

# TWIN BUTTES COVENANTS

- Amended and Restated Master Declaration of Covenants...
- First Amendment – 14.7(n): adds an exemption to the transfer fee for the first sale of a residence within 18 mos. of C.O.
- Second Amendment – Sec. 7.24 Further Resubdivision: allows further resubdivision for the duplex designated lots
- Third Amendment –
  - 14.7(n): time frame revised from 18 mos. to 3 years;
  - Add allowance of short term rentals (29 days or fewer)
- Fourth Amendment – Sec. 14.7(n) eliminates builder exemption
- Supplemental – adds commercial properties
- Supplemental – adds Lot 49
- Supplemental – adds Filing 1B properties
- Supplemental – adds Filing 2
- PIF - Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee

**AMENDED AND RESTATED MASTER DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS, AND  
RESERVATION OF EASEMENTS  
FOR TWIN BUTTES**

**Return to: Twin Buttes of Durango  
20091 Hwy 160  
Durango, CO 81301**

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**AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS  
FOR  
TWIN BUTTES**

THIS AMENDED AND RESTATED MASTER DECLARATION of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes (hereinafter termed the "Amended Declaration") is made this 11th day of August, 2016, by **Twin Buttes of Durango, Inc.**, a Colorado corporation (hereinafter sometimes termed "Declarant").

**RECITALS**

A. Declarant is the Owner of that certain real property described on Exhibit A attached hereto, located in the City of Durango, La Plata County, Colorado (hereinafter referred to as the "Annexed Property"); and

B. Declarant executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements ("Declaration") on May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado; and

C. The record Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration have consented to amendment of the Declaration as set forth in this Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements as evidenced by the written consents attached as Exhibit C; and

D. The Declarant owns Lots and real property subject to the Declaration and has consented to amendment of the Declaration as set forth in this Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements as evidenced by the Declarant's written consent attached as Exhibit D; and

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

F. Declarant has an option to purchase additional real property located generally to the east of the Annexed Property, and Declarant may, without obligation, annex all or a portion

of that certain additional property described on attached Exhibit B (hereinafter referred to as the "Additional Property") to the Annexed Property to become a part thereof and subject to this Amended Declaration; and

G. Declarant desires to develop, in stages, the Annexed Property and those portions of the Additional Property which may from time to time be annexed pursuant to this Amended Declaration and become part of the Annexed Property, into planned residential, commercial, and other community facilities; and

H. As part of the various stages of development of the aforesaid lands, Declarant intends, without obligation, to Record various subdivision plats; to dedicate portions of the Annexed Property to the public for streets, roadways, drainage, flood control, parks and general public use; and to Record various Supplemental Declarations covering portions of the Annexed Property, which Supplemental Declarations may designate the purposes for which such portions of the Annexed Property may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Annexed Property; and

I. Pursuant to C.R.S. § 32-1-1004, Declarant, in imposing this Amended Declaration on the Annexed Property, intends to empower the Finance District (as defined in Section 1.21 below) with the authority to provide governmental services, including but not limited to the provision of covenant enforcement and design review services, to the Annexed Property and to use therefor revenues that are derived from the Annexed Property; and

J. The Annexed Property is located within the boundaries of the Finance District, which has entered, or will be entering, into a binding multi-year intergovernmental agreement with the Operating District (as defined in Section 1.36) for the provision of covenant enforcement and design review services to the Annexed Property; and

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

L. The Annexed Property, and any other real property subject to this Amended Declaration, shall be part of a master planned community created by the Declarant generally known as "Twin Buttes," located in the City of Durango in La Plata County, Colorado, which may include several different Neighborhoods (as defined in Section 1.33). The Neighborhoods may contain different types of Residences (as defined in Section 1.41) and other Improvements (as defined in Section 1.24) including, without limitation, single family detached homes, attached homes, multi-family housing, such as townhomes and/or condominiums and apartment complexes, Tracts, Commercial Sites (as such terms are defined respectively in Sections 1.47 and 1.8). Such Neighborhoods may (but are not required to) be subject to covenants, conditions and restrictions in addition to those set forth in this Amended Declaration pursuant to a Supplemental Declaration (as defined in Section 1.46) and may (but are not required to) be deemed to be a "Common Interest Community" as defined in C.R.S. § 38-33.3-103. Additional real property may become subject to this Amended Declaration by the recording of a



Supplemental Declaration, and Declarant hereby reserves the right to add additional real property to this Amended Declaration pursuant to the terms hereof.

## DECLARATION

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

## ARTICLE I – DEFINITIONS

The following words, phrases, or terms used in this Amended Declaration shall have the following meanings:

1.1. "Additional Property" shall mean real property situated in the State of Colorado described on attached Exhibit B, and the Improvements located thereon. All or part of the Additional Property may be added to the Annexed Property in one or more additional phases by Supplemental Declaration or otherwise pursuant to the provisions of Article II hereof.

1.2. "Annexed Property" shall mean the real property which is owned by the Declarant as described on Exhibit A, and as of any particular time, any additional real property that has been annexed or otherwise made subject to this Declaration by a Supplemental Declaration.

1.3. "Apartment Development" shall mean a Parcel which is limited by a Supplemental Declaration or designated for residential use, and contains rental apartments and surrounding area which are intended, as shown by the Final Plat therefore approved by the City of Durango, or otherwise, as one integrated apartment operation under the same ownership.

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

1.5. "Board" shall mean the Board of Directors of the Operating District.

1.6. "Builder" shall mean an Owner that (a) acquires one or more Lots from the Declarant for the purpose of developing infrastructure on such Lots and for the construction of Residential, Commercial or community buildings thereon for the purpose of selling or leasing such building and such Lot to the ultimate purchaser or tenant(s) thereof, and (b) is designated by the Declarant as a "Builder" in a Recorded writing signed by the Declarant. Such Recorded writing may (but is not required to be) part of a Supplemental Declaration and also may assign to a Builder some or all of the Declarant's rights under this Declaration, including the Declarant's right to make additional property as designated therein subject to this Declaration.

1.7. "City" shall mean the City of Durango, Colorado.

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

1.9. "CEC" shall mean the Covenant Enforcement Committee established, if at all, by the Operating District for the purposes set forth in Article XI and any other applicable provisions of this Declaration.

1.10. "Conceptual Development Plan" shall mean the conceptual development plan approved by the City on November 17, 2008, and amended on December 1, 2009, October 4, 2011 and May 20, 2014.

1.11. "County" shall mean La Plata County, Colorado.

1.12. "Declarant" shall mean Twin Buttes of Durango, Inc., a Colorado corporation, or any Person or group of Persons acting in concert with Declarant who:

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

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

The term "Declarant" also shall include one or more successors in interest which have been designated in writing (which writing shall be Recorded in the Records) by the then existing Declarant who own all or a portion of the Annexed Property.

1.13. "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Unit", "Lot" or "Parcel".

1.14. "Design Documents" or "Twin Buttes Design Documents" shall mean the Twin Buttes Design Standards and Guidelines.

1.15. "DRC" or "Design Review Committee" shall mean the Design Review Committee established, if at all, by the Operating District for the purposes set forth in Article V and any other applicable provisions of this Declaration.

1.16. "Developer" shall mean a person or entity who is engaged in residential, commercial or other real estate development and who purchases one or more Plats or parcels from the Declarant for the purpose of constructing Improvements thereon for sale, lease, timeshare, fractional ownership or other method of use.

1.17. "Development Agreement" shall mean the Twin Buttes First Amended and Restated Development Agreement between the Declarant and the City recorded on February 5, 2016, at Reception Number 1107817, which superseded and replaced the Twin Buttes Development Agreement recorded September 19, 2011, at Reception Number 1035974, as same may be amended from time to time.

1.18. "Development Period" shall mean the period of time beginning upon the date of recording of this Declaration and expiring fifty (50) years after recording of this Declaration, or such shorter period as deemed necessary by the Declarant to comply with any regulations of HUD or other Governmental Mortgage Agencies.

1.19. "Development Rights" shall mean the rights reserved by Declarant in Article X.

1.20. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or parcel designed and intended for use and occupancy as a residence by a single family and includes condominiums and apartments.

1.21. "Finance Districts" shall mean the Twin Buttes Metropolitan District No. 2, Twin Buttes Metropolitan District No. 3, and Twin Buttes Metropolitan District No. 4 and any other finance district created or empowered under a Supplemental Declaration.

1.22. "Fines" shall mean any monetary penalty imposed by the Operating District against a Lot Owner due to a violation of this Declaration or the Rules and Regulations by such Lot Owner, a member of the Lot Owner's family or a tenant, guest or invitee of the Lot Owner or any of the foregoing.

1.23. "Government Mortgage Agencies" shall mean the FHA, the VA, the FHLMC, GNMA, FNMA, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase mortgage loans.

1.24. "Improvements" shall mean all structures, facilities and appurtenances of any kind located or occurring in or on any portion of the Annexed Property including, but not limited to, the following: residences, buildings, structures, pools, trampolines, basketball backboards, outdoor play structures, gazebos, hot tubs, tree houses, fences, walls, hedges, plantings, landscaping, "yard art" (including, without limitation, all statues, decorative pieces and other pieces of art located in the yard area of any Lot which are intended to remain in place longer than typical holiday period decorations; holiday period decorations which are in place for less than

six (6) weeks are specifically excluded from this definition of Improvements), lighting, poles, driveways, parking areas, sidewalks, patios, decks, signs, changes in any existing exterior color or shape, excavation and site work, removal of trees or plantings, walkways, trails, paving, parking areas, satellite dishes, antennae, garages, carports, driveways, retaining walls, fixtures, solar equipment, exterior tank, and exterior heating and/or air conditioning equipment and any new exterior construction or exterior improvement on a Lot which may not be included in the foregoing. The term "Improvements" includes both original improvements and all later changes, modifications and improvements on a Lot.

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

1.26. "Lot or Lots" shall mean a physical portion of the Annexed Property which is designated for separate ownership or occupancy, and the boundaries and identifying number of which are described in or may be determined from a declaration and/or a Plat. A Lot or Lots may be a Residential, Commercial or Community site. As used herein, the definition of a Lot shall include a separate fee parcel, a condominium unit, a townhome unit, a Lot on a Plat, or other portion of property designated for separate ownership.

1.27. "Master Declaration" shall mean this Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended or supplemented from time to time.

1.28. "Metropolitan Districts" shall mean the Twin Buttes Metropolitan District No. 1, Twin Buttes Metropolitan District No. 2, Twin Buttes Metropolitan District No. 3 and Twin Buttes Metropolitan District No. 4, all quasi- municipal corporations and political subdivisions of the State of Colorado, as well as any other Metropolitan Districts servicing portions of the Annexed Property or any additional real property subjected to this Declaration.

1.29. "Metropolitan District Property" shall mean any real property within the Annexed Property now or hereafter owned or leased by the Metropolitan Districts, together with all landscaping improvements, trails, open space, parks, gardens, irrigation systems, stormwater drainage system, entry monuments and other Improvements now or hereafter located on such Metropolitan District Property.

1.30. "Mortgage" shall mean any mortgage or deed of trust or other similar instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure the performance of an obligation or the payment of a debt and which is to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" as used herein is synonymous with the term "Mortgage." "First Mortgage" means a Mortgage which has priority over all other security interests in a Lot, other than statutory liens for taxes and special assessments.

1.31. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgage. "First Mortgagee"

means any Person named as the mortgagee or beneficiary under any First Mortgage, or any insurer or guarantor of a First Mortgage.

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

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

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

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

1.36. "Operating District" shall mean the Twin Buttes Metropolitan District No. 1.

1.37. "Owner" shall mean the Declarant or any other Person, or, if more than one, all Persons collectively, who hold fee simple title of Record to any portion of the Annexed Property, including sellers under executory contracts of sale but excluding buyers thereunder, and further excluding any Mortgagee or other Person having an interest in a Lot solely as security for an obligation.

1.38. "Person" shall mean any natural person, corporation, partnership (general or limited), limited liability company, governmental entity, association, trust, or any other entity or combination thereof.

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

1.40. "Public Facilities" shall mean the improvements and programs acquired, constructed, installed, completed, operated or maintained by the Metropolitan Districts.

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

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

1.43. "Residential Use" shall mean a use for dwelling purposes.

1.44. "Restrictions" shall mean (a) this Declaration as amended from time to time, and (b) the "Rules and Regulations" as amended from time to time.

1.45. "Rules and Regulations" shall mean any instruments, however denominated, which are adopted by the Metropolitan Districts for the regulation and management of the Annexed Property, including all amendments to those instruments. The term "Rules and Regulations" specifically includes the Design Documents.

1.46. "Special Declarant Rights" shall mean rights which only the Declarant has the right to exercise as enumerated in this Declaration.

1.47. "Supplemental Declaration" shall mean a written instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which may be recorded against real property described therein and which subjects such described real property to the terms, conditions and restrictions of this Declaration.

1.48. "Tract" shall mean any portion of the Annexed Property owned by the City, the Metropolitan Districts, a school or school district or a Neighborhood Association.

1.49. "Transfer" shall mean and include, whether in one transaction or in a series of related transactions, any grant, conveyance, assignment, lease, exchange or other transfer of beneficial ownership of any Lot or zoned density, including but not limited to (a) the conveyance of fee simple title to any Lot, (b) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation (other than Declarant) which, directly or indirectly, owns one or more Lots, (c) the transfer of more than fifty percent (50%) of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns one of more Lots, and (d) the conveyance or exchange of zoned density, but "Transfer" shall not mean (i) the creation or grant of a Mortgage, or foreclosure of a first Mortgage lien, (ii) the conveyance of a Lot by a Transferor to a Mortgagee in lieu of the foreclosure of a first Mortgage lien, or (iii) the conveyance of a Lot acquired by a first Mortgagee through foreclosure or a deed-in-lieu of foreclosure to a Transferee.

1.50. "Transfer Fee" shall mean a fee not to exceed three percent (3%) of the purchase price, fair market value or other consideration paid by a Transferee to a Transferor for the conveyance of a Lot or zoned density, with the percentage rate determined by the Board on an annual basis as part of the Metropolitan Districts' budgeting process. Unless otherwise stated or agreed, the Transfer Fee shall be paid by the Transferee.

1.51. "Transferee" shall mean and include all parties to whom any interest passes by a Transfer who are not the Declarant, a first Mortgagee, a government mortgage agency (e.g. FHA, VA, FHLMC, GNMA, FNMA, etc.), HUD, a Mortgagee, or a successor Declarant.

1.52. "Transferor" shall mean any Owner of a Lot other than Declarant, a first Mortgagee, a government mortgage agency (e.g. FHA, VA, FHLMC, GNMA, FNMA, etc.), HUD, a Mortgagee, or a successor Declarant who makes a Transfer to a Transferee.

1.53. "Violation" shall mean (a) an Improvement that has been performed without obtaining the DRC's approval, (b) an Improvement that was not performed in substantial compliance with the approval that was granted by the Operating District or the DRC (including, without limitation, any time periods for completion), or (c) any other violation of the Restrictions by an Owner.

## **ARTICLE II – DEVELOPMENT OF THE PROPERTY/ANNEXATION**

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

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

2.3. Merger. The properties, rights and obligations of the Metropolitan Districts, by operation of law, may be transferred to another surviving governmental entity or consolidated association similar in nature and purposes. The surviving governmental entity or consolidated association may administer the covenants and restrictions established upon any other basis as one scheme. No such merger or consolidation, however, shall effect any

revocation, change, or addition to the covenants established by this Declaration within the Annexed Property except as expressly hereinafter provided.

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

2.5. Supplements to this Declaration. If Declarant elects to submit any additional real property to this Declaration, such additions shall be described in and effected by a duly Recorded Supplemental Declaration. The Recording of any such Supplemental Declaration and the resulting expansion of the Annexed Property shall not require the consent or ratification of any Owner other than Declarant. A Supplemental Declaration may impose on the real property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions other than those set forth in this Declaration, taking into account the unique and particular aspects of the Neighborhoods within the real property covered thereby. A Supplemental Declaration which applies only to Commercial and/or Community Sites may also specify that certain use restrictions contained in this Declaration do not apply to all or a portion of the real property described in such Supplemental Declaration in light of the non-Residential uses being made of such property, and in which cases the Supplemental Declaration also may contain use restrictions different from this Declaration. Upon Recordation of a Supplemental Declaration, the portion of the real property subject to the Supplemental Declaration shall become part of the Annexed Property and shall be subject to all covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, except to the extent permitted hereunder and otherwise specifically stated in the Supplemental Declaration.

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

### ARTICLE III – METROPOLITAN DISTRICTS

3.1. Powers and Authority. The Annexed Property is located within the boundaries of the Finance Districts. The Operating District and the Finance Districts have entered into the Intergovernmental Agreement, which has been duly approved by the registered electors of all Metropolitan Districts whereby the Operating District has agreed to perform the duties, rights



and obligations of the Finance Districts, and the Finance Districts have agreed to impose such taxes, fees, rates, tolls and charges as are permitted under Applicable Law to pay for the provision of such services, including the provision of covenant enforcement and design review services as set forth in this Declaration. The Operating District shall have, and may exercise with regard to the Annexed Property, all powers and authority reasonably necessary to administer its rights and duties under this Declaration, including, without limitation: (a) the power to adopt and amend budgets for revenues, expenditures, and reserves; (b) the power to collect taxes and fees for expenses from the Owners to administer its duties and obligations provided in this Declaration; (c) the power to manage and enforce the Restrictions; (d) the power to contract with a third-party property manager for the management of the Annexed Property and/or for all other duties and responsibilities related to the overall operation of the Annexed Property; and (e) all other rights, powers and authority necessary to enforce this Declaration. The Operating District may adopt and amend Rules and Regulations. Additionally, the Operating District, acting through its governing board, shall have the power to levy reasonable fees, Fines and penalties for violations of any provision of this Declaration and/or the Rules and Regulations. The mechanism for collection of any such fees, Fines and penalties shall be as provided in Article V of this Declaration.

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

#### ARTICLE IV – MAINTENANCE

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

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

which in any way alters the exterior of any Lot or Improvements located thereon from its natural or improved state existing on the date such Lot was first subject to this Declaration shall be made or done without compliance with the procedures set forth in Article VI of this Declaration. Notwithstanding the foregoing, the maintenance, repair, and upkeep, in accordance with all Applicable Laws and City standards, of those Tracts owned by the City shall be the responsibility of the City and those Tracts owned by a school or school district shall be the responsibility of the applicable school or school district, except as may otherwise be provided herein or in a Plat, a Supplemental Declaration, or other Recorded instrument.

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

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

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

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

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

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

4.3. Operating District's Right to Perform Work. In the event any Lot Owner shall fail to timely and/or satisfactorily perform any maintenance, repair or upkeep obligations of such Lot Owner (including, without limitation, the initial installation of landscaping on the Owner's Lot), the Operating District may give written notice to the Lot Owner of the work required to be performed, and, if such failure to perform the work continues for a period of thirty (30) days

after such notice has been given, the Operating District may enter upon the Lot and perform the necessary maintenance, repairs or upkeep; provided, however, that the Operating District may enter upon a Lot in order to perform maintenance, repairs or upkeep without prior notice to the Lot Owner in the event of an emergency, as determined by the Operating District in its reasonable discretion. The cost of any such maintenance, repair or upkeep shall be the obligation of the Lot Owner and shall be added to and become a part of the fee to which the Lot is subject and the Operating District shall have a lien to secure such fee as provided by this Declaration and applicable law. Such fees shall be payable by the Lot Owner upon demand by the Operating District.

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

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

#### **ARTICLE V - DESIGN REVIEW COMMITTEE**

5.1. Design Review Committee and Design Documents. The Operating District may establish a DRC and, in such event, the members of the DRC shall be appointed by the governing board of the Operating District. For purposes of this Declaration, in the event a DRC does not exist, all references to "DRC" shall be deemed to be a reference to the Operating District. The DRC shall be responsible for the ministerial administration and application of the Design Documents to facilitate the purposes and intent of this Declaration. Separate and distinct Design Documents may apply to one or more specific Neighborhoods within the Annexed Property. Other Design Documents may apply to the Annexed Property as a whole. All such Design Documents shall be prepared and adopted by the Operating District and administered by the DRC, if formed. The Operating District may promulgate, amend, vary, repeal and augment the Design Documents from time to time, in its sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of Twin Buttes, or other factors considered necessary or desirable to fulfill the intent of the Design Documents. The Design Documents shall be binding on the Annexed Property, provided, however, that the Design Documents shall only be binding on any Commercial Sites or industrial sites made subject to this Declaration if specifically provided for in the Supplemental Declaration relating to

such Commercial Sites or industrial sites. In the event of any conflict between the Design Documents and this Declaration, this Declaration shall control. The Design Documents may include, among other things, those restrictions and limitations set forth below:

- (a) Standards establishing an architectural theme and requirements pertaining to building style and design, colors, construction materials and site planning.
- (b) Procedures for making an application to the DRC for approval, including the documents to be submitted including design review fees and the time limits for such submission.
- (c) Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Documents.
- (d) Designation of building setbacks.
- (e) Minimum and maximum areas of living space that may be developed on any Lot.
- (f) Limitations on the height of any Residence or other Improvement.
- (g) Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other such Improvements.
- (h) Landscaping regulations.
- (i) General conditions for the construction, reconstruction, refinishing or alteration of any Improvement.
- (j) Rules for constructions activities, as well as maintaining construction sites and adjacent areas.

5.2. DRC Membership and Organization. In the event the Operating District establishes a DRC, the DRC shall be comprised of not less than three (3), nor more than seven (7) voting members, plus up to three alternate members who may replace any absent voting member as determined by the DRC Chairman. The DRC may include one (1) or more design professionals or licensed architects. All members of the DRC shall be appointed, removed and replaced by the Operating District, in its sole discretion.

5.3. Purpose and General Authority. The DRC shall review, study and either approve or reject proposed Improvements, including landscaping, on the Annexed Property, all in compliance with this Declaration as supplemented, and as further set forth in the Design Documents and such Rules and Regulations as the Operating District may establish from time to time to govern its proceedings. No Improvement shall be erected, placed, reconstructed,

replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the DRC; provided, however, that Improvements that are completely within, and not visible from the outside of, a building may be undertaken without such approval, provided such Improvements do not affect the structural integrity of a building, or impact any party walls or other common or shared areas between Lots. All Improvements shall be constructed only in accordance with plans therefor approved by the DRC. In addition to reviewing and approving plans for Improvements, the DRC may review applications from Owners regarding proposed variances from the Restrictions or the Design Documents, and approve or disapprove the same.

5.4. Approval of Improvements Required. Except as may be otherwise set forth in a Supplemental Declaration, the approval of the DRC shall be required for any Improvement on any Lot except where prior approval of an Improvement on a Lot has been waived by the DRC or certain Improvements have been exempted in writing by the DRC. The foregoing notwithstanding, the approval of the DRC shall not be required for any Improvement made by the Declarant, or for any Improvement made by a Builder, the plans for which have been approved by the Declarant in writing. Further, DRC approval of any commercial use or industrial use shall not be required unless DRC approval is specifically required by the Supplemental Declaration making such Commercial Site or industrial site part of the Annexed Property.

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

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

5.7. DRC Approval. The DRC, by majority vote, shall approve plans and specifications submitted to it only if it determines that the construction, alteration and additions

contemplated thereby, and in the location as indicated, will comply with this Declaration, any applicable Supplemental Declaration and the Design Documents and will serve to preserve and/or enhance the values of the Lots within the Annexed Property and will maintain a harmonious relationship among structures, vegetation, topography and the overall design of the Annexed Property. All plans and specifications submitted to the DRC shall be drawn to scale and include such detail necessary for the DRC to make an informed review of such plans and specifications. The DRC may reject any plans and specifications it deems to be insufficient, in its sole and absolute discretion. The DRC may condition its approval of plans and specifications for Improvements on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The DRC shall consider the proposed quality of workmanship, type of materials and harmony of exterior design with other portions of the Annexed Property. Furthermore, unless otherwise allowed in writing by the DRC, an Owner shall not apply for a building permit for any improvements from the City or other governmental authority having jurisdiction over the Annexed Property until DRC approval for such Improvements has been obtained. Approval by the DRC shall be in writing or indicated by endorsement on the plans and specifications submitted for approval. No building, other structure or landscaping shall be erected or allowed to remain on any Lot which violates this Declaration. The issuance of a building permit by the City or other governmental authority having jurisdiction over the Annexed Property shall not prevent or prohibit the DRC from enforcing the terms and provisions of this Declaration. Furthermore, any approval granted shall not be considered a permit to build under applicable governmental regulations. Compliance with the provisions of Article V hereof is not a substitute for compliance with the City and other governmental building, zoning and subdivision regulations and other Applicable Laws, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction of Improvements. Furthermore, DRC approval does not approve or guarantee engineering design or compliance with Applicable Laws, and does not constitute any representation by the DRC as to such matters. The Owner is solely responsible for all such compliance. By approving plans and specifications, neither the DRC, its members, the Operating District nor the Declarant assumes any liability or responsibility for engineering design, construction or compliance with Applicable Laws.

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

5.9. Prosecution of Work After Approval. After approval or deemed approval of any proposed Improvement by the DRC, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement, any materials approved by the DRC in connection with the proposed Improvement, and any conditions imposed by the DRC and all Applicable Laws. Failure (a) to complete the proposed Improvement within thirty-six (36) months after the date of such approval

or such other period or extension of the initial thirty-six month period as specified in the Design Documents or in writing by the DRC, or (b) to complete the Improvement in accordance with the description and materials furnished to, and the conditions imposed by, the DRC and all Applicable Laws, shall constitute noncompliance with the requirements for approval of the Improvement.

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

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

5.12. Violations.

(a) Notice of Violation. If, as a result of the DRC's inspection of an Improvement or otherwise, the DRC determines that a Violation exists, the DRC shall issue a Notice of Violation to the noncompliant Owner within thirty (30) days of inspection. The Notice of Violation shall be sent via certified mail/return receipt requested and shall identify the particular circumstances or conditions of the Violation and shall require the Owner to take such action as may be necessary to correct, remedy or otherwise remove the Violation, including the time period in which the Violation is to be remedied.

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

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

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



the Restrictions, or otherwise correct, remedy or remove any Violation, in any manner the Operating District deems appropriate;

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

(iv) The Operating District shall have a lien against the noncompliant Lot to secure (1) any Fines imposed; plus (2) payment for reimbursement by the noncompliant Owner for any work performed by the Operating District required to remove, modify or otherwise correct the Violation, plus (3) interest on such amount at a rate equal to two percent (2%) over the prime rate of interest quoted at such time in the Wall Street Journal, and (4) all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in any manner allowed for foreclosure of mechanics' liens in the State of Colorado.

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

(a) General Inspections. In addition to the inspection of completed Work as provided in Section 5.11 and other provision of this Declaration, any member or authorized agent or consultant of the DRC, or any authorized officer, director, employee or agent of the Operating District, may enter upon any Lot, at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to investigate or inspect any part or portion of the Annexed Property for conformance or compliance with the Restrictions, and the DRC approved Improvements. Where such investigation or inspection reveals that any part or portion of such Lot is in violation of the Restrictions, the DRC may issue a Notice of Violation to the Owner of the Lot. The Notice of Violation shall be sent via certified mail/return receipt requested and shall identify the particular circumstances or conditions of the Lot that fail to conform to the Restrictions. The Notice of Violation sent pursuant to this Section 5.13 shall also contain the date, time, and place of a hearing to be held by the Operating District for the purpose of evaluating the Lot's conformance with such Restrictions and to consider the issuance of a finding of Violation and imposition of Fines. Any Notice of Violation sent pursuant to this Section 5.13 shall also be sent via first class U.S. mail addressed to "Occupant" at the address of the alleged nonconforming Lot, which is subject to the Declaration for which the Notice of Violation is issued, as well as a copy to any Owner notifying the DRC of any alleged Violation in accordance with subsection (b) below. All such Notices of Violation shall be sent no less than fifteen (15) days prior to the date of the hearing.

(b) Violation Identified by Another Owner. If an Owner alleges that another Owner is in Violation of this Article V or otherwise is not in compliance with any Restrictions, the complaining Owner must first submit written notice to the DRC and/or the CEC (as defined below) of the alleged Violation, and the DRC and/or the CEC may investigate such allegation and may then send a Notice of Violation to the alleged noncompliant Owner in accordance with subsection (a) above. A hearing must be held

by the Operating District before the complaining Owner may resort to legal or other action for relief.

(c) Procedure for Hearing. On the date and time of the hearing specified in any Notice of Violation, the Operating District shall hear and consider information and evidence presented by any Owners or other interested parties regarding the conformance of the subject Lot with such Restrictions. The hearing shall be conducted in accordance with any rules and procedures promulgated by the Operating District. Not more than five (5) business days following the hearing, the Operating District shall either: (i) make a finding that the Lot is in compliance with the applicable Restrictions; (ii) make a finding that the Lot is in Violation of the applicable Restrictions; or (iii) continue the hearing to a date certain for the purpose of obtaining additional information regarding the alleged Violation. The decision of the Operating District shall be final. Where the Lot is determined to be in Violation of the Restrictions, the Operating District shall issue a written finding of Violation, which shall include the time not to exceed forty-five (45) days period, in which the Violation is to be corrected, removed or otherwise remedied. Following such decision, any noncompliant Owner shall correct, remove, or otherwise remedy the Violation within the time period specified in the written finding of the Operating District. If the Owner does not comply within the specified time period, the Operating District may, at its option, pursue those remedies specified in Section 5.12(b). Notwithstanding anything to the contrary contained herein, at any time prior to the Operating District's final determination of Violation, an Owner may notify the DRC in writing that the Violation has been corrected, removed or otherwise remedied. Following inspection of the Lot by the DRC and confirmation that the Lot is in compliance, the DRC may suspend or dismiss all actions to enforce its remedies.

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

(e) No Representation. Except as set forth in Section 5.20, any inspection made by the DRC pursuant to the Restrictions shall not constitute a representation by the DRC or the Operating District that there has been or will be compliance with this Declaration, the approved plans for any Improvements, the Design Documents or any other architectural Design Documents or design standards, Rules or Regulations promulgated under this Declaration, or that the subject Lot, and the Improvements thereon, are free from defective materials or workmanship.

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

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

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

5.16. Changes to Approved Plans. Any and all changes or alterations whatsoever to plans previously approved by the DRC must be reviewed and approved by the DRC in accordance with this Article V.

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

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

5.19. Limitation of Liability. Neither the DRC nor any individual DRC member shall be liable to any Person for any official act of the DRC in connection with submitted plans and specifications, except to the extent the DRC or any individual DRC member acted willfully or in bad faith. The DRC, its members and the Operating District shall not be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of plan approval or disapproval, or the construction of Improvements whether or not pursuant to any approved plans. As set forth in Section 5.7, neither the DRC, the Operating District, the Finance Districts, nor any agent thereof, nor the Declarant or any of its managers, members, employees, agents or consultants shall be responsible for reviewing, nor shall its approval of an Improvement to property be deemed approval of, the Improvement to property from the standpoint of safety, whether structural or otherwise, or conformance with any Applicable Laws, and in all events the DRC shall be defended and indemnified by the Operating

District in any such suit or proceeding which may arise by reason of the DRC's decision. The Operating District, however, shall not be obligated to indemnify each member of the DRC to the extent any such member of the DRC is adjudged to be liable for bad faith or willful misconduct in the performance of his or her duty as a member of the DRC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

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

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

#### **ARTICLE VI - COVENANT ENFORCEMENT COMMITTEE**

6.1. Committee. The Operating District may establish a CEC and, in such event, the members of the CEC shall be appointed by the governing board of the Operating District. For purposes of this Declaration, in the event a CEC does not exist, all references to "CEC" shall be deemed to be a reference to the Operating District. The CEC shall be responsible for the ministerial administration and enforcement of the Restrictions, and shall have the right to: (a) accept complaints for violations of the Restrictions; (b) submit complaints to the Operating District regarding violations of the Restrictions; (c) inspect the Annexed Property for violations of the Restrictions; (d) issue various notices to Owners regarding the Restrictions; and (e) provide all ministerial administration and enforcement of the Restrictions as permitted by the Operating District and this Declaration. Notwithstanding anything to the contrary herein, at all times a member of the Operating District's governing board shall be appointed as the "Chairman" of the CEC.

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

6.3. Purpose and General Authority. The CEC shall review all complaints and notifications provided by the Declarant, an Owner, the Finance District, the Operating District or a Neighborhood Association regarding any alleged Violation; provided however, that

the CEC shall have no authority over any Commercial Sites or industrial sites unless such authority is specifically granted in the Supplemental Declaration relating to such Commercial Site or industrial site. The CEC also shall have the right to make an investigation on its own regarding potential Violations. The CEC shall have the authority to determine whether a Violation has occurred by any Owner, and upon such determination, may issue to an Owner a Notice of Violation identifying the particular circumstances or conditions of the Violation and requiring the Owner to take such action as may be necessary to correct, remedy or otherwise remove the Violation, including the time period in which the Violation is to be remedied.

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

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

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

(b) Notice of Violation. Where such investigation or inspection reveals that any part or portion of a Lot is not in compliance with the Restrictions, the CEC may send a Notice of Violation to the Owners of such Lot. The Notice of Violation shall be sent via certified mail return receipt requested and shall identify the particular circumstances or conditions of the Lot that fail to conform to the Restrictions. The Notice of Violation sent pursuant to this Section 6.5 shall also contain the date, time, and place of a hearing to be held by the Operating District for the purpose of evaluating the Lot's conformance with such Restrictions and to consider the issuance of a finding of Violation. Any Notice of Violation sent pursuant to this Section 6.5 shall also be sent via first class U.S. mail addressed to "Occupant" at the address of the alleged nonconforming Lot, which is subject to the Declaration and for which the Notice of Violation is issued, as well as a copy to any Owner notifying the CEC of any alleged violation of the Restrictions in accordance with subsection (c) below. All Notices of Violation shall be sent no less than fifteen (15) days prior to the date of the hearing.

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

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

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

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

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

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

(iv) The Operating District shall have a lien against the Lot subject to the Violation to secure (1) any Fines imposed, plus (2) payment for reimbursement by the violating Owner for any remedial work performed by the Operating District required to remove, correct or otherwise remedy the Violation, plus (3) interest on such amount at a rate equal to two percent (2%) over the prime rate of interest quoted at such time in the Wall Street Journal, and (4) all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in any manner allowed for foreclosure of mechanics' liens in the State of Colorado.

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

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

(h) Access Easement. Each Lot is subject to an easement in favor of the CEC and the Operating District, including their respective members, employees, agents and representatives, for the performance of any actions contemplated by this Article VI, including, without limitation, Section 6.5. All Persons performing such work shall use reasonable efforts to minimize interference with the Lot Owner's use and enjoyment of the Lot when performing such work.

## ARTICLE VII - USE RESTRICTIONS.

7.1. Applicability; General Restrictions. The Use Restrictions set forth in this Article VII shall only govern those portions of the Annexed Property that have been designated as Residential in this Declaration, or in any Supplemental Declaration subjecting such property to this Declaration. Residential sites shall be used only for the purposes set forth in this Declaration, as permitted by the Applicable Laws, and as set forth in other specific Recorded covenants, conditions or restrictions affecting all or any part of the Annexed Property. No Residence shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely, but in no event shall the maximum number of occupants in a Residence exceed the lesser of (a) three (3) persons multiplied by the number of designated bedrooms in such Residence (according to the Records), or (b) the maximum number permitted under Applicable Law.

7.2. Residential Use of Lots. Subject to the provisions of Section 7.3, each Residential site shall only be used for the construction of a Residence and appurtenant uses which are

customarily incident thereto. No business, commercial or other non-residential use may be conducted on any part of a Residential site, except as provided in Section 7.3 and Article X.

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

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

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

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

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

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

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

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

7.5. Vehicular Parking, Storage and Repairs.

(a) Parking. Except as otherwise set forth in any Rules and Regulations, vehicles shall be parked only in the garages or the driveways, if any, serving the Residential sites, or in appropriate spaces or areas which may be designated by the Operating District from time to time, except that any vehicle may be otherwise parked on a temporary basis for loading, delivery, emergency, or for guests of an Owner at the Residence on a temporary basis. The Declarant or Operating District may designate



certain parking areas for visitors or guests and adopt reasonable Rules and Regulations, from time to time, governing such areas. Except as otherwise set forth in the Rules and Regulations, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, recreational vehicles, golf carts and boat trailers, shall be parked only in enclosed garages or specific areas, if any, which may be designated by the Operating District from time to time. This restriction, however, shall not restrict trucks or commercial vehicles which are necessary for construction or for the maintenance of any portion of the Annexed Property or any improvements located thereon, nor shall such restriction prohibit vehicles (including, without limitation, emergency vehicles driven by an on or off duty employee of the entity providing emergency services) that may be otherwise parked on a temporary basis for loading, delivery, emergency or, in the case of emergency vehicles, for any other lawful purpose.

(b) Adequate Parking Required. Where specific parking requirements for commercial or multi-family Lots are not stated in applicable provisions the City's Land Use Development Code ("Code") or where special study sessions are referenced in the Code but are not conducted by the City, the Board, or upon its designation, the DRC, shall be authorized to determine the number of parking spaces that will be required for the Lot(s) and the intended uses thereof, and the Board or the DRC, shall further be authorized to require compliance with specific off-street parking Rules and Regulations as may be adopted from time to time.

(c) Storage. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted on a Residential site or upon a street adjacent to a Residential site except within enclosed garages. For purposes of this Section 7.5, a vehicle shall be considered "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy two (72) consecutive hours without the prior approval of the Operating District or the CEC.

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

(e) Violations. In the event the CEC or the Operating District shall determine that a vehicle is being parked, stored or repaired in violation of Subsections 7.5(a), (b) or (c) hereof, then a written notice describing such violation shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter as stated in the notice, as determined by the CEC or the Operating District in its discretion

from time to time, the Operating District shall have the right to remove the vehicle at the sole expense of the owner thereof.

7.6. Pets. No animals, including, but not limited to, livestock, poultry, or reptiles shall be raised, bred, or kept within a Residential site except as hereinafter provided. A reasonable number of cats, dogs, birds or other common household pets may be kept on a Residential site, provided that (a) they are not kept, bred, or maintained for any commercial purposes; (b) in the CEC or the Operating District's opinion, they do not make objectionable noises or otherwise constitute an unreasonable nuisance to other Owners; (c) they are kept within an enclosed yard on a Residential site occupied by the owner of such pets or on a leash being held by a person capable of controlling the animal; (d) the Owner of the Residential site properly disposes of all pet waste; (e) the Owner shall be financially responsible and liable for any damage caused by such pets; and (f) they are not in violation of any Applicable Laws. A "reasonable number" as used in this Section 7.6 shall mean not more than two (2) dogs and two (2) cats (for a total of four (4) pets) per Residential site, provided, however, that the CEC or the Operating District may, from time to time, determine that a reasonable number in any instance may be more or less than the above number. Notwithstanding anything in this Section 7.6 to the contrary, no pit bulls, rottweilers, wolf hybrids or any dog of known vicious propensities shall be allowed on the Annexed Property at any time. The CEC or the Operating District shall have the right to prohibit any animal which, in the sole opinion of the CEC or the Operating District, is not being kept in accordance with the restrictions contained herein. The Operating District may adopt and enforce additional Rules and Regulations governing the subject of pets within the Annexed Property.

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

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

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

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

7.11. Trash Disposal. No trash, garbage, refuse, rubbish, or cuttings shall be deposited on any street, or on any Residential site unless placed in a container suitably located, solely for

the purpose of garbage pickup and screened from view. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. It is currently anticipated that the Operating District shall contract for trash collection by one or more trash collection companies based upon competitive bids. In order to minimize unsightliness, the Operating District shall have the right to restrict the placement of trash receptacles outside for collection on any day other than the actual day for trash collection.

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

7.13. Restrictions on Signs. Except as expressly permitted by Applicable Law, no signs or flags shall be displayed to the public view on any Residential Site without the prior written approval of the CEC, with the following exceptions: (a) the Declarant may erect and maintain a sign or signs in connection with the construction, development, operation, promotion and sale of the Lots; (b) the patriotic display of flags not exceeding 4' x 6' in size shall be permitted on Memorial Day, Fourth of July and other appropriate holidays; and (c) signs of customary dimensions, not exceeding 3' x 4' in size, advertising a Lot or portion thereof as "For Sale" or "For Rent"; provided, however, that any "For Sale" or "For Rent" sign must comply with the Design Documents and any Owner must obtain DRC approval before displaying such a sign on a Lot. Notwithstanding anything herein contained to the contrary, any and all signs, if allowed, shall comply with all sign standards of the applicable governmental authorities which may be applicable to the Annexed Property, as well as the Restrictions.

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

7.15. Restrictions on Antennas, Pipes, Utility Lines and Transmitters. Pipes for water, gas, sewer, drainage, or other purposes for a Residential site, and wires, poles, aerials, antennae, satellite dishes, and other facilities for the telecommunication facilities or electricity, and utility meters or other utility facilities for a site shall be kept and maintained, to the extent possible, underground or within an enclosed structure. Any telecommunication facility for the

transmission or reception of audio, data or video signals (except those located entirely inside a structure) shall first be approved by the DRC. The DRC shall act on applications for approval of satellite dishes and antennas in accordance with the requirements of the Federal Telecommunications Act of 1996, and any applicable regulations adopted pursuant thereto, as such statute and regulations may be amended from time to time. No wind-powered electrical generators shall be permitted.

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

7.17. Restrictions on Sewage Disposal Systems. No cesspool, septic tank or other sewage disposal system shall be installed on a Residential site, except temporary Declarant owned or Declarant contractor owned model homes, community buildings or sales and construction offices. All Residences and commercial buildings, community and public facilities shall obtain sewer service from the City sewer system.

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

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

7.20. Insurance Risks. No Residential Site may be used for any use which would constitute an unusual fire hazard, would result in jeopardizing any insurance maintained on other Residential Sites within or on any other portion of the Annexed Property or would result in any increase in the premium for any such insurance; provided, however, that the DRC may approve the use if adequate safeguards are undertaken at the applicable Owner's expense and any increase in insurance premiums is allocated to, and paid by, the applicable Owner. This Section 7.20 shall not be construed as prohibiting the normal use of barbeque grills on outdoor terraces or patios, subject to reasonable regulation by the Operating District pursuant to the Rules and Regulations.

7.21. Hazardous Activities/Fires. No activities shall be conducted which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged, no exploding fireworks shall be set off and no open fires shall be lighted or permitted except in a contained barbeque unit, indoor or outdoor

fireplace or fire pit which is attended. Trash, leaves, and other similar materials shall not be burned.

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

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

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

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

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

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

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

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

7.27. Violation of Restrictions. If any Owner or his or her respective family, guests, licensees, lessees, tenants, invitees, agents or employees is in Violation of the Restrictions set forth in this Article VII, then in addition to any enforcement and remedies described in Section 6.5, the Operating District may invoke any one or more of the following remedies: (a) levy Fines upon such Owner for each Violation; (b) cause the Violation to be cured and charge the cost thereof to such Owner; and (c) obtain injunctive relief against the continuance of such Violation. Before invoking any such remedy, the Operating District shall give such Owner prior written notice of the Violation, including a specific description of the Violation and shall require the Owner to take such action as may be necessary to remedy the Violation, including the time period in which the Violation is to be remedied, which time period shall not exceed forty-five (45) days.

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

## ARTICLE VIII - DRAINAGE AND SOILS CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE IX - SPECIAL DECLARANT RIGHTS

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

(a) Completion of Improvements. The right but not the duty to construct and complete Improvements within the Annexed Property, including, without limitation, the Tracts and the Metropolitan District Property.

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

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



to such other party. In addition to Declarant, all Builders shall also have the rights specified in this subsection (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE X - RESERVATION OF DEVELOPMENT RIGHTS**

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

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

(b) Exercise of Rights. Declarant may exercise any Development Rights with respect to all or a portion of different parcels of real property at different times in

whatever order and to whatever extent Declarant, in its sole discretion, may determine.

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

10.3. Utilities Easement. Declarant hereby reserves for itself and for the Operating District a blanket easement upon, across, over and under the Annexed Property, specifically including the Tracts and the Metropolitan District Property, for utilities and the installation, use, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect, use and maintain the necessary facilities, equipment and appurtenances on the Annexed Property, specifically including the Tracts and the Metropolitan District Property, and to affix, use, repair and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the absolute right and authority to grant such easement upon, across, over or under any part or all of the Annexed Property, specifically including the Tracts and the Metropolitan District Property, provided, however, that such right and authority of Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Article IX of this Declaration, at which time such reserved rights shall vest in the Operating District. The easement provided for in this Section 10.3 shall in no way void, extinguish or modify any other Recorded easement(s) on the Annexed Property, specifically including the Tracts and the Metropolitan District Property. Notwithstanding the foregoing, the reservation of such easement and the grant of the same to a utility or quasi-utility company furnishing a service covered by the general easement created herein shall be limited to those areas of the Annexed Property which will not materially and adversely impair (a) a Builder's construction of a Residence on a Lot and the construction of buildings on Residential sites, Commercial Sites or public or community sites, or (b) the use by any Owner of a Residence.

10.4. Drainage Easement. Declarant hereby reserves to itself and to the Operating District easements for drainage or drainage facilities across the ten (10) rear and five (5) side feet of each Lot and, if necessary, an easement across each Lot in order for Declarant to access such drainage easement areas; provided, however, that such easement shall not be reserved over any of the areas described in this sentence if and to the extent a Residence is located upon any such area, which was previously approved by the Declarant or by the DRC. Except for Residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot, nor shall any change in grading be permitted to exist

which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Operating District the right to enter in and upon each ten (10) foot rear and five (5) foot side yard drainage easement at any time to construct, repair, replace or change drainage structures or to perform such grading, draining or corrective work as Declarant or the Operating District may deem necessary or desirable in its sole discretion from time to time; provided, however, that such right and authority in Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Article IX of this Declaration, at which time such reserved right shall vest solely in the Operating District.

10.5. Transfer of Development Rights. Any right created or reserved under this Article X for the benefit of the Declarant may be transferred to any Person by Recording an instrument in the Records specifically describing the rights transferred. Such instrument shall be executed by the transferor, the Declarant and the transferee.

#### ARTICLE XI - PARTY WALLS

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

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

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

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

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

11.6. Arbitration. In the event of a dispute arising concerning the provisions of this Article XI, the parties shall resolve such dispute in accordance the dispute resolution policy adopted by the Metropolitan Districts or a committee appointed by the Metropolitan Districts..

## **ARTICLE XII - EASEMENTS AND DISCLOSURES**

12.1. Easements. In addition to any other easements which may be granted or reserved elsewhere in this Declaration, this Article XII describes (a) certain disclosures regarding the Annexed Property, (b) additional easements (the "Easements") that are declared, established, granted, and reserved hereby as more particularly set forth in Sections 12.2 through 12.5 hereof, and (c) the limitations on the Easements (Section 12.6 hereof).

12.2. Easements for Access. The Declarant hereby declares, establishes, grants, and reserves Easements over each Lot in favor of the Declarant and the Operating District, including their respective agents, contractors, and employees thereof, for performing maintenance, repair, or replacement or other services as provided in this Declaration, including, without limitation, maintenance, repair, or replacement pursuant to Article IV hereof. If damage is inflicted on a Tract, any Lot or any other property, then (a) the Owner or Owners responsible for such damage will be responsible for the cost and expense of repairing or avoiding such damage, and (b) the Operating District may, at its option, take steps necessary to avoid or mitigate damage and, if an Owner or Owners are responsible for such damage, then such Owner or Owners shall reimburse the Operating District for the cost and expense of avoiding or repairing such damage. Further, the rights to access Easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner or Owners or occupant or occupants of any affected Lot; provided, however, that no such notice shall be required in connection with any exterior, non-intrusive maintenance and in emergency situations entry upon a Lot may be made at any time, provided that the Owner or Owners or occupant or occupants of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any Residence located on a Lot shall not be subject to the Easements provided for in this Section.

12.3. Retention Ponds and Detention Ponds. In furtherance of developing the Annexed Property, retention ponds and/or detention ponds may be constructed within the Metropolitan District Property to hold and release storm water in accordance with storm water drainage plan(s) that have been or will be approved by the City. The Operating District will be responsible for maintaining any retention ponds or detention ponds within the Annexed Property. With the presence of retention pond(s) or detention pond(s), there may be surface water that accumulates within the area of such ponds, and there may be periods of time when the area immediately surrounding a retention pond or detention pond is subject to flooding. Additionally, there are certain risks and dangers of physical injury and property damage inherent in the physical configuration of a retention pond and a detention pond, and the location of such a pond relative to the Annexed Property. Neither the Operating District the

Declarant, nor any Builder, their officers, directors or shareholders, shall be liable for any injury, loss or damage arising from such flooding or otherwise arising from the proximity of any retention ponds or detention ponds to the Annexed Property.

12.4. Easements and Disclosures Regarding Public Facilities. The following disclosures are made and easements established with respect to the Public Facilities:

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

(b) Release by Owner of Claims Relating to Risks. Each Owner agrees that, by acceptance of a deed to a Lot within the Annexed Property, and each family member, guest, invitee or tenant of an Owner, by use or occupancy of a Residence or other Improvement within the Annexed Property, hereby (i) discharges and releases the Declarant, the Metropolitan Districts and their Boards of Directors, the DRC and the CEC, the City, the County, any Builder, any Neighborhood Association, any party operating the Public Facilities and their respective parents, subsidiaries, and affiliated entities and their agents, directors, employees, members, managers, officers, partners, and shareholders, and their respective heirs, successors, and assigns (the "Benefited Parties") from all Claims (as that term is hereinafter defined) and (ii) waives all Claims against the Benefited Parties. The foregoing discharge, release, and waiver are made by each Owner and each family member, guest, invitee or tenant of an Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, guests, invitees, lessees, personal representatives, representatives, and successors, and for any person using or occupying any Residence or other Improvement within the Annexed Property, through, under, or with the permission of each Owner and each family member, guest, invitee or tenant of an Owner. As used in this Section 12.4(b) and in Section 12.4(c) hereof, the term "Claims" means any and all causes of action, claims, costs, damages, expenses, liabilities, and other claims arising directly or indirectly from or otherwise in connection with the Public Facilities, the Public Facilities Risks, whether caused by the negligent conduct of the Benefited Parties, including, without limitation, the negligent design, development, construction, operation, or use of the Public Facilities or otherwise.

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

that it will not assert, institute, maintain, or prosecute any proceeding (as that term is hereinafter defined) against the Benefited Parties, or any of them, for or on account of any Claim. As used herein, the term "proceeding" means any action, civil action, suit at law, claim in equity, arbitration, or other proceeding against the Benefited Parties or any of them.

12.5. Easement and Reserved Rights for Telecommunications Facilities. The Declarant hereby declares, establishes, grants and reserves the following Easements and rights with respect to telecommunications facilities, telecommunications services and utilities:

(a) Easement. The Declarant hereby declares, establishes, grants, and reserves for the benefit of itself and the Operating District a blanket Easement (the "Telecommunication Facilities and Utilities Easement") upon, across, over, and under the Annexed Property for telecommunication facilities and utilities and for the construction, installation, maintenance, replacement, and repair of telecommunication facilities and utilities. By virtue of the telecommunication facilities and utilities Easement, it shall be expressly permissible for the Declarant, the Operating District, and their respective assignees or designees to (i) erect and maintain the necessary appurtenances, equipment, lines, and other facilities on the Annexed Property that are needed for telecommunication facilities and utilities, and (ii) affix, maintain, repair, and replace the necessary appurtenances, equipment, lines, and other facilities necessary or desirable for the operation, repair, replacement, and use of the telecommunication facilities and the utilities. Notwithstanding the foregoing, the reservation of such telecommunication facilities and utilities. Easement shall be limited to those areas of the Annexed Property which will not materially and adversely impair (a) a Builder's construction of a Residence on a Lot and the construction of buildings on Residential Sites, Commercial Sites or industrial sites, or (b) the use by any Owner of a Residence.

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

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

12.7. Delegation and Termination of Rights. The duties, Easements, responsibilities, and rights that are reserved and granted pursuant to Sections 12.2 through 12.5 hereof may be delegated in whole or in part by the Declarant or the Operating District to (a) an agent or management company that is acting on behalf of the Operating District with respect to all or part of the Annexed Property, or (b) a Neighborhood Association with respect to a portion of the Annexed Property; provided, however, that any such delegation shall not relieve the Operating District of its obligations and rights hereunder. The right and authority of the Declarant pursuant to Sections 12.2, 12.3, 12.5, and 12.7 hereof shall automatically cease upon expiration of the Development Period at which time the foregoing reserved rights shall vest solely in the Operating District.

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

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

### **ARTICLE XIII - PUBLIC FACILITIES**

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

### **ARTICLE XIV – IMPOSITION OF TRANSFER FEE**

14.1. Imposition of a Transfer Fee. Except as hereinafter provided, the Declarant hereby imposes a Transfer Fee upon all Transfers of Lots and zoned density interests. Each Owner of a Lot or zoned density interest, by acceptance of a Deed or grant thereof, whether or not it shall be so expressed in such Deed or grant, agrees and covenants to the validity of the Transfer Fee and shall be personally obligated to ensure payment of the fee to the Operating



District, with such Transfer Fee to be collected as hereinafter provided. The obligation for the payment of the Transfer Fee by each Transferor and each Transferee is an independent covenant with all amounts due, from time to time, payable in full when due without deduction or set-off. All Owners of each Lot or zoned density shall be jointly and severally liable to the Operating District for the payment of the Transfer Fee, and each Transfer Fee shall also be the personal obligation of the Transferor and the Transferee at the time a Lot or zoned density is transferred. In the absence of an agreement between the Transferor and the Transferee to the contrary, the Transfer Fee shall be paid by the Transferee.

14.2. Purpose and Use of Transfer Fee. All Transfer Fees shall be applied, held, and used for the following uses and purposes: By acceptance of a Deed or grant conveying a Lot or zoned density, each Owner acknowledges and agrees that the Operating District and entities affiliated with it (including the Declarant and the Metropolitan Districts) have expended substantial sums in connection with developing a master plan for the Annexed Property, helping finance and plan the community, and providing the credit enhancement necessary for the Metropolitan Districts to obtain the financing necessary for them to develop the community including common areas. Transfer Fees paid to the Operating District are intended to compensate the Metropolitan Districts for the financial obligations and risks undertaken in the development activities and guarantees of financial obligations, and represents reasonable compensation to the Metropolitan Districts for such obligations and risks, and the promise and assurance of payment by Owners is a material inducement to the Metropolitan Districts to undertake such obligations and risks and that, without the Transfer Fees, the Metropolitan Districts would have been unwilling to undertake such obligations and risks. The Metropolitan Districts may use the Transfer Fees for any lawful purpose. At their option and election, the Metropolitan Districts may, from time to time, waive collection of the Transfer Fee with respect to a specified Transfer or Transfers provided that such waiver shall (1) be accomplished by a recorded waiver, and (2) shall apply only to the Transfer or Transfers described in such waiver.

14.3. Collection and Payment of Transfer Fee. The Operating District shall be responsible for and shall collect the Transfer Fee at the time of each Transfer of a Lot or zoned density; provided, however, the Operating District may delegate the collection of the Transfer Fee to a title insurance company or a third party. The Transfer Fee shall be payable at the time of each Transfer.

14.4. Effect of Nonpayment of Transfer Fee. If a Transfer occurs with respect to which a Transfer Fee is due, but not paid, then the unpaid Transfer Fee shall be a lien upon the transferred Lot or zoned density which (a) is subordinate to the lien of any first mortgage on a Lot or zoned density, but prior to all other encumbrances and liens, and (b) will bear interest at the rate of not more than eighteen percent (18%) per annum from the date of the Transfer until the date of payment. The Operating District may foreclose upon the lien of the Transfer Fee in the same manner that a mortgage is foreclosed upon in the State of Colorado, may file an action against the Transferor or the Transferee or both to collect the Transfer Fee in the same manner that actions are brought to collect sums due on account, or may pursue such other remedies and rights as they may have at law, in equity, or otherwise, under the laws of the State of Colorado. If an action is brought to collect all or part of a Transfer Fee, then the Operating District shall also be entitled to an award of its court costs and reasonable attorneys' fees incurred in the collection of the Transfer Fee.

14.5. Certificate of Status of Transfer Fee. The Operating District, from time to time, may issue certificates evidencing the amount of unpaid Transfer Fees due with respect to a particular Lot or zoned density.

14.6. Restriction on Amendment of Transfer Fee. Notwithstanding anything to the contrary contained herein, the provisions of this Amended Declaration regarding the payment of a Transfer Fee may not be amended, modified, repealed, terminated, or waived without the prior written consent of (a) the Declarant, to the extent that the Declarant continues to own a Lot in the Annexed Property, or (b) the Operating District, or as applicable, a Metropolitan District.

14.7. Exclusions from Imposition of Transfer Fees. Notwithstanding anything to the contrary contained herein and subject to the terms of this Section 14.7, the following Transfers of a Lot or a zoned density interest shall be exempt from and not subject to the imposition of a Transfer Fee: (a) a Transfer from a Transferor to a Transferee who is the spouse of a Transferor, (b) a Transfer from a Transferor to a Transferee resulting from an order of court, a dissolution of a marriage, or by operation of law, (c) a Transfer for estate planning purposes whether outright or in trust that is for the benefit of the Transferor or his or her relatives, but only if there is no more than nominal consideration for the Transfer, (d) Transfers resulting from a devise, bequest, or other transfer made in connection with a probate proceeding involving a Transferor, (e) a Transfer from a Transferor to a Transferee that is either a gift or otherwise does not involve consideration, (f) a Transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith, (g) Transfers made pursuant to mergers or consolidation of corporations or by a subsidiary to a parent corporation which does not result in a change of control, (h) a Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses, to the extent no consideration is paid, (i) a Transfer of ownership from one or more individuals or from an entity, to an entity, where the individuals or principals in the Transferee entity are the same as the individuals or the principals in the Transferor entity, (j) any Transfer solely of minerals or interests in minerals, (k) a Transfer to secure a debt or other obligation, or a Transfer or release of property which is security for a debt or other obligation, (l) a Transfer in connection with foreclosure of a first deed of trust or mortgage by the original lienholder or in connection with a deed given in lieu of foreclosure to an original first deed of trust or mortgage lienholder, or (m) any Transfer in the form of a lease, provided such lease by its terms does not exceed 25 years. To be entitled to a foregoing exemption from the Transfer Fee, the Transferor and the Transferee must (i) claim the foregoing exemption from the Transfer Fee at least five days prior to the proposed Transfer by making written application to the Operating District, and (ii) provide such evidence as the Operating District may reasonably require, to confirm and evidence such exemption. In the event that it is not reasonably possible to obtain Operating District approval of an exemption prior to effectuating a Transfer, the Transferor and Transferee shall pay the Transfer Fee due to the Operating District and contemporaneously submit an application stating the reason why the Transfer Fee is not owed. The Operating District shall determine whether the Transfer is exempt as set forth in this Section 14.7 and issue its decision within thirty (30) days of receipt of the application. The Operating District may

adopt such other policies, procedures or requirements, including application fees or late fees, it deems necessary to ensure compliance with this Article. The foregoing exemptions from the Transfer Fee will apply only to the specific Transfer of a Lot that is exempt from the imposition of the Transfer Fee pursuant to this Section 14.7 and subsequent Transfers of such Lot will be subject to the Transfer Fee provided for in this Article XIV.

#### **ARTICLE XV – IMPOSITION OF PUBLIC IMPROVEMENT FEE**

15.1. General. Declarant appoints and authorizes the Twin Buttes Metropolitan District No. 1 to impose an obligation to collect and pay, and to provide for the implementation of the collection and payment of a fee ("Public Improvement Fee" or "PIF") to pay for the public improvements that the Metropolitan Districts will construct, install or cause to be constructed and installed. This obligation, to the extent one is created, shall be set forth in a separate covenant (the "PIF Covenant") adopted by the Twin Buttes Metropolitan District No. 1, as declarant under the PIF Covenant and recorded in the real estate records of La Plata County, Colorado.

15.2. Collection of PIF. Subject to the terms of the PIF Covenant, such Public Improvement Fee will be required to be collected by all sellers or providers of goods or services who engage in any qualified sales transactions within the property subject to the PIF Covenant from the purchaser or recipient of such goods or services and then paid over to the Operating District or its assignee. The Public Improvement Fees will be collected, received and remitted in accordance with the terms and provisions of the PIF Covenant. The Public Improvement Fee shall not exceed two percent (2%) of the qualified sales transactions ("PIF Sales").

#### **ARTICLE XVI - EXEMPTION FOR THE DECLARANT AND BUILDER**

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

#### **ARTICLE XVII - GENERAL PROVISIONS**

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

further relief as may be available, or any combination thereof. Such proceedings may be instituted by an Owner or the Operating District or its designated committee. In any such proceedings the prevailing party shall recover the costs and reasonable attorneys' fees incurred by such party in connection with such proceedings. In addition, the Operating District may levy Fines against a Lot Owner, or such Owner's lessee, due to a violation of the restrictions. Reasonable notice and the opportunity for a hearing shall be provided to the affected Lot Owner, or such Owner's lessee, before any such Fines are charged. The unpaid Fines shall be added to the taxes and fees charged against the Lot of such Lot Owner by the Operating District or the Finance District. The failure to enforce any provision of this Declaration, the Design Documents, and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such Violation shall be of the same or of a different provision. The Operating District shall not be liable to reimburse any Lot Owner for attorneys' fees or costs incurred in any suit brought by a Lot Owner to enforce or attempt to enforce this Declaration.

17.2. Neighborhood Associations. Nothing in this Declaration shall prohibit the organization or creation of any Neighborhood Association in accordance with Applicable Laws in which the membership is comprised of Owners of Lots within all or part of an area covered by a Supplemental Declaration. Such Neighborhood Associations may have the right to impose assessments, own Tracts, and/or perform all duties typically allocated to an association under the Colorado Common Interest Ownership Act, or otherwise, subject to the Restrictions and provided any such assessments are subordinate to any assessments levied pursuant to this Declaration.

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

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

17.5. Amendment. Except as otherwise provided in this Declaration, this Declaration may be amended (by (a) either modifying or deleting any existing provisions, or (b) adding new provisions) or terminated at any time by a written and recorded instrument containing the consents of the then record Owners of at least sixty-seven percent (67%) of the Lots subject to this Declaration; provided, however, that at any time that the Declarant owns a Lot or any other real property subject to this Declaration, any amendment to this Declaration shall be strictly conditioned on the Declarant's written consent. Furthermore, to the extent the Annexed Property and this Declaration has been submitted to and approved by HUD or any Government Mortgage Agencies, all amendments to this Declaration must have the approval by any of the foregoing entities that have approved the same and have outstanding guaranteed loans secured by Lots within the Annexed Property.

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

17.7. Limited Liability. Neither the Declarant, the Metropolitan Districts, nor any officers, directors, shareholders, managers, members, partners, agents or employees of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter in which the action taken or failure to act was in good faith and without malice. Such parties shall be reimbursed by the Operating District for any costs and expenses, including reasonable attorneys' fees, incurred by them with the prior approval of the Operating District (which approval shall not unreasonably be withheld) as a result of the threatened or pending litigation pertaining to the Annexed Property or this Declaration in which they are or may be named as parties.

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

17.9. No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, the Metropolitan Districts, or by any of their officers, directors, shareholders, managers, members, partners, agents or employees in connection with any portion of the Annexed Property, or any Improvement, its physical condition, structural integrity, freedom from defects, zoning, compliance with Applicable Laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, or any other matter whatsoever whether similar or dissimilar to the foregoing, unless and except as specifically set forth in writing. The release and waiver set forth in Section 17.10 shall apply to this Section.

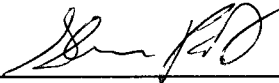
17.10. Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives and discharges the Declarant and the Metropolitan Districts and their respective officers, directors, managers, members, partners, agents, employees, successors and assigns from all losses, claims, liabilities, costs,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

17.11. Waiver of Trial to a Jury or Trial to a Judge. BY ACCEPTING A DEED TO ANY LOT, EACH OWNER HEREBY KNOWINGLY, VOLUNTARILY AND

INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY A JURY OR TO A JUDGE WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY THEM AGAINST DECLARANT OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO, OR ANY CLAIM ARISING OUT OF ALLEGATIONS OF DEFECTIVE CONSTRUCTION.

IN WITNESS WHEREOF, Declarant has caused this Amended Declaration to be duly executed.

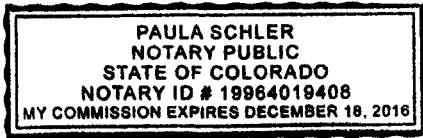
TWIN BUTTES OF DURANGO, INC., a Colorado corporation


By:   
Glenn D. Pauls, President

State of Colorado            )  
  ) ss.  
County of La Plata         )

The foregoing Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes was acknowledged before me this 11<sup>th</sup> day of August, 2016, by Glenn D. Pauls, as President of TWIN BUTTES OF DURANGO, INC., a Colorado corporation.

WITNESS my hand and official seal.  
My commission expires: 12/18/16



  
Notary Public

**LIST OF EXHIBITS**

Exhibit A	Legal Description of Annexed Property
Exhibit B	Additional Property
Exhibit C	Consent of Owners
Exhibit D	Consent of Declarant

**EXHIBIT A**  
**(Legal Description of Annexed Property)**

TWIN BUTTES PHASE I, FILING 1A PLAT ACCORDING TO THE RECORDED PLAT  
THEREOF FILED FOR RECORD MAY 6, 2016 UNDER RECEPTION NO. 1111401,  
COUNTY OF LA PLATA, STATE OF COLORADO.



**EXHIBIT B**  
**(Additional Property)**

PARCEL 1R-A, TWIN BUTTES AND THE CITY OF DURANGO, PARCELS 1R, 2, 5 AND 6 BOUNDARY ADJUSTMENT and REZONE, ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MAY 6, 2016, UNDER RECEPTION NO. 1111396, COUNTY OF LA PLATA, STATE OF COLORADO.

PARCEL 2R, TWIN BUTTES AND THE CITY OF DURANGO, PARCELS 1R, 2, 5 AND 6 BOUNDARY ADJUSTMENT and REZONE ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MAY 6, 2016 UNDER RECEPTION NO. 1111396, COUNTY OF LA PLATA, STATE OF COLORADO.

PARCEL 3R-A, TWIN BUTTES AND THE CITY OF DURANGO, PARCELS 2R, 3R AND 4 BOUNDARY ADJUSTMENT and REZONE, ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MAY 6, 2016, UNDER RECEPTION NO. 1111397, COUNTY OF LA PLATA, STATE OF COLORADO.

PARCEL 1, MCINTYRE RANCH AND THE CITY OF DURANGO BOUNDARY ADJUSTMENT, ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MARCH 7, 2012, UNDER RECEPTION NO. 1043794, COUNTY OF LA PLATA, STATE OF COLORADO.

**TOGETHER WITH:**

PARCEL 2 ON PLAT RECORDED UNDER RECEPTION NO. 1026896  
PARCELS 1A AND 1B ON PLAT RECORDED UNDER RECEPTION NO. 1043561  
PARCEL I IN INSTRUMENT RECORDED UNDER RECEPTION NO. 1062510  
PARCEL IN INSTRUMENT RECORDED UNDER RECEPTION NO. 1062520  
PARCEL IN INSTRUMENT RECORDED UNDER RECEPTION NO. 1093013

**LESS AND EXCEPT:**

TWIN BUTTES PHASE I, FILING 1A PLAT ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MAY 6, 2016 UNDER RECEPTION NO. 1111401, COUNTY OF LA PLATA, STATE OF COLORADO.

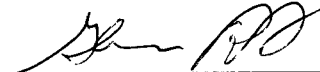
ALL IN LA PLATA COUNTY, COLORADO

**EXHIBIT C**

(Consent of Owners)

As record Owner of at least sixty-seven percent (67%) of the Lots subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as recorded on May 6, 2016, under Reception No. 1111402, of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, the undersigned approve and consent to the foregoing Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, and consent to the recording of the same.

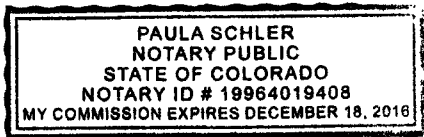
TWIN BUTTES OF DURANGO, INC.

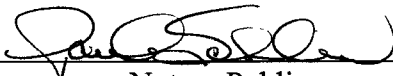
By:   
Glenn D. Pauls, President

State of Colorado            )  
  ) ss.  
County of La Plata         )

The foregoing Consent to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes was acknowledged before me this 11<sup>th</sup> day of August, 2016, by Glenn D. Pauls, as President of TWIN BUTTES OF DURANGO, INC., a Colorado corporation, Owner of at least sixty-seven percent (67%) of the Lots subject to the Master Declaration.

WITNESS my hand and official seal.  
My commission expires: 12/18/16



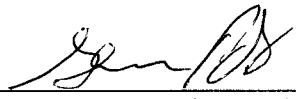
  
Notary Public

**EXHIBIT D**

(Consent of Declarant)

Declarant, Twin Buttes of Durango, Inc., a Colorado corporation, as owner of Lots and other real property subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, recorded on May 6, 2016, under Reception No. 1111402, of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, the approves and consents to the foregoing Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, and consents to the recording of the same.

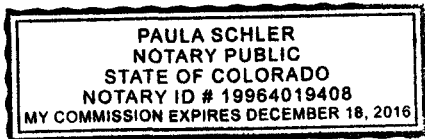
TWIN BUTTES OF DURANGO, INC.

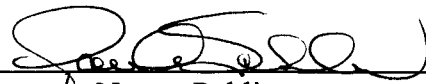
By:   
Glenn D. Pauls, President

State of Colorado            )  
  ) ss.  
County of La Plata         )

The foregoing Consent to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes was acknowledged before me this 11<sup>th</sup> day of August, 2016, by Glenn D. Pauls, as President of TWIN BUTTES OF DURANGO, INC., a Colorado corporation, Declarant.

WITNESS my hand and official seal.  
My commission expires: 12/18/16



  
Notary Public

elin

Return to:  
Twin Buttes of Durango  
690 Twin Buttes Avenue  
Durango, CO 81301

**FIRST AMENDMENT  
TO  
AMENDED AND RESTATED MASTER DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR TWIN BUTTES**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR TWIN BUTTES (the "First Amendment") is made and entered into to be effective as of December 13, 2017 ("Effective Date"), by Declarant Twin Buttes of Durango, Inc., a Colorado corporation ("Declarant").

RECITALS

A. Declarant executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded August 12, 2016, under Reception No. 1116065 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, which has been supplemented by the recording of a Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 12, 2016, at Reception No. 1116066, and further supplemented by the recording of a Supplemental Declaration for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 24, 2017, at Reception No. 1132603 (collectively the "Declaration").

B. Declarant desires to amend the Declaration by amending Article XIV, Section 14.7, to include an additional exclusion from imposition of Transfer Fees pursuant to the terms hereof.

C. Declarant owns at least sixty-seven percent (67%) of the Lots subject to the Declaration.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees to amend the Declaration as follows:

AMENDMENT

1. Additional exclusion from imposition of Transfer Fee. Article XIV, Section 14.7, first sentence, is hereby amended by the addition of the following exclusion:

" or (n) the recording of a deed evidencing the first sale of a residence which recording occurs within eighteen (18) months of the issuance by the City of a certificate of occupancy."

2. Miscellaneous. The following provisions shall apply with respect to this First Amendment:

a. Except as modified herein, the Declaration is in full force and effect and is hereby ratified by Declarant.


b. Capitalized terms not defined herein shall have the same meaning as set forth in the Declaration.

c. In the event of any conflict between the Declaration and this First Amendment, this First Amendment shall control.

IN WITNESS WHEREOF, the Declarant has caused this First Amendment to be executed to be effective as of the date first set forth above.

DECLARANT:

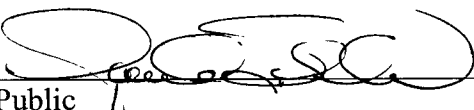
TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation

  
\_\_\_\_\_  
By: Glenn Pauls  
Its: President

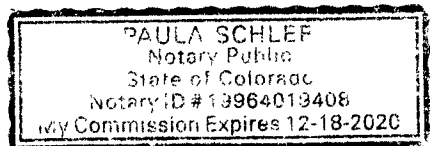
STATE OF COLORADO )  
  ) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 21st day of February, 2018, by Glenn Pauls, President of Twin Buttes of Durango, Inc.

Witness my hand and official seal

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

My commission expires: 12/18/20





Return to:  
Twin Buttes of Durango  
690 Twin Buttes Avenue  
Durango, CO 81301

**SECOND AMENDMENT  
TO  
AMENDED AND RESTATED MASTER DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR TWIN BUTTES**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR TWIN BUTTES (the "Second Amendment") is made and entered into to be effective as of March 1, 2018 ("Effective Date"), by the record Owners of at least sixty-seven percent (67%) of the Lots subject to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

RECITALS

A. Declarant, Twin Buttes of Durango, Inc., executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded August 12, 2016, under Reception No. 1116065 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, which has been supplemented by the recording of a Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 12, 2016, at Reception No. 1116066, and further supplemented by the recording of a Supplemental Declaration for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 24, 2017, at Reception No. 1132603, and which has been amended by the First Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded February 23, 2018, under Reception No. 1139941 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado (collectively the "Declaration").

B. The Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration consent to this Second Amendment.

C. The Owners desire to amend the Declaration to permit subdivision of certain lots at initial development in accordance with the design densities allocated in the Twin Buttes Third Amended and Restated Development Agreement between the City of Durango, Colorado and Twin Buttes of Durango, Inc. dated March 1, 2018, or as may be allocated in Preliminary Plans for future filings in Twin Buttes.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the record Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration agree to amend the Declaration as follows:

AMENDMENT

1. Amendment of Section 7.24. Article VII, Section 7.24, shall be amended by the addition of the language set forth in italics below:

*7.24. Restriction on Further Subdivision. Specific Lots may be designated as eligible for construction of up to two (2) Residential structures, attached or detached, owned jointly or separately, which designations may be set forth in the Twin Buttes Third Amended and Restated Development Agreement between the City of Durango, Colorado and Twin Buttes of Durango, Inc. dated March 1, 2018, or may be allocated in Preliminary Plans for future filings in Twin Buttes. Owners of the specific Lots to be subdivided must receive Twin Buttes Metropolitan District Design Review Committee approval and the required approval of City of Durango prior to commencing construction. Design densities may only be increased at initial development and construction. After initial development and construction, no Residential site shall be further subdivided or separated into smaller Lots by any Owner, and no portion consisting of less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar non-material corrective instruments. The Declarant shall not be considered an Owner for the purpose of this Section 7.24.*

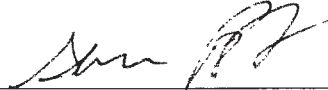
2. Miscellaneous. The following provisions shall apply with respect to this Second Amendment:

- a. Except as modified herein, the Declaration is in full force and effect.
- b. Capitalized terms not defined herein shall have the same meaning as set forth in the Declaration.
- c. In the event of any conflict between the Declaration and this Second Amendment, this Second Amendment shall control.

IN WITNESS WHEREOF, the Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration approve and consent to this Second Amendment to the Declaration to be effective as of the date first set forth above.

CONSENT OF OWNER AND DECLARANT

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation



By: Glenn Pauls  
Its: President

STATE OF COLORADO

)

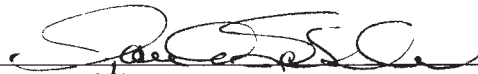
) ss.

COUNTY OF LA PLATA

)

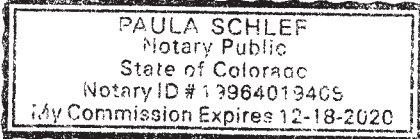
Subscribed and sworn to before me this 26 day of April, 2018, by Glenn Pauls, President of Twin Buttes of Durango, Inc., as Declarant and as record Owner of certain lots in Twin Buttes Phase 1, Filing 1A and 2A, subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

Witness my hand and official seal



Notary Public

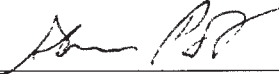
My commission expires: 12/18/20





CONSENT OF OWNER


TWIN BUTTES OF DURANGO, LLC  
a Colorado limited liability company

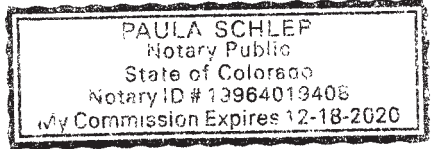
By:   
Glenn Pauls, Member/Manager

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF LA PLATA                 )

Subscribed and sworn to before me this 26 day of April, 2018, by Glenn Pauls, Member/Manager of Twin Buttes of Durango, LLC, a Colorado limited liability company, as record Owner of Assessor's Parcel No. 5661-252-00-029, subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

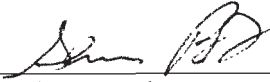
Witness my hand and official seal.  
My commission expires: 12/18/20

  
Notary Public



CONSENT OF OWNER

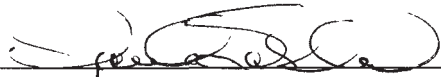
MCINTYRE RANCH, LLLP,  
a Colorado limited liability limited partnership

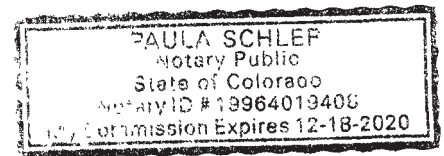
By:   
Glenn Pauls, as General Partner

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF LA PLATA        )

Subscribed and sworn to before me this 26 day of April, 2018, by Glenn Pauls, General Partner of McIntyre Ranch, LLLP, a Colorado limited liability limited partnership, as record Owner of Assessor's Parcel No. 5661-252-00-030, subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.


Witness my hand and official seal.  
My commission expires: 12/18/20

  
Notary Public



CONSENT OF OWNER

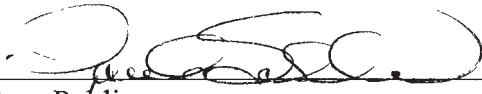
NEW ENERGY STATION, LLC  
a Colorado limited liability company

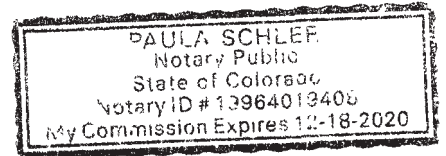
By:   
Glenn Pauls, as Member/Manager

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF LA PLATA        )

Subscribed and sworn to before me this 26 day of April, 2018, by Glenn Pauls, Member/Manager of New Energy Station, LLC, a Colorado limited liability company, as record Owner of Assessor's Parcel No. 5661-243-00-082, subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

Witness my hand and official seal.  
My commission expires: 12/18/20

  
Notary Public



CONSENT OF OWNER

TWIN BUTTES LOT G, LLC

By: [Signature]  
Robert Delves, Manager/Member

By: [Signature]  
Joel Aguilar, Manager/Member

STATE OF COLORADO )  
) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 24 day of April, 2018, by Robert Delves, Manager/Member of Twin Buttes Lot G, LLC, a Colorado limited liability company, as record Owner of Assessor's Parcel No. 5661-234-01-054, subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

Witness my hand and official seal.  
My commission expires: 3/24/20

ELIZABETH S CARROLL  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20044010455  
MY COMMISSION EXPIRES 03-24-2020

[Signature]  
Notary Public

STATE OF COLORADO )  
) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 26 day of April, 2018, by Joel Aguilar, Manager/Member of Twin Buttes Lot G, LLC, a Colorado limited liability company, as record Owner of Assessor's Parcel No. 5661-234-01-054, subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

Witness my hand and official seal.  
My commission expires: 3/24/20

ELIZABETH S CARROLL  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20044010455  
MY COMMISSION EXPIRES 03-24-2020

[Signature]  
Notary Public

CONSENT OF OWNER

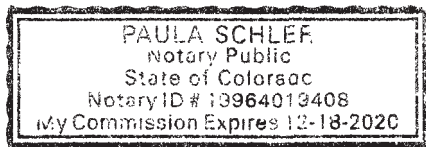
MANTELL-HECATHORN BUILDERS, INC.  
a Colorado corporation

By: Gregory E Mantell-Hecathorn  
Gregory E. Mantell-Hecathorn, President *President*

STATE OF COLORADO )  
  ) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 25 day of April, 2018, by Gregory E. Mantell-Hecathorn, President of Mantell-Hecathorn Builders, Inc., a Colorado corporation, as record Owner of Assessor's Parcel No. 5661-233-01-011, subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

Witness my hand and official seal.  
My commission expires: 12/18/20



[Signature]  
Notary Public



5

Return to:  
Twin Buttes of Durango  
690 Twin Buttes Avenue  
Durango, CO 81301

**THIRD AMENDMENT  
TO  
AMENDED AND RESTATED MASTER DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR TWIN BUTTES**

THIS THIRD AMENDMENT TO THE AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR TWIN BUTTES (the “Third Amendment”) is made and entered into to be effective as of December 13, 2018 (“Effective Date”), by the record Owners of at least sixty-seven percent (67%) of the Lots subject to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

RECITALS

A. Declarant, Twin Buttes of Durango, Inc., executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado (the “Records”), as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded August 12, 2016, under Reception No. 1116065 of the Records, which has been supplemented by the recording of Supplemental Declarations of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes in the Records on August 12, 2016 at Reception No. 1116066, on August 24, 2017 at Reception No. 1132603, and on August 10, 2018 at Reception No. 1146642, and which has been amended by the First Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded February 23, 2018, under Reception No. 1139941 of the Records and further amended by the Second Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded April 27, 2018, under Reception No. 1142292 of the Records (collectively the “Declaration”).

B. The Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration consent to this Third Amendment. Declarant also consents to this Third Amendment.

C. The Owners desire to amend the Declaration to permit short-term rental of Residential sites by Owners and to further modify the provisions for exclusions from the imposition of the Transfer Fee.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the record Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration agree to amend the Declaration as follows:

AMENDMENT

1. Amendment of Section 7.25. Article VII, Section 7.25, shall be amended to read as follows (additional language shown in italics below and deleted language shown as stricken-through):

7.25. Leases. The Owner of a Residential site shall have the right to lease such Owner's Residence or other Dwelling Unit, subject to the following conditions:

(a) All leases shall be in writing and copies thereof shall be provided to the Board or its delegate immediately upon request. Every lease shall provide that the tenant's occupancy of the Residential site shall be subject to the provisions of this Amended Declaration and any Rules and Regulations.

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

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

(d) Any lease for a term of twenty-nine (29) days or fewer shall be referred to herein as a "Short-Term Lease." An Owner may enter into a Short-Term Lease for its Residential site only upon receipt of all approvals or permits required by the Operating District. The Operating District is authorized to adopt Rules and Regulations pertaining to Short-Term Leases, which may, among other things, establish: (i) the Neighborhoods or other areas in which Short-Term Leases may be permitted; (ii) minimum property improvements to allow a property to be considered for Short-Term Leases (e.g. parking spaces); (iii) the process for obtaining approval from the Operating District; and (iv) the remedies and penalties for violation of such Rules and Regulations, which may include revocation of approval. Short-Term Leases may also require the payment of Public Improvement or other such Operating District imposed Fees.

(e) Short-Term Leases may also be subject to regulation by the City of Durango, and Owners shall comply with the City's ordinances, rules and processes pertaining to Short-Term Leases, as applicable.

2. Amendment of Section 7.2. Article VII, Section 7.2, shall be amended to include the following additional language:

Any leasing of a Residential Site shall be considered accessory to the Residential Use and shall not be considered a business, commercial or non-residential use.

3. Amendment to Section 14.7(n). Article XIV, Section 14.7(n), which was added pursuant to the First Amendment, shall be amended to read as follows (changes shown in italics below):

(n) the recording of a deed evidencing the first sale of a residence which recording occurs within three (3) years of the issuance by the City of a certificate of occupancy.

4. Miscellaneous. The following provisions shall apply with respect to this Third Amendment:

- a. Except as modified herein, the Declaration is in full force and effect.
- b. Capitalized terms not defined herein shall have the same meaning as set forth in the Declaration.
- c. In the event of any conflict between the Declaration and this Third Amendment, this Third Amendment shall control.


[SIGNATURE PAGE FOLLOWS]



CONSENT OF OWNER

IN WITNESS WHEREOF, the Owner of at least sixty-seven percent (67%) of the Lots subject to the Declaration approves and consents to this Third Amendment to the Declaration to be effective as of the date first set forth above and further ratifies and confirms all prior Amendments to the Declaration.

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation



By: Glenn Pauls, President

STATE OF COLORADO

)


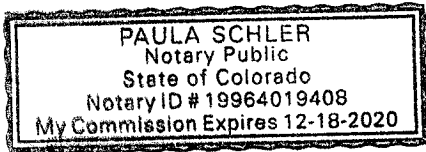
) ss.

COUNTY OF LA PLATA

)

Subscribed and sworn to before me this 26 day of February, 2019, by Glenn Pauls, President of Twin Buttes of Durango, Inc., as record Owner of at least sixty-seven percent (67%) of the Lots subject to the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

Witness my hand and official seal. My commission expires: 12/18/20

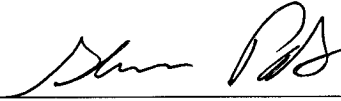


Notary Public

CONSENT OF DECLARANT

IN WITNESS WHEREOF, the Declarant approves and consents to this Third Amendment to the Declaration to be effective as of the date first set forth above.

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation


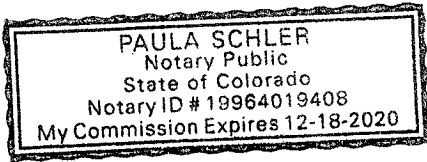


By: Glenn Pauls, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 26 day of February, 2019, by Glenn Pauls, President of Twin Buttes of Durango, Inc., as Declarant under the Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

Witness my hand and official seal. My commission expires: 12/18/20

  
Notary Public

Return to:  
Twin Buttes of Durango  
690 Twin Buttes Avenue  
Durango, CO 81301

**FOURTH AMENDMENT  
TO  
AMENDED AND RESTATED MASTER DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR TWIN BUTTES**

THIS FOURTH AMENDMENT TO THE AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR TWIN BUTTES (the “Fourth Amendment”) is made and entered into to be effective as of January 1, 2023 (“Effective Date”), by the record Owners of at least sixty-seven percent (67%) of the Lots subject to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes, as amended and supplemented.

RECITALS

A. Declarant, Twin Buttes of Durango, Inc., executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded August 12, 2016, under Reception No. 1116065 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, which has been supplemented by the recording of a Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 12, 2016, at Reception No. 1116066, and further supplemented by the recording of a Supplemental Declaration for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 24, 2017, at Reception No. 1132603, and further supplemented by the recording of a Supplemental Declaration for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 10, 2018, at Reception No. 1146642, and further supplemented by the recording of a Supplemental Declaration for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on October 11, 2022, at Reception No. 1216099, and which has been amended by the First Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded February 23, 2018, under Reception No. 1139941 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, the Second Amendment to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded April 27, 2018, under Reception No. 1142292 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, and the Third Amendment to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded February 28, 2019, at Reception No. 1153949 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado (collectively the “Declaration”).

B. The Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration consent to this Fourth Amendment.

C. The Owners desire to amend the Declaration to modify an existing exemption from the real estate transfer fee and to further limit its application effective as of January 1, 2023.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the record Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration agree to amend the Declaration as follows:

AMENDMENT

1. Amendment of Section 14.7. Article XIV, Section 14.7(n), shall be amended to state (added language in **bold**):

14.7. Exclusions for Imposition of Transfer Fees. Notwithstanding anything to the contrary contained herein and subject to the terms of this Section 14.7, the following Transfers of a Lot or a zoned density interest shall be exempt from and not subject to the imposition of a Transfer Fee:

\* \* \*


(n) the recording of a deed evidencing the first sale of residence, **where the lot was purchased from the original Declarant on or before December 31, 2022**, and which **residential deed** recording occurs within three (3) years of the issuance by the City of a certificate of occupancy.

2. Miscellaneous. The following provisions shall apply with respect to this Fourth Amendment:

- a. Except as modified herein, the Declaration is in full force and effect.
- b. Capitalized terms not defined herein shall have the same meaning as set forth in the Declaration.
- c. In the event of any conflict between the Declaration and this Fourth Amendment, this Fourth Amendment shall control.

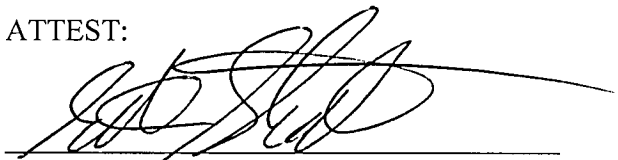
IN WITNESS WHEREOF, the undersigned, as President and Secretary/Treasurer of the Twin Buttes Metropolitan District No. 1 certify that Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration have approved and consented to this Fourth Amendment to the Declaration to be effective as of the date first set forth above.

TWIN BUTTES METROPOLITAN DISTRICT NO. 1,  
a quasi-municipal corporation and political subdivision of the  
State of Colorado



By: Glenn Pauls  
Its: President

ATTEST:



By: Scott Strand  
Its: Secretary/Treasurer

STATE OF COLORADO                             )  
   ) ss.  
COUNTY OF LA PLATA                        )

Subscribed and sworn to before me this 10<sup>th</sup> day of March, 2023, by Glenn Pauls, President, and Scott Strand, Secretary/Treasurer, of Twin Buttes Metropolitan District No. 1.

Witness my hand and official seal



Notary Public

My commission expires: 12/18/24

PAULA SCHLER  
Notary Public  
State of Colorado  
Notary ID # 19964019408  
My Commission Expires 12-18-2024

6

**SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
FOR  
TWIN BUTTES**

The undersigned Declarant enters into and executes this Supplemental Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Twin Buttes (the "Supplemental Declaration") as of this 11th day of August, 2016.

RECITALS

A. Declarant executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded Aug. 12, 2016, under Reception No. 1116065 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado (the "Master Declaration").

B. Article II of the Master Declaration reserves unto the Declarant the right to submit additional real property to the Master Declaration with such addition effected by a duly recorded Supplemental Declaration.

C. The purpose of this Supplemental Declaration is to annex certain Commercial Sites into the Declaration and to impose on the Commercial Sites certain covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions as identified herein or as incorporated by reference to provisions of the Master Declaration.

D. Unless otherwise defined herein, all initially capitalized terms used in this Supplemental Declaration shall have the meanings set forth for such terms in the Master Declaration.

SUPPLEMENTAL DECLARATION

NOW, THEREFORE, Declarant declares that the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Master Declaration except as specifically set forth herein and shall be binding on all persons having or acquiring any right, title or interest in the property described herein, their heirs, successors, and assigns, and shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and his successors in interest, and the Metropolitan Districts and their successors in interest.

1. Legal Description of the Property Being Annexed. The legal description of the Commercial Sites within the property being annexed to the Master Declaration by this Supplemental Declaration is set forth on Exhibit A, attached hereto and incorporated herein.

2. Annexation. The property described in Exhibit A is being annexed to the Master Declaration and shall be Annexed Property pursuant to the provisions of Article II of the Master Declaration. The

Rtn: Twin Buttes of Durango, 20091 Hwy 160, Durango, CO 81301

Owners of the property described in Exhibit A consent to the annexation described herein as evidenced by the executed Consents of Owners appended as Exhibit B.

3. Effect of Annexation. The property described in Exhibit A, and the Commercial Sites identified therein, shall be deemed to be included within the Annexed Property covered by the Master Declaration and subject to all of the terms, provisions, covenants, conditions, reservations, charges, and liens set forth in the Master Declaration, including all assessment and transfer fee obligations set forth in the Master Declaration, unless otherwise exempted herein. The property described in Exhibit A is also expressly subject to applicable provisions of the governing documents of the Metropolitan Districts, as more particularly described in the Master Declaration, including but not limited to the Rules and Regulations and the Design Documents.

4. Commercial Sites Exempted from Provisions. The property described in Exhibit A is specifically exempted from the following provisions of the Master Declaration: Section 4.1, Article VII with the exception of Section 7.5(b) regarding adequate parking, and Article XI in its entirety.

5. Except as expressly exempted by this Supplemental Declaration, the Master Declaration shall be in full force and effect in accordance with its terms for the property described in Exhibit A.

IN WITNESS WHEREOF, the Declarant has executed this Supplemental Declaration the date and year first above written.

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation

  
\_\_\_\_\_  
By: Glenn D. Pauls  
Its: President

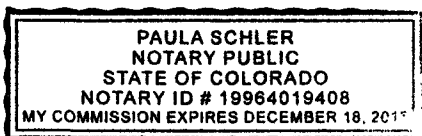
STATE OF COLORADO )  
 ) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 11<sup>th</sup> day of August, 2016, by Glenn D. Pauls, President of Twin Buttes of Durango, Inc.

Witness my hand and official seal

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

My commission expires: 12/18/16



**EXHIBIT A**

PARCEL A - owned by Twin Buttes of Durango, LLC:

Parcel I in instrument recorded under Reception No. 1062510, La Plata County, Colorado,  
Assessor's Parcel No. 5661-252-00-002.

PARCEL B - owned by Twin Buttes of Durango, LLC:

Parcel 1A on Plat recorded under Reception No. 1043561, La Plata County, Colorado,  
Assessor's Parcel No. 5661-252-00-029.

PARCEL C - owned by McIntyre Ranch, LLLP:

Parcel 1B on Plat recorded under Reception No. 1043561, La Plata County, Colorado,  
Assessor's Parcel No. 5661-252-00-030.

PARCEL D - owned by New Energy Station, LLC:

Parcel 2 on Plat recorded under Reception No. 1026896, La Plata County, Colorado,  
Assessor's Parcel No. 5661-243-00-082.

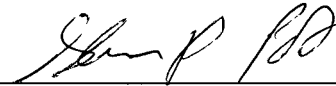


**EXHIBIT B**

CONSENT OF OWNER

The undersigned as Owner of Parcels A and B described in Exhibit A hereby consents to the annexation of Parcels A and B described in Exhibit A to become part of the Annexed Property and made subject to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes.

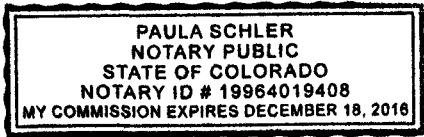
TWIN BUTTES OF DURANGO, LLC  
a Colorado limited liability company

By:   
Glenn D. Pauls, Member/Manager

State of Colorado            )  
  ) ss.  
County of La Plata         )

The foregoing Consent to the Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes was acknowledged before me this 11<sup>th</sup> day of August, 2016, by Glenn D. Pauls, as Member/Manager of Twin Buttes of Durango, LLC, a Colorado limited liability company.

Witness my hand and official seal/  
My commission expires: 12/18/16

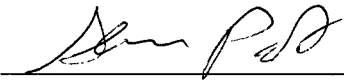


  
Notary Public

CONSENT OF OWNER

The undersigned as Owner of Parcel C described in Exhibit A hereby consents to the annexation of Parcel C described in Exhibit A to become part of the Annexed Property and made subject to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes.

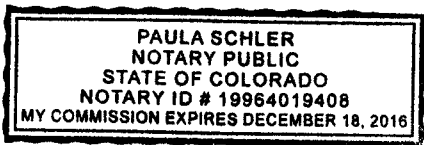
MCINTYRE RANCH, LLLP,  
a Colorado limited liability limited partnership

By:   
Glenn D. Pauls, as General Partner

State of Colorado            )  
  ) ss.  
County of La Plata         )

The foregoing Consent to the Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes was acknowledged before me this 11<sup>th</sup> day of August, 2016, by Glenn D. Pauls, as General Partner of McIntyre Ranch, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.  
My commission expires: 12/18/16




  
Notary Public

CONSENT OF OWNER

The undersigned as Owner of Parcel D described in Exhibit A hereby consents to the annexation of Parcel D described in Exhibit A to become part of the Annexed Property and made subject to the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes.

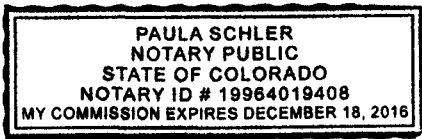
NEW ENERGY STATION, LLC  
a Colorado limited liability company

By:   
Glenn D. Pauls, as Member/Manager

State of Colorado            )  
  ) ss.  
County of La Plata         )

The foregoing Consent to the Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes was acknowledged before me this 11<sup>th</sup> day of August, 2016, by Glenn D. Pauls, as Member/Manager of New Energy Station, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 12/18/16



  
Notary Public



### SUPPLEMENTAL DECLARATION FOR TWIN BUTTES

The undersigned Declarant enters into and executes this Supplemental Declaration for Twin Buttes to supplement the Amended and Restated Master Declaration of Covenants, Conditions; Restrictions and Reservation of Easements for Twin Buttes, and to supplement the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee, all as of this 2<sup>nd</sup> day of July, 2017.

#### RECITALS

A. Declarant executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado ("Master Declaration"), as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded August 12, 2016, under Reception No. 1116065 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado ("Amended Master Declaration"), which has been supplemented by the recording of a Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes in the records of the Office of the Clerk and Recorder of La Plata County, Colorado on August 12, 2016, at Reception No. 1116066.

B. Declarant and its Affiliates have also executed and caused to be recorded that Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee ("PIF Declaration") recorded December 5, 2016, under Reception No. 1121586 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, imposing a public improvement fee on property in Twin Buttes as contemplated by Article XV of the Amended Master Declaration.

C. Article II of the Amended Master Declaration reserves unto the Declarant the right to submit additional real property to the Amended Master Declaration with such addition effected by a duly recorded supplemental declaration.

D. Section 12 of the PIF Declaration reserves unto the Declarant the right to submit additional real property to the PIF Declaration with such addition effected by a duly recorded supplemental declaration.

E. The purpose of this Supplemental Declaration is to annex certain property described herein into the Amended Master Declaration and to annex the property into the PIF Declaration to impose on that property, the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions as identified herein or as incorporated by reference to provisions of the Amended Master Declaration and the PIF Declaration.

F. Unless otherwise defined herein, all initially capitalized terms used in this Supplemental Declaration shall have the meanings set forth for such terms in the Amended Master Declaration and the PIF Declaration.

*Return to: Twin Buttes, 20091 Hwy 160, Durango, CO 81301 (pick-up)*

## SUPPLEMENTAL DECLARATION

NOW, THEREFORE, Declarant declares that the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Amended Master Declaration and in the PIF Declaration except as specifically set forth herein and shall be binding on all persons having or acquiring any right, title or interest in the property described herein, their heirs, successors, and assigns, and shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and his successors in interest, and the Metropolitan Districts and their successors in interest.

1. Legal Description of the Property Being Annexed. The legal description of the property being annexed to the Amended Master Declaration and to the PIF Declaration by the recording of this Supplemental Declaration for Twin Buttes is set forth on **Exhibit A**, attached hereto and incorporated herein.

2. Annexation. The property described in **Exhibit A** is being annexed to the Amended Master Declaration pursuant to the provisions of Article II of the Amended Master Declaration, and, the property described in **Exhibit A** is being added to the Twin Buttes PIF Property as Additional Twin Buttes PIF Property as described in Section 12 of the PIF Declaration.

3. Effect of Annexation. The property described in **Exhibit A** shall be deemed to be included within the Annexed Property covered by the Amended Master Declaration and the property described in **Exhibit A** shall be deemed to be included within the Twin Buttes PIF Property covered by the PIF Declaration and the property shall be subject to all of the terms, provisions, covenants, conditions, reservations, charges, and liens set forth in the Amended Master Declaration, including all assessment, Transfer Fee and Public Improvement Fee obligations set forth in the Amended Master Declaration and in the PIF Declaration, unless otherwise exempted herein. The property described in **Exhibit A** is also expressly subject to applicable provisions of the governing documents of the Metropolitan Districts, as more particularly described in the Amended Master Declaration, including but not limited to the Rules and Regulations and the Design Documents specifically adopted by the Metropolitan Districts.

4. Property Exempt from Provisions. The property described in **Exhibit A** is specifically exempted from the following provisions of the Amended Master Declaration: None.

5. Except as expressly exempted by paragraph 4 of this Supplemental Declaration, the Amended Master Declaration and the PIF Declaration shall be in full force and effect in accordance with their terms for the property described in **Exhibit A**.

IN WITNESS WHEREOF, the Declarant has executed this Supplemental Declaration the date and year first above written.

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation



By: Glenn D. Pauls  
Its: President

STATE OF COLORADO )  
  ) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 21<sup>st</sup> day of July, 2017, by Glenn D. Pauls,  
President of Twin Buttes of Durango, Inc.

Witness my hand and official seal



Notary Public

My commission expires: 12/18/2020

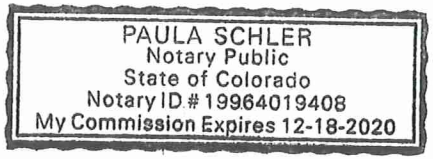


EXHIBIT A

LOT 49, TWIN BUTTES PHASE 1 FILING 2A MINOR SUBDIVISION, ACCORDING TO THE  
RECORDED PLAT THEREOF FILED FOR RECORD Aug. 24, 2017 UNDER RECEPTION  
NO. 1132602, COUNTY OF LA PLATA, STATE OF COLORADO.



**SUPPLEMENTAL DECLARATION FOR TWIN BUTTES**

The undersigned Declarant enters into and executes this Supplemental Declaration for Twin Buttes to supplement the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Twin Buttes, and to supplement the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee, all as of this 6<sup>th</sup> day of June, 2018.

RECITALS

A. Declarant executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado ("Master Declaration"), as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded August 12, 2016, under Reception No. 1116065 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, ("Amended Master Declaration"), which has been supplemented by the recording of a Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes at Reception No. 1116066 on August 12, 2016 and a Supplemental Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes at Reception No. 1132603 on August 24, 2017, both in the records of the Office of the Clerk and Recorder of La Plata County, Colorado, and which has been amended by the First Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded February 23, 2018, under Reception No. 1139941 and the Second Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded April 27, 2018, under Reception No. 1142292, both in the records of the Office of the Clerk and Recorder of La Plata County, Colorado.

B. Declarant and its Affiliates have also executed and caused to be recorded that Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee ("PIF Declaration") recorded December 5, 2016, under Reception No. 1121586 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, imposing a public improvement fee on property in Twin Buttes as contemplated by Article XV of the Amended Master Declaration.

C. Article II of the Amended Master Declaration reserves unto the Declarant the right to submit additional real property to the Amended Master Declaration with such addition effected by a duly recorded supplemental declaration.

D. Section 12 of the PIF Declaration reserves unto the Declarant the right to submit additional real property to the PIF Declaration with such addition effected by a duly recorded supplemental declaration.

E. The purpose of this Supplemental Declaration is to annex certain property described herein into the Amended Master Declaration and to annex the property into the PIF Declaration to impose on that property, the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable

*Return to: Twin Buttes of Durango, 690 Twin Buttes Avenue, Durango, CO 81301*



servitudes and provisions as identified herein or as incorporated by reference to provisions of the Amended Master Declaration and the PIF Declaration.

F. Unless otherwise defined herein, all initially capitalized terms used in this Supplemental Declaration shall have the meanings set forth for such terms in the Amended Master Declaration and the PIF Declaration.

### SUPPLEMENTAL DECLARATION

NOW, THEREFORE, Declarant declares that the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Amended Master Declaration and in the PIF Declaration except as specifically set forth herein and shall be binding on all persons having or acquiring any right, title or interest in the property described herein, their heirs, successors, and assigns, and shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and his successors in interest, and the Metropolitan Districts and their successors in interest.

1. Legal Description of the Property Being Annexed. The legal description of the property being annexed to the Amended Master Declaration and to the PIF Declaration by the recording of this Supplemental Declaration for Twin Buttes is set forth on **Exhibit A**, attached hereto and incorporated herein.

2. Annexation. The property described in **Exhibit A** is being annexed to the Amended Master Declaration pursuant to the provisions of Article II of the Amended Master Declaration, and, the property described in **Exhibit A** is being added to the Twin Buttes PIF Property as Additional Twin Buttes PIF Property as described in Section 12 of the PIF Declaration.

3. Effect of Annexation. The property described in **Exhibit A** shall be deemed to be included within the Annexed Property covered by the Amended Master Declaration and the property described in **Exhibit A** shall be deemed to be included within the Twin Buttes PIF Property covered by the PIF Declaration and the property shall be subject to all of the terms, provisions, covenants, conditions, reservations, charges, and liens set forth in the Amended Master Declaration, including all assessment, Transfer Fee and Public Improvement Fee obligations set forth in the Amended Master Declaration and in the PIF Declaration, unless otherwise exempted herein. The property described in **Exhibit A** is also expressly subject to applicable provisions of the governing documents of the Metropolitan Districts, as more particularly described in the Amended Master Declaration, including but not limited to the Rules and Regulations and the Design Documents specifically adopted by the Metropolitan Districts.

4. Property Exempt from Provisions. The property described in **Exhibit A** is specifically exempted from the following provisions of the Amended Master Declaration: None.

5. Except as expressly exempted by paragraph 4 of this Supplemental Declaration, the Amended Master Declaration and the PIF Declaration shall be in full force and effect in accordance with their terms for the property described in **Exhibit A**.

IN WITNESS WHEREOF, the Declarant has executed this Supplemental Declaration the date and year first above written.

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation



By: Glenn Pauls  
Its: President

STATE OF COLORADO

)

) ss.

COUNTY OF LA PLATA

)

Subscribed and sworn to before me this 6<sup>th</sup> day of June, 2018, by Glenn Pauls,  
President of Twin Buttes of Durango, Inc.

Witness my hand and official seal



Notary Public

My commission expires: 12-18-20

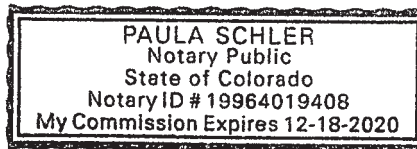


EXHIBIT A

TWIN BUTES PHASE 1 FILING 1B, ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD August 10, 2018 UNDER RECEPTION NO. 11466421, COUNTY OF LA PLATA, STATE OF COLORADO.

## SUPPLEMENTAL DECLARATION FOR TWIN BUTTES

The undersigned Declarant enters into and executes this Supplemental Declaration for Twin Buttes to supplement the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Twin Buttes, and to supplement the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee, all as of this 11 day of October, 2022.

### RECITALS

A. Declarant executed and caused to be recorded that certain Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded May 6, 2016, under Reception No. 1111402 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado (“Master Declaration”), as amended by the Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded August 12, 2016, under Reception No. 1116065 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, (“Amended Master Declaration”), which has been supplemented by the recording of a Supplemental Declaration for Twin Buttes at Reception No. 1116066 on August 12, 2016 and a Supplemental Declaration for Twin Buttes at Reception No. 1132603 on August 24, 2017 and a Supplemental Declaration for Twin Buttes at Reception No. 1146642 on August 10, 2018, all in the records of the Office of the Clerk and Recorder of La Plata County, Colorado, and which has been amended by the First Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded February 23, 2018, under Reception No. 1139941 and the Second Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded April 27, 2018, under Reception No. 1142292 and the Third Amendment to Amended and Restated Master Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements for Twin Buttes recorded February 28, 2019 under Reception No. 1153949, all in the records of the Office of the Clerk and Recorder of La Plata County, Colorado.

B. Declarant and its Affiliates have also executed and caused to be recorded that Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee (“PIF Declaration”) recorded December 5, 2016, under Reception No. 1121586 of the records of the Office of the Clerk and Recorder of La Plata County, Colorado, imposing a public improvement fee on property in Twin Buttes as contemplated by Article XV of the Amended Master Declaration.

C. Article II of the Amended Master Declaration reserves unto the Declarant the right to submit additional real property to the Amended Master Declaration with such addition effected by a duly recorded supplemental declaration.

D. Section 12 of the PIF Declaration reserves unto the Declarant the right to submit additional real property to the PIF Declaration with such addition effected by a duly recorded supplemental declaration.

E. The purpose of this Supplemental Declaration is to annex certain property described herein into the Amended Master Declaration and to annex the property into the PIF Declaration to impose on that property, the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions as identified herein or as incorporated by reference to provisions of the Amended Master Declaration and the PIF Declaration.

F. Unless otherwise defined herein, all initially capitalized terms used in this Supplemental Declaration shall have the meanings set forth for such terms in the Amended Master Declaration and the PIF Declaration.

### SUPPLEMENTAL DECLARATION

NOW, THEREFORE, Declarant declares that the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Amended Master Declaration and in the PIF Declaration except as specifically set forth herein and shall be binding on all persons having or acquiring any right, title or interest in the property described herein, their heirs, successors, and assigns, and shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and his successors in interest, and the Metropolitan Districts and their successors in interest.

1. Legal Description of the Property Being Annexed. The legal description of the property being annexed to the Amended Master Declaration and to the PIF Declaration by the recording of this Supplemental Declaration for Twin Buttes is set forth on **Exhibit A**, attached hereto and incorporated herein.

2. Annexation. The property described in **Exhibit A** is being annexed to the Amended Master Declaration pursuant to the provisions of Article II of the Amended Master Declaration, and, the property described in **Exhibit A** is being added to the Twin Buttes PIF Property as Additional Twin Buttes PIF Property as described in Section 12 of the PIF Declaration.

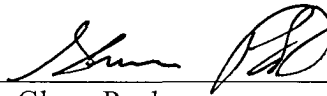
3. Effect of Annexation. The property described in **Exhibit A** shall be deemed to be included within the Annexed Property covered by the Amended Master Declaration and the property described in **Exhibit A** shall be deemed to be included within the Twin Buttes PIF Property covered by the PIF Declaration and the property shall be subject to all of the terms, provisions, covenants, conditions, reservations, charges, and liens set forth in the Amended Master Declaration, including all assessment, Transfer Fee and Public Improvement Fee obligations set forth in the Amended Master Declaration and in the PIF Declaration, unless otherwise exempted herein. The property described in **Exhibit A** is also expressly subject to applicable provisions of the governing documents of the Metropolitan Districts, as more particularly described in the Amended Master Declaration, including but not limited to the Rules and Regulations and the Design Documents specifically adopted by the Metropolitan Districts.

4. Property Exempt from Provisions. The property described in **Exhibit A** is specifically exempted from the following provisions of the Amended Master Declaration: None.

5. Except as expressly exempted by paragraph 4 of this Supplemental Declaration, the Amended Master Declaration and the PIF Declaration shall be in full force and effect in accordance with their terms for the property described in **Exhibit A**.

IN WITNESS WHEREOF, the Declarant has executed this Supplemental Declaration the date and year first above written.

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation



By: Glenn Pauls  
Its: President

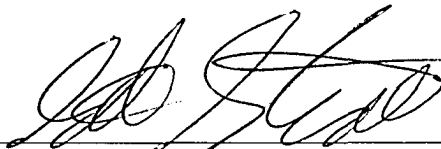
STATE OF COLORADO )

) ss.

COUNTY OF LA PLATA )

Subscribed and sworn to before me this 8 day of August, 2022, by Glenn Pauls, President of Twin Buttes of Durango, Inc.

Witness my hand and official seal



Notary Public

My commission expires: 3-24-2024



EXHIBIT A

TWIN BUTES PHASE 1 FILING 2, ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD 10-11-2022, 2022 UNDER RECEPTION NO. 1216101, COUNTY OF LA PLATA, STATE OF COLORADO.

16

**DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING  
TWIN BUTTES PUBLIC IMPROVEMENT FEE**

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE TWIN BUTTES PUBLIC IMPROVEMENT FEE (this "**PIF Covenant**") is made as of November 30, 2016, to take effect as of January 1, 2017, by TWIN BUTTES OF DURANGO, INC., a Colorado corporation ("**Declarant**").

**Recitals**

This PIF Covenant is made with respect to the following facts:

A. Declarant and its Affiliates own certain real property described on **Exhibit A** hereto, constituting approximately 56 acres, which Declarant intends to develop as a commercial, retail development to be known as "**Twin Buttes**." New public improvements to serve the Twin Buttes development and other properties within the service area boundaries of the Twin Buttes Metropolitan District No. 1 ("Operating District") and Twin Buttes Metropolitan Districts Nos. 2-4 (the "Financing Districts") (collectively the "Districts") will be provided by the Districts.

B. The public improvements that the Districts will construct, install or cause to be constructed and installed, include those public improvements the costs of which may, in accordance with Colorado law, C.R.S. § 32-1-1001, et seq., lawfully be paid for or reimbursed by the Districts, including, without limitation, water services, safety protection devices, sanitation services, street improvements, curbs, gutters, culverts, drainage facilities, sidewalks, parking facilities, paving, lighting, grading, landscaping, and storm and wastewater management facilities and associated land acquisition and remediation (the "**Public Improvements**"). The costs of such Public Improvements, including costs of design, acquisition, construction, financing and operation, and all other costs and expenses incurred or advanced in connection with the design, acquisition, construction, financing and operation, including, without limitation, maintenance, repair and replacement costs, are referred to herein as the "Public Improvement Costs."

C. The Public Improvement Costs will be paid, in part, through the imposition, through the recording of this PIF Covenant, of a Public Improvement Fee on all "PIF Sales" (as defined below), in such amount as set forth in the PIF Sales Guidelines. Subject to the terms of this PIF Covenant, such Public Improvement Fee will be required to be collected by all sellers or providers of goods or services who engage in any PIF Sales transactions within the property subject to this PIF Covenant from the purchaser or recipient of such goods or services and then paid over to the Districts or their assignee. The Districts or the PIF Collection Agent will receive the Public Improvement Fees and remit the same to a paying agent for the bonds issued by the Districts to pay for Public Improvement Costs, or to such other party or parties as may be entitled thereto pursuant to the Public Financing Documents described herein.

D. The Declarant and its Affiliates own fee title to all of the "Twin Buttes PIF Property" (as defined below), which is the property that is subject to this PIF Covenant. The Affiliates' acknowledgements of, and consents to, the imposition of this PIF Covenant are appended hereto as **Exhibit B**.

Return To: Twin Buttes of Durango  
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Durango, CO 81301



E. Subject to and in accordance with the terms and provisions of this PIF Covenant, Declarant now desires to impose the obligation to collect and pay, and to provide for the implementation of the collection and payment of, a Public Improvement Fee on all PIF Sales that occur within the Twin Buttes PIF Property.

### **Declaration**

In consideration of the facts set forth in the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Declarant, Declarant hereby declares as follows:

1. Defined Terms. The following terms, when used in this PIF Covenant, will have the following meanings:

"Affiliates" means with respect to any person, any immediate family member of such person or any entity which such person controls, and, with respect to any entity, any officer, director, manager or general partner of such entity, or any person or entity that controls, is controlled by or is under common control with such entity (for purposes hereof, "control" of an entity means the ownership of at least 50% of the equity interests in such entity).

"Bond Requirements" means principal, redemption or purchase price, premium, if any, interest, any necessary reserves, administration costs, and other amounts required to be paid with respect to the Bonds outstanding from time to time.

"Bond Agent" means the paying agent or trustee for the holders of the Bonds appointed pursuant to the Public Financing Documents.

"Bonds" means any of the bonds or refunding thereof to be issued from time to time by the Districts, the proceeds of which are used to pay Public Improvement Costs.

"Confidential Information" has the meaning set forth in Section 6 hereof.

"Declarant" means Twin Buttes of Durango, Inc., a Colorado corporation.

"Default Rate" means the prime interest rate (as published from time to time by The Wall Street Journal, and with any changes in such rate to be effective on the date such change is published) plus 5% per annum, but if such rate exceeds the maximum interest rate permitted by applicable law, such rate will be reduced to the highest rate allowed by applicable law under the circumstances.

"Dissemination Agent" means an agent of the District or the Bond Agent charged with disseminating information on a periodic basis to purchasers of any Bonds.

"Districts" has the meaning set forth in **Recital A** above.

"Enforcing Party" has the meaning set forth in Section 7 hereof.

"Lodging Sales" means sales of lodging services including hotels, motels, condominiums, apartments, vacation rentals (through websites such as VRBO, Airbnb, etc.) and camping spaces, calculated as a percentage of the gross room rental income or gross rental income. The PIF on Lodging Sales shall be the percentage rate as stated in the PIF Sales Guidelines.

"Non-Lodging Sales" means all other PIF Sales that are not Lodging Sales. The PIF on Non-Lodging Sales shall be the percentage rate as stated in the PIF Sales Guidelines.

"Owned/Leased Twin Buttes PIF Property" means, with respect to any Twin Buttes Owner, the portion of the Twin Buttes PIF Property to which such Twin Buttes Owner owns fee title and, with respect to any Twin Buttes Occupant, the portion of the Twin Buttes PIF Property which such Twin Buttes Occupant has the right to possess or occupy pursuant to its lease, sublease, license, concession or other occupancy agreement.

"Person" means any individual, partnership, corporation, limited liability company, association, trust or other type of entity or organization.

"PIF Collection Agent" means the Operating District, the Bond Agent, or any other entity appointed by either the Operating District or the Bond Agent to serve as such.

"PIF Covenant" means this PIF Covenant as it may be supplemented or amended from time to time.

"PIF Sales" means any exchange of goods or services for money or other media of exchange initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the Twin Buttes Property, whether subject to State Sales Tax or not, including a sale of tangible personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the Twin Buttes PIF Property which shall constitute a PIF Sale notwithstanding the fact that the subject tangible personal property may be delivered to the purchaser outside the Twin Buttes PIF Property. Any other transactions that are exempted from such Sales Tax by such State Sales Tax Statutes but that the District expressly includes in the definition of PIF Sales in the guidelines established by it from time to time pursuant to Section 3 below shall be subject to the Public Improvement Fee. Such other transactions as are subject to such Sales Tax pursuant to the State Sales Tax Statutes, but that the District expressly excludes from the definition of PIF Sales in the guidelines established by the District from time to time pursuant to Section 3 below shall be exempted from the Public Improvement Fee. PIF Sales collectively include Lodging Sales and Non-Lodging Sales.

"Pledge" means such assignment, conveyance, pledge, remittance or other transfer as may be customary and necessary or appropriate to make fully available for payment of the Bond Requirements any Public Improvement Fee revenues.

"Public Financing" means the sale of Bonds or other acquisition of funds to finance or refinance, or otherwise to reimburse the Districts or a Declarant for costs incurred in connection with the design and construction of Public Improvements.

"Public Financing Documents" means the bond resolution, trust indenture, PIF collection agreement, and any other documents executed or delivered in connection with the closing of any Public Financing.

"Public Improvements" has the meaning set forth in **Recital B** above.

"Public Improvement Costs" has the meaning set forth in **Recital B** above.

"Public Improvement Fee" means a Public Improvement Fee assessed pursuant to this PIF Covenant against all PIF Sales (Lodging Sales and Non-Lodging Sales) initiated, consummated, conducted, transacted or otherwise occurring from or within the Twin Buttes PIF Property in the amount determined by the Declarant and recited in the PIF Sales Guidelines, except to the extent waived by the Districts.

"Report Recipients" has the meaning set forth in Section 5 hereof.

"Reports" has the meaning set forth in Section 5 hereof.

"Sales Tax" means that tax levied by the State of Colorado pursuant to the State Sales Tax Statutes.

"State Sales Tax Statutes" means Colorado Revised Statutes §§ 39-26-101 *et. seq.* and any regulations promulgated pursuant thereto, both as amended from time to time.

"Twin Buttes Occupant" means any Person who has the legal right, pursuant to a deed, lease, sublease, license, concession, easement or other occupancy agreement of any type or nature, to possess or occupy any portion of the Twin Buttes PIF Property, including, without limitation, any space within any building constructed on any Twin Buttes PIF Property; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has such of right of possession primarily for the purpose of securing a debt or other obligation owed to such Person, will not constitute a "Twin Buttes Occupant" unless and until such Person becomes a Twin Buttes Owner or a mortgagee in possession or otherwise possesses or occupies a portion of the Twin Buttes PIF Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary or other Person will be a "Twin Buttes Occupant" hereunder.

"Twin Buttes Owner" means any Person who owns fee title to any portion of the Twin Buttes PIF Property.

"Twin Buttes PIF Property" means the real property described on **Exhibit A** hereto, provided that additional property may be made a part of the Twin Buttes PIF Property pursuant to the provisions of Section 12 hereof.

"Twin Buttes Retailer" means any Twin Buttes Occupant who is a seller or provider of goods or services who engages in any PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the Twin Buttes PIF Property.

2. Assessment of Public Improvement Fee. From and after the filing of this PIF Covenant:

(a) every Twin Buttes Occupant who constitutes a Twin Buttes Retailer will collect from the purchaser or the recipient of goods or services in each PIF Sales transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of such Twin Buttes Occupant's Owned/Leased Twin Buttes PIF Property that is possessed or occupied by such Twin Buttes Occupant in its capacity as a Twin Buttes Retailer, and pay to the District, the Bond Agent or other PIF Collection Agent, the Public Improvement Fee with respect to such transaction; and

(b) every Twin Buttes Owner or Twin Buttes Occupant who leases or subleases any portion of its Owned/Leased Twin Buttes PIF Property to a Twin Buttes Retailer, or who permits a Twin Buttes Retailer to occupy any portion of its Owned/Leased Twin Buttes PIF Property by license, concession or otherwise, will require, pursuant to the lease, sublease, license, concession or other occupancy agreement between such Twin Buttes Owner or Twin Buttes Occupant and each Twin Buttes Retailer by virtue of which such Twin Buttes Retailer is given the right to possess or occupy any portion of such Owned/Leased PIF Property, that such Twin Buttes Retailer collect from the purchaser or the recipient of goods or services in each PIF Sales transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of the Twin Buttes PIF Property possessed or occupied by such Twin Buttes Retailer pursuant to such lease, sublease, license, concession or other occupancy agreement, and pay to the District, the Bond Agent or other PIF Collection Agent, the Public Improvement Fee with respect to such transaction.

3. PIF Sales Guidelines. In accordance with the definition of PIF Sales set forth in Section 1 above, the Districts have established uniform guidelines setting forth the Public Improvement Fee percentage rate and further clarifying or delineating which transactions are included in the definition of "PIF Sales" for purposes of calculating the Public Improvement Fee due hereunder. The Districts in their sole discretion may from time to time revise the PIF Sales Guidelines. Such guidelines will be delivered to all Twin Buttes Retailers in writing (and for purposes of determining the names and addresses of Twin Buttes Retailers, any Twin Buttes Owner will, within 10 business days after receipt of a written request therefor from the Districts, the Bond Agent or other PIF Collection Agent, provide such requesting party with the name and address of all Twin Buttes Retailers that then occupy any Twin Buttes PIF Property owned by such Twin Buttes Owner). Each Twin Buttes Retailer will be entitled to rely on such guidelines for purposes of compliance with this PIF Covenant. In addition to the Public Improvement Fee, each Twin Buttes Retailer will be subject to all sales and use taxes that may be imposed and otherwise not waived or credited by the State of Colorado and any other applicable taxing authority.

4. Payment of Public Improvement Fee. Whether or not collected from customers, each Twin Buttes Retailer will pay the Public Improvement Fee monthly in arrears, in an amount equal to the applicable percentage rate set forth in the PIF Sales Guidelines for all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring during the immediately preceding month from or within the portion of the Twin Buttes PIF Property occupied by such Twin Buttes Retailer during such month. The Public Improvement Fee will be due and payable without notice within 20 days after the close of each calendar month, and unless the Districts in their sole discretion otherwise direct, each Twin Buttes Retailer will pay the same directly to the

Districts or other PIF Collection Agent. The procedures for reporting, assessment, collection, segregation of the Public Improvement Fee (but not for calculation) will be identical in all respects to those set forth in the State Sales Tax Statutes, and each Twin Buttes Retailer will PIF Sales and remit the Public Improvement Fee to the Districts or other PIF Collection Agent a monthly basis when such Twin Buttes Retailer reports and remits Sales Taxes to the State, employing reporting forms and following procedures provided by the Districts intended to be substantially similar to those used and required by the State for the remittance of Sales Tax. The Public Improvement Fee will be calculated and imposed on transactions at the rate stated above the definition of Public Improvement Fee) prior to the calculation and assessment of any State of Colorado sales tax, and before any sales taxes of any other taxing entity required to be imposed law. The Public Improvement Fee will be added to the sales price for all PIF Sales transactions prior to the calculation of Sales Taxes, and all State Sales Tax and sales taxes of other taxing entities will be calculated and assessed on the sum of the PIF Sales price plus the amount of the Public Improvement Fee. Specific instructions regarding reporting forms and payment will be provided to all Twin Buttes Retailers by the Districts, and each Twin Buttes Retailer will entitled to rely thereon for purposes of compliance with this Section 4. Declarant hereby acknowledges, any other Twin Buttes Owner, by acquiring fee title to any portion of the Twin Buttes PIF Property subject to this PIF Covenant, shall be deemed to have acknowledged, any Twin Buttes Occupant, by acquiring the right to possess or occupy any portion of the Twin PIF Property subject to this PIF Covenant, shall be deemed to have acknowledged, and each Buttes Owner and Twin Buttes Occupant will cause any Twin Buttes Retailer whom such Twin Buttes Owner or Twin Buttes Occupant permits to possess or occupy (by lease or otherwise) any portion of its Owned/Leased Twin Buttes PIF Property to acknowledge, prior to conducting any business at any Twin Buttes PIF Property, THAT THE PUBLIC IMPROVEMENT FEE IS NOT A TAX IN ANY FORM AND THAT THE AUTHORITY OF THE PIF COLLECTION TO RECEIVE THE PUBLIC IMPROVEMENT FEE IS DERIVED THROUGH THIS PIF COVENANT. In the event the Districts or the Bond Agent cease to be the PIF Collection Agent for the Public Improvement Fee (as further described in Section 9 below), the Districts will promptly notify each Twin Buttes Retailer of the same and provide appropriate direction for payment and reporting of the Public Improvement Fee thereafter. For purposes of compliance with this Section 4, each Twin Buttes Retailer will be entitled to rely upon written notice from Districts and, in such event, upon specific instructions regarding reporting forms and payment procedures for the Public Improvement Fee provided in writing to such Twin Buttes Retailer by the Districts.

5. Additional Reporting Requirements. Each Twin Buttes Retailer will deliver to Declarant or any Affiliate of the Declarant specified by the Declarant, the District and, at the express written direction of the District, to the Bond Agent or other PIF Collection Agent (collectively, "**Report Recipients**"), true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (collectively the "**Reports**") made or provided to the State of Colorado by such Twin Buttes Retailer in connection with all Sales Tax for the corresponding Sales Tax period at the same time such Reports are delivered to the State of Colorado. If any subsequent adjustments, additions or modifications are made: to any Sales Taxes or the Public Improvement Fee reported, remitted or paid, or Report made, by a Twin Buttes Retailer to the State of Colorado with respect to Sales Taxes or the Public Improvement Fee, such Twin Buttes Retailer will provide the Report Recipients with true and complete copies of all revised Reports or other written material issued

received by such Twin Buttes Retailer in regard thereto. If any such adjustment increases the amount of the Public Improvement Fee which a Twin Buttes Retailer is required to remit or pay, results in a refund of such Public Improvement Fee, such Twin Buttes Retailer will immediately pay such additional Public Improvement Fee in the amount due, or will receive an appropriate credit against the next Public Improvement Fee due from such Twin Buttes Retailer in the of such excess Public Improvement Fee. Such Twin Buttes Retailer will claim such credits or such additional Public Improvement Fee in the next monthly reporting period by use of the standard reporting and remittance forms. All Reports made or provided by a Twin Buttes will be maintained by such Twin Buttes Retailer for at least three years from the date of submission thereof to the State of Colorado, and upon written request, will be made available to the Report Recipients for inspection and audit. Subject to Section 6 below, Reports received by the Declarant, Affiliates of Declarant, the Districts or the Bond Agent or other PIF Collection Agent will remain confidential and be used only for purposes of collecting the Public Improvement Fee due, enforcing Twin Buttes Retailers' obligations hereunder, and otherwise monitoring compliance with the provisions of this PIF Covenant.

6. Audits and Release of Information by the PIF Collection Agent. By acquiring its possessory interest in and to its Owned/Leased Twin Buttes PIF Property subject to the terms and conditions of this PIF Covenant, each Twin Buttes Retailer hereby specifically authorizes the District, the Bond Agent and any other PIF Collection Agent to audit the books and records of such Twin Buttes Retailer to determine compliance with the Public Improvement Fee collection and remittance obligation of such Twin Buttes Retailer under this PIF Covenant and, subject to the restrictions set forth in the next sentence, to release to the Declarant, the Districts, the Bond Agent and any Dissemination Agent for distribution to purchasers of any Bonds (but not to any other person or entity, except as required by law) such audited information and any Public Improvement Fee-related reports, Reports, returns (including sales tax returns) and other documents as are delivered to the District, the Bond Agent and other PIF Collection Agent by such Twin Buttes Retailer and any relevant information gathered by the Districts, the Bond Agent, or other PIF Collection Agent during an audit or in reviewing such reports, returns or other documents (collectively, the "**Confidential Information**"); *provided, however*, that all Confidential Information, together with the contents thereof, will be kept strictly confidential and will not be disclosed or otherwise published by any person to whom the Districts, the Bond Agent, or other PIF Collection Agent so releases Confidential Information, except for such disclosures or publications as may be required by applicable laws. Without limiting the foregoing confidentiality and non-disclosure requirements, to the fullest extent permitted under applicable laws, any publication or disclosure of Confidential Information submitted by or pertaining to a specific Twin Buttes Retailer (or the contents of such Confidential Information) by the Districts, the Bond Agent or other PIF Collection Agent, the Declarant, the Districts, or any Dissemination Agent (or by anyone else to whom the Districts, the Bond Agent or other PIF Collection Agent is required by law to disclose Confidential Information) which is otherwise required to be made, will be made only on an aggregated basis with the similar information submitted by other Twin Buttes Retailers and without separate identification (direct or indirect) of the Public Improvement Fee or PIF Sales of such specific Twin Buttes Retailer.

7. Compliance and Enforcement. Each Twin Buttes Retailer will comply with all policies and requirements of the Districts regarding notification to customers of the assessment and collection of the Public Improvement Fee as such policies and requirements are

by the Districts to such Twin Buttes Retailer in writing from time to time. The failure or refusal any Twin Buttes Retailer to assess, collect or remit the Public Improvement Fee, or to comply the requirements concerning notification to customers as required in this PIF Covenant, will constitute a default by such Twin Buttes Retailer under the terms of this PIF Covenant. THE DISTRICTS, THE BOND AGENT, OR OTHER PIF COLLECTION AGENT ARE HEREBY EXPRESSLY MADE THIRD PARTY BENEFICIARIES OF THE TWIN BUTTES RETAILERS' OBLIGATIONS UNDER THIS PIF COVENANT, INCLUDING, BUT NOT LIMITED TO, THE ASSESSMENT, COLLECTION AND REMITTANCE OF THE PUBLIC IMPROVEMENT FEE. Declarant hereby acknowledges, any other Twin Buttes Owner, by acquiring fee title to any portion of the Twin Buttes PIF Property subject to this PIF Covenant, shall be deemed to have acknowledged, any Twin Buttes Occupant, by acquiring the right to possess or occupy any portion of the Twin Buttes PIF Property subject to this PIF Covenant, be deemed to have acknowledged, and each Twin Buttes Owner and Twin Buttes Occupant shall cause any Twin Buttes Retailer whom such Twin Buttes Owner or Twin Buttes Occupant to possess or occupy (by lease or otherwise) any portion of its Owned/Leased Twin Buttes PIF Property to acknowledge, prior to conducting any business at any Twin Buttes PIF Property, THAT THE DECLARANT, THE DISTRICTS, THE BOND AGENT, OR OTHER PIF COLLECTION AGENT WILL HAVE A DIRECT CAUSE OF ACTION AND FULL RIGHT AND AUTHORITY TO ENFORCE EACH TWIN BUTTES RETAILER'S OBLIGATIONS UNDER THIS PIF COVENANT, AND THAT NO DEFAULT BY A TWIN BUTTES RETAILER'S LANDLORD UNDER ANY PROVISION OF THE LEASE OR OTHER OCCUPANCY AGREEMENT PURSUANT TO WHICH SUCH TWIN BUTTES RETAILER OCCUPIES ANY TWIN BUTTES PIF PROPERTY WILL ENTITLE SUCH TWIN BUTTES RETAILER TO ANY OFFSET, DEDUCTION OR OTHER DEFENSE TO PAYMENT OF PUBLIC IMPROVEMENT FEE DUE HEREUNDER. Any payment of the Public Improvement Fee not paid when due hereunder will bear interest at the Default Rate, and the defaulting Twin Buttes Retailer will bear all costs of enforcement and collection thereof, including reasonable attorneys fees. In addition, if a Twin Buttes Retailer fails to pay any Public Improvement Fee when due and such failure continues for more than 10 days after notice thereof is given to such Twin Buttes Retailer by the PIF Collection Agent, the PIF Collection Agent may charge such Buttes Retailer, and such Twin Buttes Retailer will be obligated to pay the PIF Collection Agent, late charge in an amount equal to the greater of 10% of the delinquent Public Improvement Fee \$100.00. The PIF Collection Agent will have the right to take any lawful action to the collect the Public Improvement Fee. Notwithstanding anything to the contrary contained in this PIF Covenant, the Declarant, the Districts, the Bond Agent, or other PIF Collection Agent, or any party designated by any of the foregoing (collectively, an "**Enforcing Party**"), shall have the to enforce the provisions of this PIF Covenant against any Twin Buttes Retailer that fails to abide by any of the terms and conditions of this PIF Covenant. An Enforcing Party will be awarded recover from a defaulting Twin Buttes Retailer all costs and expenses incurred by such Enforcing Party in successfully enforcing the obligations of such Twin Buttes Retailer under this PIF Covenant in any legal proceedings brought (or defended) by such Enforcing Party.

8. Use and Pledge of Public Improvement Fee Revenues; PIF Collection Agent's Payment Instructions. The Public Improvement Fee revenues generated by the Public Improvement Fee imposed pursuant to this PIF Covenant may be used for the payment of Public Improvement Costs or otherwise as expressly provided in this PIF Covenant and the Public Financing Documents. Any right, title and interest of the Declarant in the Public Improvement

and the obligations of the Twin Buttes Retailers as set forth in this PIF Covenant may be by the Declarant to the Districts, the Bond Agent, or another entity; *provided, however*, notwithstanding any such assignment, the Declarant will be entitled to enforce this PIF Covenant against any Twin Buttes Retailer in the event such Twin Buttes Retailer fails to comply with the provisions hereof.

**The District is hereby expressly authorized to Pledge for the payment of Bond Requirements all Public Improvement Fee revenues, or any portion thereof, generated by the Public Improvement Fee imposed pursuant to this PIF Covenant and received or receivable by the PIF Collection Agent. The PIF Collection Agent is hereby instructed and required to pay so much of such Public Improvement Fee revenues received by it as may be so Pledged to the party entitled thereto pursuant to the applicable Public Financing Documents and the balance thereof shall be paid to the Districts for ongoing operation, maintenance and administrative expenses of the Districts, and for other disbursement in accordance with the terms of the Public Financing Documents.**

The Districts may continue to receive a Public Improvement Fee on all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Twin Buttes PIF Property to pay costs of constructing, maintaining or operating Public Improvements and for other lawful purposes. However, the Districts may, by written notice to all Twin Buttes Owners and All Twin Buttes Retailers, waive such Public Improvement Fee in full or in part on a temporary or permanent basis (provided that such notice must also be recorded in the real property records of La Plata County if such waiver is full and permanent).

9. PIF Collection Agent Succession. The Operating District has agreed initially to act as the PIF Collection Agent. The Operating District will be entitled to terminate the Operating District's services as the PIF Collection Agent upon not less than 180 days' notice to such parties as may be required by the terms of any Public Financing Documents. In the event the Operating District's services as PIF Collection Agent are terminated, the Operating District may appoint a successor PIF Collection Agent and, upon such appointment, the Operating District will notify all Twin Buttes Retailers thereof pursuant to Section 4 above.

10. General Acknowledgement. Declarant hereby acknowledges, any other Twin Buttes Owner, by acquiring fee title to any portion of the Twin Buttes PIF Property subject to PIF Covenant, shall be deemed to have acknowledged, and any Twin Buttes Occupant, by acquiring the right to possess or occupy any portion of the Twin Buttes PIF Property subject to PIF Covenant, shall be deemed to have acknowledged, prior to conducting any business at any Twin Buttes PIF Property, THAT THE PROVISIONS OF THIS PIF COVENANT HAVE OR WILL BE AGREED TO BY THE DISTRICTS AND THE BOND AGENT, AND THAT THE DISTRICTS AND THE BOND AGENT ARE OR WILL BE RELYING UPON THESE PROVISIONS IN TAKING CERTAIN ACTIONS WITH RESPECT TO THE PUBLIC IMPROVEMENT FEE AND THE PUBLIC IMPROVEMENTS WITH THE EXPRESS CONDITION THAT THIS PIF COVENANT WILL NOT BE AMENDED, MODIFIED OR WAIVED; ACCORDINGLY, DECLARANT HEREBY AGREES AND ALL OTHER TWIN BUTTES OWNERS AND TWIN BUTTES OCCUPANTS SHALL BE DEEMED TO HAVE AGREED THAT NO AMENDMENT OR MODIFICATION WILL BE MADE TO, NOR ANY WAIVER MADE OR ACCEPTED BY DECLARANT, ANY TWIN BUTTES OWNER OR



ANY TWIN BUTTES OCCUPANT WITH RESPECT TO THIS PIF COVENANT WITHOUT THE WRITTEN CONSENT OF THE DISTRICTS, AND THAT ANY SUCH PURPORTED AMENDMENT, MODIFICATION OR WAIVER, WITHOUT THE WRITTEN CONSENT OF THE DISTRICTS, WILL BE VOID AND OF NO FORCE AND EFFECT. Each Twin Buttes Owner and Twin Buttes Occupant will cause any Twin Buttes Retailer whom such Twin Buttes Owner or Twin Buttes Occupant permits to possess or occupy (by lease or otherwise) any of its Owned/Leased Twin Buttes PIF Property to acknowledge, prior to conducting any business at any Twin Buttes PIF Property, THAT THE PROVISIONS OF THIS PIF COVENANT THAT PERTAIN TO TWIN BUTTES RETAILERS HAVE BEEN OR WILL BE AGREED TO BY THE DISTRICTS AND THE BOND AGENT, AND THAT THE DISTRICTS AND THE AGENT ARE OR WILL BE RELYING UPON SUCH PROVISIONS IN TAKING CERTAIN ACTIONS WITH RESPECT TO THE PUBLIC IMPROVEMENT FEE AND THE PUBLIC IMPROVEMENTS WITH THE EXPRESS CONDITION THAT THE PROVISIONS OF THIS PIF COVENANT THAT PERTAIN TO TWIN BUTTES RETAILERS WILL NOT BE AMENDED, MODIFIED OR WAIVED; ACCORDINGLY, SUCH TWIN BUTTES SHALL BE DEEMED TO HAVE AGREED THAT NO AMENDMENT OR MODIFICATION WILL BE MADE TO, NOR ANY WAIVER MADE OR ACCEPTED BY SUCH TWIN BUTTES RETAILER WITH RESPECT TO THE PROVISIONS OF THIS PIF COVENANT THAT PERTAIN TO TWIN BUTTES RETAILERS WITHOUT THE WRITTEN CONSENT OF THE DISTRICTS, AND THAT ANY SUCH PURPORTED AMENDMENT, MODIFICATION OR WAIVER, WITHOUT THE WRITTEN CONSENT OF THE DISTRICTS, WILL BE VOID AND OF NO FORCE AND EFFECT.

11. Twin Buttes Owner/Twin Buttes Occupant Obligations. Each Twin Buttes Owner and Twin Buttes Occupant will cause any Twin Buttes Retailer to whom such Twin Buttes Owner or Twin Buttes Occupant leases or whom such Twin Buttes Owner or Twin Buttes Occupant otherwise permits to occupy any portion of its Owned/Leased Twin Buttes PIF Property, in its lease or other occupancy agreement with such Twin Buttes Retailer pursuant to which such Twin Buttes Retailer occupies any portion of such Twin Buttes Owner's or Twin Buttes Occupant's Owned/Leased Twin Buttes PIF Property, to acknowledge and agree to (in a manner that causes such Twin Buttes Retailer to be bound by) all provisions of this PIF Covenant that pertain to such Twin Buttes Retailer.

12. Additional Twin Buttes PIF Property. Declarant may acquire fee title to, or cause one or more of its Affiliates to acquire fee title to, the Additional Twin Buttes PIF Property. Upon acquisition of any Additional Twin Buttes PIF Property by Declarant or such an Affiliate, the new fee owner thereof may record a supplement to this PIF Covenant in the real property records of La Plata County which will set forth the legal description of such Additional Twin Buttes PIF Property and state that, from and after the date of such recording, such Additional Twin Buttes PIF Property will constitute Twin Buttes PIF Property for all purposes under this PIF Covenant. From and after the date any such supplement is properly signed, acknowledged and recorded, the Additional Twin Buttes PIF Property described therein will constitute, and become a part of, the Twin Buttes PIF Property for all purposes under this PIF Covenant.

13. No Dominion or Control By Declarant. Notwithstanding anything contained in PIF Covenant to the contrary, or in any other document related to the Twin Buttes PIF Property, Declarant and its Affiliates do not have and will not be legally entitled, authorized or empowered

to exercise any dominion or control over any of the Public Improvement Fee revenues imposed collected pursuant to this PIF Covenant and the Public Financing Documents. To the extent any Public Improvement Fee revenue is collected by the Declarant or its Affiliates, such Declarant or Affiliate is merely acting on behalf of the Districts in implementing this PIF Covenant and providing for the collection and payment of Public Improvement Fee revenues under the Public Financing Documents. Subject to the express terms of this Section 13: (a) the Public Improvement Fee is a fee imposed on Twin Buttes Retailers to pay Public Improvements Costs provided herein; (b) the nature of the Public Improvement Fee is that of a fee imposed for the benefit of the Districts under private contract and not through the exercise of any District taxing authority; (c) the Public Improvement Fee revenues are not tax revenues in any form and the Public Improvement Fee will not be enforceable by the State; (d) the Pledged Public Fee revenues are the property of the Districts to be used for the payment of the Bond and as otherwise may be provided in this PIF Covenant or the Public Financing Documents; and (e) the authority of the Districts to receive the Public Improvement Fee revenues is derived through this PIF Covenant and the Public Financing Documents.

14. Notices to Twin Buttes Retailers. Whenever a party is required pursuant to the provisions of this PIF Covenant to give notice to "all" Twin Buttes Retailers, the notice given will be deemed sufficient if given to all Twin Buttes Retailers the names and addresses of which were known to the party giving such notice after a reasonably diligent effort to ascertain the names and addresses of all Twin Buttes Retailers.

15. Governing Laws. This PIF Covenant will be governed by, and enforced in accordance with, the laws of the State of Colorado.

16. Covenants Run with the Land. The covenants, agreements, promises and duties as set forth in this PIF Covenant will be construed as covenants and not as conditions and, to the fullest extent legally possible, all such covenants will run with and be enforceable against both the covenantor and the land and will constitute equitable servitudes burdening both the respective covenantor and its Twin Buttes PIF Property for the benefit of the respective covenantee. Each covenant to do or refrain from doing some act on or with respect to activities on any portion of the Twin Buttes PIF Property under this PIF Covenant (i) is a burden upon such portion of the Twin Buttes PIF Property and is for the benefit of the remainder of the Twin Buttes PIF Property, (ii) will be a covenant running with the land with respect to both the burdened and benefited portions of the Twin Buttes PIF Property, and (iii) will be binding upon of each Twin Buttes Owner, Twin Buttes Occupant and Twin Buttes Retailer and each successor to their respective interests in the Twin Buttes PIF Property and will inure to the benefit of Declarant, the other Twin Buttes Owners, the Districts, the Bond Agent and any other PIF Collection Agent.

If and to the extent that any of the covenants or other provisions herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants maybe valid, then the provisions concerned will continue and endure only until the expiration of a period of 90 years after the date this PIF Covenant is filed in the real property records of La Plata County, Colorado.

17. Severability. Invalidation of any of the provisions contained in this PIF Covenant, or of the application thereof to any person or entity, by judgment or court order, will in no way affect any of the other provisions of this PIF Covenant or the application thereof to any other person or entity or circumstance and the remainder of this PIF Covenant will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this PIF Covenant ineffective to carry out the material intentions of the Declarant as expressed or implied by this PIF Covenant, then the objectionable provisions) hereof will be construed, and this PIF Covenant will be deemed amended, as if such provision were replaced with an enforceable provision which effectuates, as nearly as possible, the material intentions of the Declarant.

18. Applicability to Residential Property. Declarant may cause portions of the Twin Buttes PIF Property to be developed for residential use. This PIF Covenant will have no applicability to any portion of the Twin Buttes PIF Property that is used solely for residential purposes, except to the extent that any PIF Sales (including Lodging Sales) are initiated, consummated, conducted, transacted or otherwise occur from or within such portion of the Twin Buttes PIF Property.

IN WITNESS WHEREOF Declarant has executed this PIF Covenant as of the date first set forth above.

TWIN BUTTES OF DURANGO, INC.,  
a Colorado corporation, Declarant

By: Glenn D. Pauls  
Title: President

STATE OF COLORADO             )  
  ) ss.  
COUNTY OF LA PLATA             )

The foregoing instrument was acknowledged before me as of the 30<sup>th</sup> day of November, 2016, by Glenn D. Pauls as President of Twin Buttes of Durango, Inc., a Colorado

WITNESS my hand and official seal.

My Commission Expires: 12/18/2020

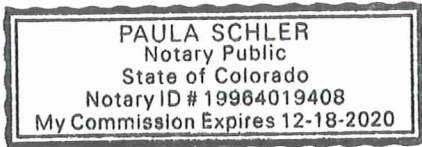
  
\_\_\_\_\_  
Notary Public

Exhibit A

LEGAL DESCRIPTION OF THE  
TWIN BUTTES PIF PROPERTY

TWIN BUTTES PHASE I, FILING 1A PLAT ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MAY 6, 2016 UNDER RECEPTION NO. 1111401, COUNTY OF LA PLATA, STATE OF COLORADO

Together with

PARCEL A

Parcel I in instrument recorded under Reception No. 1062410, La Plata County, Colorado, Assessor's Parcel No. 5661-252-00-002.

PARCEL B

Parcel 1A on Plat recorded under Reception No. 1043561, La Plata County, Colorado, Assessor's Parcel No. 5661-252-00-029.

PARCEL C

Parcel 1B on Plat recorded under Reception No. 1043561, La Plata County, Colorado, Assessor's Parcel No. 5661-252-00-030.

PARCEL D


Parcel 2 on Plat recorded under Reception No. 1026896, La Plata County, Colorado, Assessor's Parcel No. 5661-243-00-082.

Exhibit B

CONSENT OF AFFILIATE

The undersigned as Owner of a portion of the property described in Exhibit A hereby consents to the inclusion of the property described in Exhibit A to become part of the PIF Property and made subject to the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee.

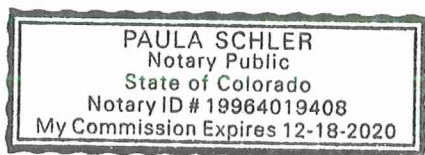
TWIN BUTTES OF DURANGO, LLC,  
a Colorado limited liability company

By:   
Glenn D. Pauls, as Member/Manager

STATE OF COLORADO    )  
  ) ss.  
County of La Plata        )

The foregoing Consent to the inclusion of the property identified in Exhibit A to the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee was acknowledged before me this 30<sup>th</sup> day of November, 2016, by Glenn D. Pauls, as Member/Manager of Twin Buttes of Durango, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 12/18/2020

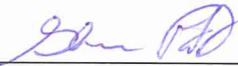


  
Notary Public

CONSENT OF AFFILIATE

The undersigned as Owner of a portion of the property described in Exhibit A hereby consents to the inclusion of the property described in Exhibit A to become part of the PIF Property and made subject to the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee.

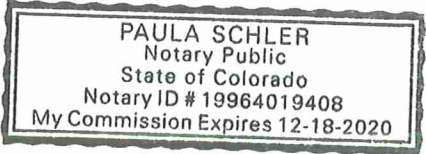
MCINTYRE RANCH, LLLP,  
a Colorado limited liability limited partnership

By:   
Glenn D. Pauls, as General Partner

STATE OF COLORADO    )  
  ) ss.  
County of La Plata        )

The foregoing Consent to the inclusion of the property identified in Exhibit A to the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee was acknowledged before me this 30<sup>th</sup> day of November, 2016, by Glenn D. Pauls, as General Partner of McIntyre Ranch, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.  
My commission expires: 12/18/2020




  
Notary Public

CONSENT OF AFFILIATE

The undersigned as Owner of a portion of the property described in Exhibit A hereby consents to the inclusion of the property described in Exhibit A to become part of the PIF Property and made subject to the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee.

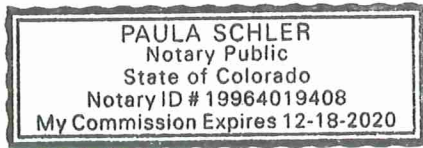
NEW ENERGY STATION, LLC,  
a Colorado limited liability company

By:   
Glenn D. Pauls, as Member/Manager

STATE OF COLORADO    )  
  ) ss.  
County of La Plata        )

The foregoing Consent to the inclusion of the property identified in Exhibit A to the Declaration of Covenants Imposing and Implementing Twin Buttes Public Improvement Fee was acknowledged before me this 30<sup>th</sup> day of November, 2016, by Glenn D. Pauls, as Member/Manager of New Energy Station, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 12/18/2020



  
Notary Public