Plan, C.R.S. §32-1-1004, as amended, and other provisions of the Special District Act, as amended, including covenant enforcement, design review, and trash collection.

Section 2.22 "Special Declarant Rights" means those rights as described in Section 10.3(e) below. All of the Special Declarant Rights may be exercised by a Declarant or the District with respect to any portion of the Property now or hereafter within the Community. A Declarant or the District may exercise any or all of these Special Declarant Rights at any times. Such rights shall terminate automatically either twenty (20) years after the date of recording of this Declaration or at such time as any Declarant or any Builder no longer owns any portion of the Lots or Tracts, whichever occurs first.

Section 2.23 "Unit" means each portion of the Property which is designated as a Lot on a recorded plat that may be sold or conveyed without violation of the provisions of law pertaining to the subdivision of land, including each residence (attached or detached) now or hereafter located thereon, but does not include any Common Elements or any publicly dedicated property.

### **Article III**

#### **COMMON ELEMENTS, UNITS, AND ALLOCATED INTERESTS**

Section 3.1 Rights of Ingress and Egress. Declarant and every Owner and its Permittees, shall have a perpetual right and easement of enjoyment in and to the Common Elements for the purpose of entering and exiting such Owner's Unit, the appurtenant garage, parking areas, any recreational facilities, and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Unit; provided, however, that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, duties, and obligations contained in this Declaration;

(b) The right of the District to adopt, from time to time, rules and regulations concerning the Units, Common Elements, and/or any other property owned by the District, and any facilities located thereon, as the District may determine is necessary or prudent;

(c) The right of the right of the District to enter into permits, licenses and use agreements with other entities, including without limitation, Cielo Metropolitan District



and/or the Cielo Homeowners' Association, Inc., to use such other entities' recreational areas at such fees that may be established and/or to permit such other entities' members to use the recreational areas that are Common Elements within the District upon such terms and conditions as the Declarant and/or the District may deem appropriate.

Section 3.2 Conveyance of Common Elements. The Common Elements shall be conveyed to and accepted by the District at such time(s) as determined appropriate by the District and Declarant. Notwithstanding the foregoing, the granting of permits, licenses, and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the District will not be deemed to be a conveyance.

Section 3.3 Inseparability. Each Unit and all appurtenances, rights, and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered, or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance, or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance, or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties, and obligations created by law or by this Declaration.

Section 3.4 Number of Units. The number of Units initially included in the Community, and the maximum that may be included, is three hundred fifty (350).

#### **Article IV THE DISTRICT**

Section 4.1 District Management and Maintenance Duties. Subject to the rights and obligations of Owners as set forth in this Declaration, the District shall:

(a) Be responsible for the management, control, maintenance, repair, replacement, and improvement of the Tracts from the time conveyed to the District, including, but not limited to, landscaping and hardscaping of Tracts, irrigation of any landscaping comprising a part of the Tracts, entry features, perimeter fencing, concrete sidewalk, common area driveways, and gravel maintenance, Community recreational facilities, and park, playground and trail maintenance for the Community.

(b) Arrange for a garbage collection service to remove garbage deposited by Owners in receptacles provided through the District; and

(c) Be responsible for covenant compliance for all Units within the Community, including holding meetings, hearings and assessing fines as needed for non-compliance with this Declaration.

Section 4.2 Management Agreements. The District may have professional management of its business affairs.

Section 4.3 Other Contracts, Licenses, and Agreements. The District, through the Board, shall have the right to enter into, make, perform, or enforce (a) contracts, leases, licenses, agreements, easements, and/or rights-of-way, for the use by Owners, other persons, their family members, guests, and invitees, for pedestrian and vehicular access, ingress and egress to and from the Community, or any portion thereof, for vehicular parking, or for on-site residential management; (b) agreements with other homeowners' associations and/or metropolitan districts for the use of all or some of the recreational facilities that are Common Elements in the Community provided that the other homeowners' associations and/or metropolitan districts allow reciprocal use of their recreational facilities for the benefit of Owners cost-free or at a nominal cost or that such other homeowners' association and/or metropolitan districts pay the District the equivalent amounts that Owners of the District pay on a per Unit basis for use of such facilities (or an amount per user equal to the monthly District fees charged by the District on a per-Unit basis); (c) contracts, licenses, leases, or other agreements for the provision of cable or satellite telecommunication service to the Community, or any portion thereof; (d) contracts, licenses or other agreements for the private removal of snow on the roads or for landscaping services to the Common Elements within the Community; and (e) contracts, licenses or other agreements for the private removal of garbage and recycling within the Community. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Board, and may include provisions by which the District covenants and agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the improvements thereto and thereon, providing such service, or other amounts which the Board determines are necessary to secure such contracts, licenses, and agreements.

Section 4.4 Acquiring and Disposing of Real and Personal Property. The District may acquire, lease, own, and hold for the use and benefit of all Owners, tangible and intangible personal property and real property (including the purchase or lease of a Unit that may be used as a manager's office and/or residence) for such uses and purposes as the Board may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Board in its reasonable discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

Section 4.5 New Additions to Common Elements. The District shall have the right to construct new additions to the Common Elements.

Section 4.6 Governance Policies. The Board may promulgate and enforce, including, without limitation, enforcement by levying and collecting charges and fines for the violation thereof after affording an Owner a reasonable opportunity to be heard, reasonable rules and regulations governing the use of the Units, residences, Common Elements, and any property owned by the District or the Owners in common ("Rules and

Regulations"), which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. In the event of any conflict between the Rules and Regulations and this Declaration, the terms of this Declaration shall control.

Section 4.7 Authenticated Electronic Representation. Notwithstanding anything to the contrary contained in the Governing Documents, to the extent not prohibited by applicable law, the District may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

## **Article V INSURANCE**

Section 5.1 Insurance. The District may maintain insurance in connection with its functions. Such insurance to be maintained by the District may include property insurance, commercial general liability insurance, fidelity coverage and personal liability insurance to protect directors and officers of the District from personal liability in relation to their duties and responsibilities in acting as directors and/or officers on behalf of the District. In addition, the District may maintain insurance against such other risks as the Board of Directors may determine. Nothing herein shall be construed or interpreted as a waiver of the District's governmental immunity as provided by law.

Section 5.2 Insurance to be Maintained by Owners. Insurance coverage on each Owner's Unit, and the Improvements thereon, as well as on personal property belonging to an Owner to provide for replacement cost coverage, and public liability insurance coverage on each Unit, is the responsibility of the Owner of such Unit.

## **Article VI MECHANICS' LIENS**

Section 6.1 Mechanics' Liens. No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof or his agent, contractor, or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the District from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or for materials furnished in work on the first Owner's Unit.

Section 6.2 Enforcement by the District. In relation to any mechanic's lien filed against all or any portion of the Common Elements, if the District determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a

reasonable basis for such dispute, the District may enforce the indemnity provided by Section 6.1 hereof by collecting from the Owner of the Unit on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien on the Common Elements, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien.

**Section 6.3 Effect of Part Payment.** If a lien attributable to labor performed and/or materials furnished on the Community, or any portion thereof, is recorded against two or more Units, the Owner(s) of any of the affected Units may pay to the lienholder the amount of the lien attributable to such Owner's Unit, and the lienholder shall release such Unit from the lien. The amount required to be paid by any such Owner in order to obtain release of his Unit from any such lien shall be equal to the quotient of (a) the amount of the lien, divided by (b) the total number of Units affected by the lien. Partial payment and release of any such lien with respect to any Unit(s) shall not prevent the lienholder from enforcing his rights against any Unit for which payment has not been received or against any Unit who requested the work or labor provided.

## **Article VII EASEMENTS AND LICENSES**

**Section 7.1 Recorded Easements.** In addition to all easements, licenses, and rights-of-way of record set forth in this Declaration, the Property, and all portions thereof, shall be subject to all matters of record affecting the Property, all easements, licenses, obligations, and rights-of-way of record and as shown on the plat, and to any subordinate declaration affecting all or a portion of the Community.

**Section 7.2 Encroachments.** If any portion of the Common Elements Improvements encroaches upon any Unit(s), or if any portion of the Improvements on a Unit encroaches upon any other Unit(s), or any portion of the Common Elements, or if any encroachment occurs in the future as a result of: (a) shifting, settling, or other movement of any part of an Improvement; (b) alteration, reconstruction, or repair to the Common Elements; or (c) repair or restoration of part of a building after damage by fire or other casualty, or condemnation or eminent domain proceedings, and further provided that such encroachment does not exceed two feet in width, then, in any of said events, a valid easement is hereby created and does exist for the encroachment and for the maintenance of the same, as long as the encroachment exists, as long as the physical boundaries of the Units after the construction, reconstruction, rebuilding, alteration, or repair, will be in substantial accord with the description of those boundaries that appears in the plat. If any one or more of the Units, any building, or other improvements comprising part of the Community, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof encroaches as provided in the preceding sentence, a valid easement for such encroachment is hereby created and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust, or other security instruments relating to Units, the actual

location of any Improvements comprising a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered.

**Section 7.3 Emergency Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

**Section 7.4 Utilities.** There is hereby created a blanket easement for the benefit of the Owners upon, across, and through the Common Elements for the installation, replacement, repair, and maintenance of utilities, including but not limited to water, sewer, gas, storm water drainage, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment, and appurtenances on the Common Elements necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits, and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority of Declarant shall cease and terminate upon the earliest of ten (10) years after recordation of this Declaration in the County of Douglas, Colorado, conveyance by a Declarant of all Units (after Declarant has added all Units to the Community that it has a right to add pursuant to its Development Rights hereunder) to Owners other than a Declarant, or when Declarant elects to surrender such right, at which time said reserved right shall vest in the District. The easement provided for in this Section 7.4 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Common Elements.

**Section 7.5 Maintenance Easement.** An easement is hereby granted to the District and its officers, directors, agents, employees, and assignees upon, across, over, in, and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions that the District is obligated or permitted to perform pursuant to this Declaration, as the case may be, including the right of the District to construct and maintain on the Common Elements maintenance and storage facilities for use by the District.

**Section 7.6 Drainage Easement.** An easement is hereby granted to the District, its officers, agents, employees, successors, and assignees to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage Improvements to improve the drainage of water on the Property including, without limitation, any drain pans, pipes, inlets, or other drainage Improvements that may be installed on a Unit.

**Section 7.7 Easements of Access for Repair.** Each Owner hereby grants to the District, and to its agents, employees and contractors, a right and easement on, over, under, across and through such Owner's Unit for and incidental to inspection and/or

enforcement, incidental to any term or provision of any of the Governing Documents. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive entry or for entry required as a result of an emergency. The interior of any residence or other improvement on a Unit shall not be subject to the easements provided for in this Section.

Section 7.8 Declarant's Rights to Complete the Community. Declarant, for itself and its successors and assignees, shall have and hereby reserves a right and easement of ingress and egress over, in, upon, under, and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Community, the sale of the Units, the exercise of the Development Rights and Special Declarant Rights set forth herein; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner or such Owner's Permittees, to or of such Owner's Unit or the Common Elements. The rights under this Section 7.8 shall terminate upon conveyance by Declarant of all Units (after Declarant has added all Units to the Community that it has a right to add pursuant to its Development Rights) to Owners other than a Declarant or ten (10) years after the recording of this Declaration, whichever occurs first.

Section 7.9 Easement for Unannexed Property. Declarant and the District hereby reserves, for the use and benefit of any property owned by Declarant and located proximately to the Community which may be annexed pursuant to Section 10.3(e) ("Annexable Area"), a non-exclusive, perpetual easement for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, alleys, sidewalks, access ways and similar Common Area, now or hereafter constructed, erected, installed or located in or on the Community, and on, over, across and under the Common Area for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement, reading, and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein collectively the "Annexable Area Easement"). By virtue of this Annexable Area Easement, Declarant and the District generally intends to provide for pedestrian and vehicular access and for utilities services to those portion(s) of the Annexable Area which have not been included in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration; and expiration of a Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

Section 7.10 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

**Article VIII**  
**RESTRICTIVE COVENANTS AND FEES**

**Section 8.1 Residential and Limited Non-Residential Use.** Subject to Section 7.8 and Section 8.4, and Article X hereof, Units shall be used for residential purposes only, including uses that are customarily incident thereto, and shall not be used at any time for business, commercial, or professional purposes. Notwithstanding the foregoing, an Owner may use his or her Unit for a professional or home occupation, as long as the applicable zoning ordinances permit such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Community is created thereby. Garages shall be used solely for parking motor vehicles and for storage incidental to residential use, provided such storage does not prevent the simultaneous parking of motor vehicles.

**Section 8.2 Administrative Registration Fee.** The District may charge a reasonable Administrative Registration Fee to each Owner (other than to a builder who is constructing the initial Unit) upon the conveyance or financing or refinancing of a Unit to such Owner for the purposes of paying any cost or expense incurred by the District to its management company for the purpose of registering and setting up such Owner's membership records. Any such Administrative Registration Fee shall be established by vote of the Board of the District from time to time. The Administrative Registration Fee shall be paid by the new Owner upon each conveyance of the Unit, beginning when the builder sells the Unit to the initial Owner, or at the time any Unit is refinanced and a new lender takes a security interest in the Unit.

**Section 8.3 Owner's Maintenance Obligations; Prohibition of Certain Activities.**

(a) Except as provided in Section 4.1, each Owner shall be responsible for maintenance, repair, and replacement of his or her own Unit and all personal property comprising or located on his or her Unit. Each Owner shall keep his or her Unit exteriors broom-clean, shall be responsible for his or her own window-washing, and shall keep his or her Unit free of litter and debris including, without limitation, seasonal removal of fallen leaves.

(b) Except as provided in Section 4.1, each Owner shall be responsible for maintaining the garage allocated to his or her Unit in an attractive, clean condition, free of debris and unsightly articles of any kind and shall maintain, at such Owner's cost, the garage door and garage door opener of such Owner's garage. The storage of gasoline and other flammable materials or noxious or hazardous wastes or materials of any kind within the Unit, garage, or other storage space is strictly prohibited, except that gasoline and motor oil used as fuel for an Owner's mechanical lawn maintenance or mechanical snow removal equipment may be stored in such Owner's Unit or the appurtenant garage, or other storage space on such Owner's Unit in quantities not to exceed five gallons in the aggregate.

(c) No recreational vehicles, boats, or trailers of any type or any motor vehicle designed or used for commercial purposes shall be parked in driveways, on a Lot or on any Common Elements at any time, except temporary parking for loading or unloading or as otherwise approved by the DRC. Inoperable vehicles shall not be parked within the Community for more than 72 hours except within a Unit Owner's garage.

(d) Each Owner shall dispose of his or her garbage by placing it into containers of such dimensions and at such locations as the District shall from time to time designate. Garbage cans shall be stored out of site from the road except on collection days. The garbage shall be removed by a garbage collection service provided by the District.

(e) Nothing shall be done or kept on any Unit or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner or Owner's Permittees. Each Owner shall indemnify and hold the District and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by Owner or Owner's Permittees.

(f) No modifications may be made to any of the Common Elements by an Owner, other than Declarant, without the prior written consent of the Board.

Section 8.4 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for a Declarant and its employees, agents, assigns, and contractors to perform such reasonable activities and to maintain upon portions of the Community such facilities as a Declarant deems reasonably necessary or incidental to the completion and sale of Units and the exercise of Special Declarant Rights and Development Rights, specifically including without limiting the generality of the foregoing, maintaining business offices, storage spaces, signs, model units, sales offices, parking areas, construction offices, and lighting facilities. Declarant reserves the right to relocate any sales office, model, or management office to any other Unit then owned by a Declarant. The rights retained by Declarant in this Section 8.4 shall terminate upon conveyance by a Declarant of all Units to Owners other than a Declarant or ten (10) years after the recording of this Declaration, whichever occurs first.

Section 8.5 Household Pets. No animals, livestock, poultry, or insects of any kind shall be raised, bred, kept, or boarded in or on the Community, except that domesticated dogs, cats, household birds (not chickens), or fish may be kept in any Unit, subject to all governmental ordinances, laws, and regulations and subject to rules and regulations that may be adopted by the Board, in its reasonable discretion, with regard to pets, and provided that no pets may be kept for commercial purposes or be permitted to become a nuisance, as reasonably determined by the Board. The Board shall have, and is hereby given, the right and authority to determine in its reasonable discretion that dogs, cats, or other household pets permitted herein are being kept in such number or in such



manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of this Section 8.5, and to take such action or actions as it deems reasonably necessary to correct the same, including prohibiting the pet(s) from being kept on a Unit. An Owner's license to keep household pets granted under this Section is revocable by the Board for violation of the terms hereof and shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s), as well as any costs incurred by the District as a result of such pet(s). Each Owner is responsible for cleaning up his or her pet's waste from his or her Unit, the Common Elements, and adjacent public ways. Each Owner must comply at all times with applicable ordinances, laws, and regulations governing pets. No animals shall be allowed to be tied or chained to any balconies, patios, porches, or other parts of the Community, and any animals so tied or chained may be removed by the District or its agents.

**Section 8.6 Use of Common Elements.** Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the District. No vehicle maintenance or repair is allowed within the Common Areas.

**Section 8.7 Exterior Changes.** Except for those Improvements erected, constructed, or installed by a Declarant or the initial home builder of a residence on a Lot in its completion of the Community, no exterior additions to, alterations, or decoration of any Unit, including but not limited to any structural alterations to any Unit or Common Element, any change to drainage, any changes in walls or other structures, nor installation of window mounted air conditioning units or awnings, or any exterior improvement of any type, or any interior improvements visible from the exterior shall be commenced, erected, placed, or maintained without the prior written approval of the DRC and subject to the applicable laws, ordinances, regulations, and restrictions, if any, limiting or precluding alteration of the exterior of any Unit. The DRC may require the Owner who requests the approval to (a) submit plans for the alteration to the DRC for review, (b) obtain insurance as reasonably required by the DRC/Board, and (c) post adequate surety. In reviewing any plans, the DRC/Board may engage the services of architects, attorneys, and engineers, and the reasonable cost of such services will be paid by the Owner requesting approval.

**Section 8.8 Fencing.** Owners shall have fences alongside and rear Lot lines. Fences shall be three-rail PVC fence and 5 ft PVC privacy fence as initially installed by the Declarant or Builder in accordance with the Master Fencing Plan attached hereto as Exhibit C, and may also contain wire mesh. Wire mesh shall not be required except for fences fronting the Cherry Creek common areas, which must contain such wire mesh. The fencing requirements under this Section 8.8 are more specifically described in the design guidelines for the Community adopted by the Design Review Committee, which design guidelines shall supersede this Declaration if different.

Section 8.9 Signs and Advertising.

(a) No signs, posters, billboards, advertising devices, or displays of any kind shall be erected or maintained anywhere within the Community so as to be evident to public view, except: (i) signs that may be approved in writing by the Board; or (ii) signs, posters, billboards, or any other type of advertising device or display erected by Declarant pursuant to Special Declarant Rights. An Owner, or Owner's agent, may place a single sign advertising a Unit for sale or for lease may be placed on a Unit, but the standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Board. No signage shall be allowed upon any Unit or Common Element for commercial purposes or that may detract from the aesthetic value of the Community or that may detract from the property value of the Units, as determined by the Board in its reasonable discretion.

(b) Notwithstanding the forgoing, as long as state law requires, the District shall not prohibit:

(1) the display of the American flag by an Owner on such Owner's Unit, in a window of the Owner's Residence, or on a balcony adjoining the Owner's Residence if the flag is displayed in a manner consistent with federal law, provided that the District may adopt reasonable Rules and Regulations regarding the placement and manner of display of the flag, and the Rules and Regulations may restrict the location and size of flags and flagpoles, but shall not prohibit installation of the same;

(2) the display by an Owner of a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's Residence, provided that the District may adopt reasonable Rules and Regulations regarding the size and manner of display of service flags, except that the maximum dimensions allowed shall not be less than nine inches by 16 inches; or

(3) the display of a political sign by an Owner on that Owner's Unit or in a window of that Owner's Residence, except the District may prohibit the display of political signs earlier than 45 days before the day of an election and later than ten (10) days after election day, provided that the District may regulate the size of political signs that may be placed on a Unit if the Rules and Regulations are no more restrictive than any applicable city or County ordinance. If an applicable city or County ordinance does not regulate the size and number of political signs on residential property, the District shall permit at least one political sign per political office or ballot issue that is contested in a pending election with the maximum dimensions of 36 inches by 48 inches.

Section 8.10 Lease. The term "lease" as used herein shall include any

agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Unit shall have the right to lease his Unit under the following conditions:

(a) All leases shall be in writing and a copy of the lease or lease form shall be delivered to the Board or the District's managing agent (with the economic terms of such lease deleted by the Owner, if so desired) prior to the effective date of the lease.

(b) All leases shall provide that the terms of the lease and lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration, and rules and regulations of the District, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease. Any lease or lessee that violates the provisions of this Declaration or rules and regulations adopted by the Board shall be deemed in default, and the District may bring an action to terminate such lease and the lessee's occupancy of the premises.

(c) No lease shall be for less than 30 days.

Section 8.11 Nuisances. No nuisance shall be allowed on the Community, nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful enjoyment or possession and proper use of the Community by its residents, as reasonably determined by the Board. As used herein, the term "nuisance" shall not include any activities of a Declarant or a Builder in regard to the completion of the Community or any uses of Unit permitted in this Declaration. All parts of the Community shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no activities reasonably deemed by the Board as offensive and no unlawful use shall be permitted or made of the Community or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

Section 8.12 Hazardous Activities. No activity shall be conducted, and no improvement shall be constructed, on any property within the Community that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Community, and no open fires shall be lighted or permitted within the Community except within barbeque grills properly operated. No part of the Community may be used for storage of explosives, gasoline, combustible material, or other volatile and/or incendiary materials or devices, except that gasoline and oil products used in yard maintenance equipment not to exceed five gallons may be stored by Owners in the Units or other storage spaces on their Units as provided in Section 8.3(b) above.

Section 8.13 Treatment of Wild Animals. This section applies to humane treatment of all wild animals anywhere within the Community and on private, District and/or common property. These provisions may not be changed or amended without Board approval.

(a) Hunting and Trapping. Recreational and/or commercial hunting and recreational and/or commercial trapping of any animal are prohibited.

(b) Attracting and Taming Wildlife. Taming or making pets of wild animals is prohibited. Young wild animals found or acquired cannot be kept and reared, but must be surrendered to professional rehabilitative care. Free-roaming acclimated and partly habituated wild animals that come and go at will are accepted. Keeping a native wild animal in confinement as a captive is prohibited.

(c) Feeding Wildlife. Feeding wild mammals, except squirrels and chipmunks, and feeding wild birds, except songbirds and hummingbirds is prohibited. Wildlife may be placed at risk by feeding that habituates animals to humans, resulting in diminution of animal's fear or normal caution around humans, by abnormally concentrating animals, by increasing risk of contact between wild animals, humans or pets, and other similar situations. Wildlife may not be indirectly fed by leaving food out for companion animals. Feeding wild songbirds and hummingbirds is allowed in moderation. Feeding must not lead to conflicts between animals and humans. The District may recommend proper foods and feeding schedules. The District may also suspend all bird feeding during any period of increased nuisance wildlife activity. Bird and squirrel feeders should be limited in type and number. Feeders and human-supplied water sources (including birdbaths) shall be kept clean so that disease is not transmitted. Feeders should be protected from "raiding" by mammals such as raccoons.

(d) Wildlife Conflicts. Resolutions to conflict between humans and wild animals shall first be attempted using non-lethal means, except under extreme and immediate circumstances where human safety or the safety of a companion animal is imminently threatened. Wildlife control, including non-lethal actions, shall not be conducted simply because a homeowner considers the mere presence of a wild animal to be a "pest" or "nuisance. Preferably, human-wildlife conflicts should be resolved by changing human practices (such as trash management and securing stored food), modifying habitats (changing plantings or managing landscapes), and/or structural modifications (fencing or other methods to exclude animals). Whenever practicable, the cause of human-wildlife conflict shall be sought and the conditions or circumstances that led to the conflict shall be removed.

(e) Controlling Wildlife Populations. Circumstances may arise where the community has evaluated a conflict situation and agreed to the need to intervene in and control a local population of wild animals (not merely an individual wild animal or small number of wild animals). The Community shall contact the Colorado Parks and Wildlife and not take these measures into their own hands.

(f) Nests and Dens. Nests of wild birds shall not be taken, moved or interfered with in any manner as stipulated under applicable state and federal law. No wild animal den or nest of unprotected bird species may be disturbed, moved, or altered except as part of a planned conflict abatement program, or under compelling circumstances of human health, safety, or security needs. Young shall not be taken or

moved from dens or nests but allowed to mature until they naturally disperse, except where the conditions listed above merit more urgent response. In these circumstances, the family integrity should be maintained by methods to prevent orphaning.

(g) Living with Wildlife. Owners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, properly storing garbage, pet food, livestock feed and other potential attractants.

(1) Owners must be aware of potential problems associated with the occasional presence of wildlife such as coyotes, deer, black bear, mountain lion, fox, skunks, raccoons, squirrel, and magpie. The following covenants along with the nuisances and animal/pets sections herein, are designed to minimize problems with wildlife and will help minimize problems homeowners could have with wildlife as well as helping homeowners protect themselves, their property, and the wildlife that live at the Community.

(2) There is potential for vegetation damage by wildlife, particularly from deer feeding on lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation with fencing, netting, and repellants to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

(3) Do not feed wildlife or offer supplements such as salt blocks, attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans which may be dangerous to both. State law prohibits purposely or knowingly attracting wildlife with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental food attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer may attract mountain lions.

(4) Compost piles can attract skunks, raccoons, and bears and are prohibited within the plat.

(5) Barbeque grills should be kept clean. Food spills and smells on the grill may attract wildlife.

(6) Gardens, fruit trees and orchards attract wildlife; produce should be harvested when ripe and kept off the ground to prevent odor from rotting vegetation attracting bear or skunk.

(7) Bird feeders and bird seed attract bears and homeowners should consider not using them from April through October. If used, bird feeders should be suspended a minimum of 20 feet above ground; be at least 4 feet from any support poles or points; and should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

(8) Pets shall be confined to help protect them from predatory wildlife. Pet food should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as skunks or raccoons. When feeding pets do not leave food out overnight, and consider feeding pets indoors so that wild animals such as bear, skunk or magpie do not learn to associate food with your home.

(9) Colorado Parks and Wildlife ("CPW") may be consulted for further information on living with wildlife. Pamphlets are available through CPW that can help homeowners "live with wildlife." Owners are advised that the subdivision is in proximity to the Cherry Creek which provides prime habitat for wildlife.

#### **Article IX AMENDMENT, DURATION, AND REVOCATION**

##### **Section 9.1 Amendment.**

(a) Except for amendments that may be executed by a Declarant or by the District under the provisions of this Declaration, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by: (i) vote or agreement of Owners of Units holding at least 67% of the votes in the District who are then authorized to vote; (ii) and any Builder provided that Builder's right to consent under this Section 9.1 shall expire on the first to occur of the conveyance by Builder of all Units to Owners or ten (10) years after the date this Declaration is recorded in the real property records of the County of Douglas, Colorado; and (iii) Declarant, provided that Declarant's right to consent under this Section 9.1 shall expire on the tenth (10<sup>th</sup>) anniversary of the date this Declaration is recorded in the real property records of the County of Douglas, Colorado.

(b) The District shall comply with any other notice or voting requirements for amendments as may be set forth in the Bylaws from time to time.

(c) Every amendment to the Declaration must be recorded in the Office of the Clerk and Recorder of Douglas County, Colorado, and is effective only upon recording. Except to the extent expressly permitted by this Declaration, no amendment may create or increase any Special Declarant Rights in the absence of unanimous consent of the Owners. Amendments to the

Declaration required by this Article IX to be recorded by the District shall be prepared, executed, recorded, and certified on behalf of the District by an officer of the District designated for that purpose or, in the absence of designation, by the president of the District.

(d) Notwithstanding anything to the contrary, any of the Governing Documents may be amended, in whole or in part, by the Declarant without the consent or approval of any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, including the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, and the federal national mortgage association. Such right of amendment shall terminate automatically as provided in Article 10 of this Declaration.

(e) Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the District designated for that purpose. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the District has received the requisite approvals. Amendments to this Declaration which may be made by a Declarant pursuant to this Declaration may be signed by a Declarant and shall require no other signatory.

Section 9.2 Technical Amendment. Declarant hereby reserves and is granted the right and power to record amendments to this Declaration without the approval or consent of any Owner, First Mortgagee, or any other person or entity for the purpose of making non-material changes (such as for correction of technical, typographical, or clerical errors), or for clarification of a statement, or for any changes to property not yet part of the Community. The District may unilaterally execute and record such amendments at any time prior to the conveyance by a Declarant of all Units to Owners (other than a Declarant) or ten (10) years after the date this Declaration is recorded in Douglas County, Colorado, whichever occurs first.

Section 9.3 Recording of Amendments. To be effective, all amendments to or revocation or termination of this Declaration must be recorded in the Office of the Clerk and Recorder of Douglas County, Colorado, and must contain evidence of the required approval thereof. The recording of a certificate of the secretary of the District, certifying that Owners representing the requisite percentage of the Units, and Eligible Holders representing the requisite percentage of Eligible Holders, if required, have given notarized, written consent to the amendment, shall satisfy the requirement of evidence of the required approval. The secretary of the District must further certify that originals of such written consents by Owners and Eligible Holders, along with the recorded amendment, are in the corporate records of the District and available for inspection.

Section 9.4 Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing

address with the District, and all statements, demands and other notices intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest shall, subject to Section 4.7 of this Declaration (Authenticated Electronic Representation), be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the District of a registered address, then any statement, demand or other notice may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit. All statements, demands, or other notices intended to be served upon the Board of Directors shall be sent by U.S. mail, postage prepaid, to Declarant who then owns any portion of the Property at its registered address.

**Article X**  
**DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

Section 10.1 Development Rights. In addition to the rights expressly reserved in this Declaration to Declarant, Declarant hereby reserves the following Development Rights (the "Development Rights"), which Development Rights are appurtenant to, benefit, and burden all of the Property that is subject to this Declaration:

(a) The right to create or construct additional Common Elements and to convert Units into Common Elements.

(b) The right to withdraw all or any part of the Common Elements from the provisions of this Declaration if such Common Elements are conveyed or dedicated to a public entity or metropolitan district (other than the District) for ownership and maintenance, and the right to withdraw Units from the provisions of this Declaration if such Units are owned by Declarant.

(c) The right to reserve, grant, create, modify and use easements over, across, under or through the Community on property then-owned by Declarant; and the right to move any Lot lines(s) on Lot(s) owned by Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed.

Section 10.2 Special Declarant Rights. In addition to the rights reserved to Declarant in other Sections of this Declaration and notwithstanding anything to the contrary contained in this Declaration, Declarant has and hereby reserves the following Special Declarant Rights, which Special Declarant Rights are appurtenant to, benefit, and burden, all of the Property that is subject to this Declaration:

(a) the right to build and complete Improvements on the Units owned by Declarant;

(b) the right to maintain sales offices, sales trailers, construction offices, construction trailers, management offices, and models on the Units owned by Declarant or on the Common Elements;



(c) the right to maintain signs and advertising in the Community to advertise the Community or other communities developed, managed by, or affiliated with the Declarant;

(d) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulations of parking and/or recreational facilities and/or Common Elements that may or may not be a part of the Community;

(e) the right to exercise any additional reserved right created by any other provision of this Declaration.

Section 10.3 Additional Rights Reserved by Declarant. Declarant hereby reserves the following additional rights, which additional reserved rights are appurtenant to, benefit, and burden all of the Property that is now or hereafter subject to this Declaration:

(a) The right to repair any portion of the Community, the right to perform construction work, and the right to store materials, on Units owned by Declarant and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or First Mortgagee. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in or assigned under this Declaration. Declarant also has a reserved easement for access and utilities to any properties which Declarant may have the right to add, even if not added to the Community. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property, provided that such easements may not interfere with the building envelope on any Lot(s).

(b) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary.

(c) The right to amend the Declaration and/or any plat in connection with the exercise of any Development Right with respect to Units owned by Declarant.

(d) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, paths, walkways, trails, drainage areas, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions, and exclusions with respect to property then-owned by Declarant.

(e) The right to annex to the Property additional property, including any property which may previously have been withdrawn from the Property. Each such

annexation, if any, shall be accomplished by recording of an annexation document that expressly states that the property described therein shall be subject to this Declaration and all terms and provisions hereof. Declarant hereby reserves the right to Record one or more documents in order to clarify the effect of any annexation(s). Each such document(s), if any such document(s) are recorded by a Declarant, may state the legal description(s) of any property which has been annexed, and may include such other provisions as a Declarant may determine. Declarant reserves the right to withdraw the Property, or any portion thereof, including one or more Units, from this Declaration so long as the Declarant owns the portion of the Property to be withdrawn. Each withdrawal, if any, may be affected by the Declarant recording a withdrawal document in the Records. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawal property from this Declaration so that, from and after the date of recording a withdrawal document, the property so withdrawn shall not be part of the Property or the Community, or in any way subject to the terms hereof.

Section 10.4 Exercise of Declarant Rights. Declarant or its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 10.5 Special Builder Rights. In addition to the rights reserved to Builders in other Sections of this Declaration and notwithstanding anything to the contrary contained in this Declaration, Declarant has and hereby reserves to each Builder the following rights, which rights are appurtenant to, benefit, and burden, all of the Property that is subject to this Declaration and shall be exercised at the Builder's sole expense and liability:

- (a) the right of a Builder to build and complete Improvements on the Units owned by that Builder;
- (b) the right of a Builder to maintain sales offices, sales trailers, construction offices, construction trailers, management offices, and models on the Units owned by that Builder or, with Declarant's or the DRC's approval, on the Common Elements;
- (c) the right to maintain signs and advertising in the Community during periods of active sales of homes in the Community by such Builder;
- (d) the right to move any Lot lines(s) on Lot(s) owned by Builder, for the purpose of accommodating Improvements which are constructed or may be constructed;
- (e) the right to exercise any additional reserved right for Builders created by any other provision of this Declaration.

**Article XI**  
**ENFORCEMENT**

Section 11.1 Enforcement of Governing Documents.

(a) Statement of Clarification. Without modifying or restricting the scope of this Article XI and as a statement of clarification only, nothing contained in this Article XI is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a Claim (as defined herein), that the mandatory dispute resolution provisions contained in this Article XI are required. Declarant, the District, their officers, directors, affiliates, agents, and employees, all Owners and any Person not otherwise subject to this Declaration but who agrees to submit to this Article XI (including any subcontractors and suppliers), each such entity being referred to individually as a "Bound Party" and collectively as the "Bound Parties". Each Bound Party hereto agrees to encourage the amicable resolution of disputes involving the District and the Property and all Improvements thereon without the emotional and financial costs of litigation. Accordingly, except as otherwise agreed to in writing between any Bound Parties, each Bound Party covenants and agrees to submit all Claims to mediation, and if such mediation is not successful, final binding arbitration, as set forth below in this Declaration, and not to otherwise bring legal or equitable action in any court.

(b) Self-Help. Declarant, the District, or any authorized agent of either of them may enforce by self-help any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in the Governing Documents to the fullest extent permitted by this Declaration and the law.

(c) Claims. Except as specifically excluded in this Section or as otherwise agreed to in writing between any Bound Parties, including without limitation any purchase and sale agreement or similar document (each a "Superseding Agreement"), all claims, disputes and other controversies arising out of or relating in any way to the:

(1) interpretation, application or enforcement of this Declaration;

(2) design, construction, sale, maintenance, habitability or condition of any improvements within the Community or any alleged defect therein, including without limitation any "action" as defined in C.R.S. §13-20-802.5(1); or

(3) rights, obligations and duties of any Bound Party under this Declaration, and/or any breach or alleged breach thereof;

are hereinafter referred to as a "Claim" or "Claims." All Claims shall be subject to and resolved in accordance with the terms and provisions of this Article XI. Notwithstanding

any contrary provision of this Article XI, the following shall not be Claims and shall not be subject to the provisions of this Article XI:

- (1) any legal action by the District or Declarant to obtain a temporary or permanent restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the District or Declarant to act under and enforce the provisions of Article 8; and
- (2) any legal action to enforce an arbitration award provided in this Article 11.

Any question about whether a matter is a Claim, and/or whether such matter is covered by this Article 11, shall be determined by the arbitrator.

(d) Notice of Claim. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

- (1) the nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
- (2) the legal or contractual basis of the Claim (i.e., the specific authority out of which the claim arises); and
- (3) the specific relief and/or proposed remedy sought.

(e) Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall a Claim be made after the date when institution of legal or equitable action based on such Claim would be barred by the applicable statute of limitations or repose.

(f) Right to be Heard. Upon receipt of a Claim and prior to commencing any arbitration proceeding which may fall within the scope of Section 12.4, the Respondent shall have the right to be heard by the Claimant in an effort to resolve the Claim. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such party in negotiations. With respect to the foregoing, the Claimant and Respondent shall individually (i.e. without the joinder or inclusion of other Owners or such Claimant serving as a class representative for or becoming a class member of other Owners) mediate all Claims prior to proceeding under Section 12.4 below. The mediation shall be conducted by a single mediator. If such parties are unable to agree upon the selection of a mediator within fifteen (15) days of initiation of the Claim, then a single mediator shall be chosen in accordance with the rules governing the selection of an arbitrator under the Colorado Uniform Arbitration Act (the “CUAA”). All mediation fees shall be split equally among the Claimant and Respondent. Prior to conducting such mediation, and consistent with Colorado law, the parties thereto shall

agree in writing to limit the admissibility in arbitration or any court action of anything said, any admission made, and any documents prepared in the course of the mediation. If Claimant or Respondent commences an arbitration or other action based upon a Claim without first attempting to resolve the Claim through mediation, such party shall not be entitled to recover the costs of such action, even if the same would otherwise be available in such arbitration or other action.

(g) Right to Inspect. If the Claim is asserted against Declarant and/or its officers, directors, affiliates, agents, employees, contractors or consultants and is based on a defect in the design or the construction of any Improvements within the Property, Declarant shall have the right to access the affected area for purposes of inspecting the condition complained of, and the correction thereof, including any necessary redesign. This shall include, but not be limited to, notice prior to conducting any investigative or destructive testing. The Claimant shall meet with Declarant and/or its designees to discuss, in good faith, ways to resolve the Claim.

Section 11.2 Costs and Fees of Collecting Past Due Charges. Notwithstanding the foregoing, if an Owner fails to pay charges as described in Section 11.6 of this Declaration or any other sums due to the District in a timely manner, the District may require reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure without the necessity of commencing formal legal proceedings.

Section 11.3 Purpose of Fines and Penalties. The fines and penalties levied by the District are used to protect and maintain the recreation, health, safety and welfare of the residents of the Community through enforcement of the Declaration, Rules and Regulations and Guidelines.

Section 11.4 Liens. The District has the right and authority to levy and collect fines, to impose liens (as provided in C.R.S. Section 32-1-1001(l)(j)(I), as amended), to negotiate, settle and/or take any other actions with respect to any violation(s) or alleged violations( a) of the Governing Documents. No further recordation of any claim of lien is required. However, the Board or any officer of the DRC or any managing agent of the District, may prepare and record in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Unit, and a description of the Unit. If a lien is filed, the reasonable costs and expenses thereof shall be added to the due amount for the Unit against which it is filed and collected as part and parcel thereof. The District's lien may be foreclosed as provided by law.

Section 11.5 Certificate of Status of Fines and Penalties. The District shall furnish to an Owner, or such Owner's designee, or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the District's registered agent, a written statement setting forth the amount of unpaid fines and penalties, if any, currently levied against such Owner's Unit. The statement shall be furnished within a reasonable time after

receipt of the request and is binding on the District, the Board and every Owner. The District or its agents shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 11.6 Other Charges. To the extent permitted by law, the District may levy and assess charges, costs and fees, for matters such as, but not limited to, the following, in such amounts(s) as the Board may determine, including: reimbursement of charges that are made to the District by its managing agent or other Person; copying of District or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other charges incurred by the District.

Section 11.7 Remedies Cumulative. Each remedy provided for the enforcement of the terms this Declaration is cumulative and not exclusive.

## Article XII MISCELLANEOUS

Section 12.1 Period of the Community. The Community created by this Declaration shall continue until this Declaration is terminated in any manner provided in this Declaration or by law.

Section 12.2 Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to all other applicable provisions of law.

Section 12.3 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

Section 12.4 Mediation. If a dispute arises between the Owners, between a Bound Party and the District, or between Declarant and the District or any Bound Party relating to any provision of the Governing Documents (a "Dispute") that is not otherwise resolved informally or by a notice and hearing procedure specified in the Rules and Regulations, the parties thereto shall proceed in good faith to resolve the matter by mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the Dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the Dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate if the entire Dispute is not resolved within 30 days after the date written notice requesting mediation is sent by one party to the other(s) (the "Mediation Period"). Each party shall pay its own costs and expenses relating to the mediation proceedings.

Section 12.5 Arbitration. As a means to promote efficient cost-effective resolution of disputes pertaining to the Property and to encourage and foster the

development of housing and to further promote the affordability of housing, it is a requirement that the following claims involving the Property or any improvements thereon shall be submitted to binding arbitration in lieu of submitting any such claim to a judicial proceeding for any and all claims: (1) that are between two or more of the following persons or entities: (a) any owner of any portion of the Property; (b) any common interest community District created with respect to the Property; (c) the subdivider, Declarant or any contractor or anyone claiming under or through any such persons; (d) any party that constructs any residential dwelling units upon the Property; (e) any Construction Professional as defined in the Construction Defect Action Reform Act ("CADARA"), C.R.S. 13-80-802.5, et seq., as amended; and (2) that pertain to any of the following: (a) the Property; (b) any dwelling unit or improvement constructed on the Property, or common area development structure or improvement; (c) the District or any portion thereof; or (d) the Declaration or other documents governing the District. The foregoing shall not preclude any of the foregoing parties from endeavoring to resolve any such claims through either negotiation or mediation before submitting such claim to binding arbitration. Notwithstanding the foregoing, this restriction shall not be deemed to require that claims brought by the District to recover unpaid charges payable to the District or to obtain a temporary restraining order injunction from a court of law prohibiting a violation of such covenants, conditions and restrictions shall be subject to binding arbitration.

For purposes of this Declaration, binding arbitration shall mean submission of any claim described above be submitted to a single arbitrator who must be, at a minimum, a retired Colorado State District Court Judge or retired Federal District Court Judge or through the use of such organization that such retired Judge may be a member of, including such organizations as the Judicial Arbiter Group or its successors. In such arbitration, the costs and expenses of arbitration shall be borne equally by the parties and shall be conducted utilizing such rules of procedure as the arbitrator may reasonably adopt to promote the efficient and economical resolution of any such claim. This provision shall be binding upon all successors in interest, grantees, owners, heirs, assigns, and all others who acquire an interest in or to the Property.

Section 12.6 Amendment; Servitude in Gross. The rights, terms and provision of this Article XII are enforceable by Declarant, and shall not be amended without the written consent of Declarant. Further, this Article 12 and the rights, terms and provisions contained herein constitute a servitude in gross for the benefit of Declarant and its officers, directors, affiliates, agents, employees, contractors and consultants, successors and assigns and shall inure to the benefit of the foregoing, and all of the foregoing are third party beneficiaries thereof, regardless of ownership of any portion of the Property.

Section 12.7 Binding Effect. BY TAKING TITLE TO ANY PORTION OF THE COMMUNITY, EACH OWNER THEREOF ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 12 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP THE PROPERTY, CONSTRUCT IMPROVEMENTS AND SELL LOTS TO BUILDERS TO PERMIT THE CONSTRUCTION OF UNITS, AND THAT IN THE ABSENCE OF THE

PROVISIONS CONTAINED IN THIS ARTICLE XII, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP THE PROPERTY, CONSTRUCT IMPROVEMENTS OR SELL HOMES CONSTRUCTED ON THE LOTS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO SUCH PORTION OF THE PROPERTY, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 12 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHTS AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL OR ACTUAL CONSTRUCTION DEFECT AFFECTING THE IMPROVEMENTS OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION ANY UNIT.

Section 12.8 Limitation on an Owner's Liability.

(a) No Owner shall be liable to the District or other Owners for the expenses, costs, and fees incurred by the District or other Owners for maintenance, repair, or replacement of the Common Elements or any Unit caused by the negligent or willful act or omission of that Owner to the extent that the District or the other Owners would be reimbursed for such expenses, costs, and fees by such the insurance required to be carried pursuant to Article 5.

(b) The District and each Owner hereby waive any and all rights to recover against the other, and against their respective officers, directors, stockholders, partners, employees, agents, representatives for damage to such waiving party or loss of its property or the property of others under its control arising from any cause covered by any property insurance required to be carried by such waiving party hereunder or actually carried by such waiving party, to the extent of the limits of such property insurance. The foregoing waiver shall be effective only as long as it does not invalidate any insurance coverage carried by the waiving party and only as long as it is permitted by such party's insurance carrier without payment of an additional premium.

Section 12.9 Non-Waiver. Failure by a Declarant, the District, any Owner, First Mortgagee, or any other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 12.10 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

Section 12.11 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 12.12 Captions. The captions to the Articles and Sections and the Table



of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision hereof.

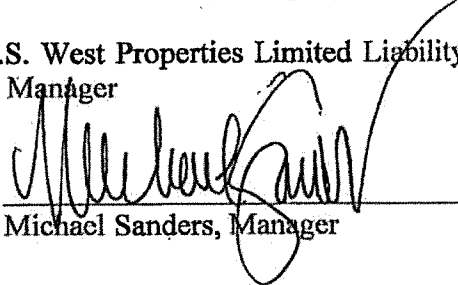
Section 12.13 Conflicts in Documents. In case of any conflict between this Declaration and the District's Service Plan, the District's Service Plan shall control. In the event of any conflict between this Declaration and the District's Rules and Regulations, this Declaration shall control.

IN WITNESS WHEREOF, Declarant and District have executed this Declaration effective as of the date first written above.

**DECLARANT:**

CHOKE CHERRY INVESTORS, LLC, a Colorado limited liability company

By: U.S. West Properties Limited Liability Co., Its Manager

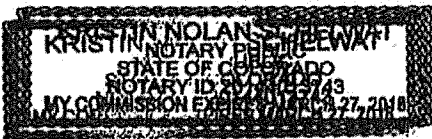
By:   
Michael Sanders, Manager

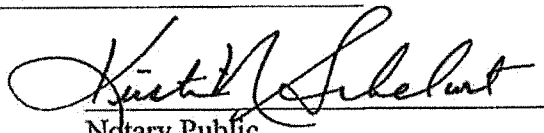
STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )

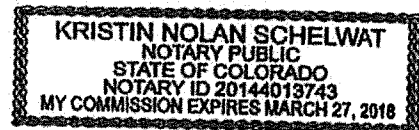
The above and foregoing Declaration of Covenants, Conditions, and Restrictions of Stone Creek Ranch was acknowledged before me this 20 day of FEBRUARY, 2018, by Michael Sanders, Manager of U.S. West Properties Limited Liability Co., the Manager of Choke Cherry Investors, LLC.

WITNESS my hand and official seal.

My commission expires: 3-27-18

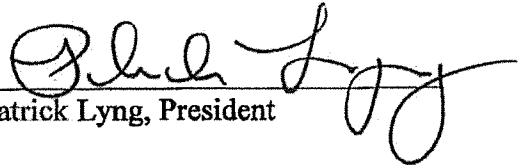


  
Notary Public



**DISTRICT:**

STONE CREEK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

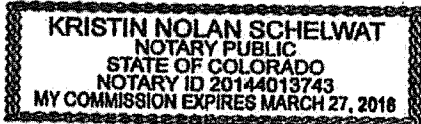
By:   
Patrick Lyng, President


STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARAPAHOE )

The above and foregoing Declaration of Covenants, Conditions, and Restrictions of Stone Creek Ranch was acknowledged before me this 20 day of FEBRUARY, 2018, by Patrick Lyng, President of Stone Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: 3-27-18



  
Notary Public

**EXHIBIT A  
TO  
THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
OF STONE CREEK RANCH**

Legal Description of the Lots comprising the Property

Lots 1 through 329, inclusive,  
Stone Creek Ranch Filing No. 1,  
Douglas County, Colorado.

**EXHIBIT B  
TO  
THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
OF STONE CREEK RANCH**

Tracts

Tracts A through L, inclusive,  
Tracts N through S, inclusive, and  
Tracts V through Y, inclusive,  
Stone Creek Ranch Filing No. 1,  
Douglas County, Colorado.

**EXHIBIT C  
TO  
THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
OF STONE CREEK RANCH**

Master Fencing Plan

[See attached]

