

**DECLARATION OF COVENANTS  
BY  
COBBLE CREEK GOLF COMMUNITY, L.L.C.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS BY COBBLE CREEK GOLF COMMUNITY, L.L.C. (the "Declaration") is made as of \_\_\_\_\_, 1999, by its manager (the "Declarant").

RECITALS

A. Declarant is the owner of that certain real property located in the County of Montrose, Colorado, more particularly described on the attached Exhibit A (the "Property").

B. Declarant desires to create a common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes § 38-33.3-101 et seq. (the "Act") on the Property, the name of which is Cobble Creek Golf Community.

ARTICLE 1  
DECLARATION AND SUBMISSION

Section 1.1 *Declaration*. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property and are for the purpose of establishing a general plan and of protecting and maintaining the value and desirability of the project as a high quality residential development. Additionally, Declarant hereby submits the Property to the provisions of the Act.

ARTICLE 2  
DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, the Articles of Incorporation or any Amendments thereto, and the Bylaws or any Amendments thereto, shall have the following meanings:

Section 2.1 "*Agency*" means any agency or corporation that purchases or insures residential mortgages.

Section 2.2 "*Articles*" mean the Articles of Incorporation for Cobble Creek Home Owners' Association, Inc. a Colorado non-profit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.3 "*Annual Assessment*" means the Assessment levied pursuant to an annual budget.

Section 2.4 "*Assessments*" means the Annual, Special and Default Assessments levied pursuant to Article 9 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.5 "*Association*" means Cobble Creek Home Owners' Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.6 "*Association Documents*" means this Declaration, the Articles of Incorporation, the Bylaws, the Map and any procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.7 "*Bylaws*" means the Bylaws adopted by the Association, as amended from time to time.

Section 2.8 "*City*" means the City of Montrose, Colorado

Section 2.9 "*Clerk and Recorder*" means the office of the Clerk and Recorder in the County of Montrose, Colorado.

Section 2.10 "*Common Element*" means all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 2.11 "*Common Expenses*" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 8; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.12 "*County*" means the County of Montrose, Colorado.

Section 2.13 "*Declaration*" means this Declaration and the Map, and amendments and supplements to the foregoing.

Section 2.14 "*Design Review Committee*" or "*DRC*" means the board which shall be appointed by the Association's Executive Board to approve building design, construction and all other improvements including additions, improvements and changes thereto on the Lots as herein provided other than those constructed by Declarant.

Section 2.15 "*Executive Board*" is synonymous with "*Board*" and means the governing body of the Association.

Section 2.16 "*First Mortgage*" means any Mortgage that is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.17 "*First Mortgagee*" means any person, firm or entity named as a mortgagee or beneficiary in any First Deed of Trust, or any successor to the interest of any such person under such First Mortgage.

Section 2.18 "*Lot*" is synonymous with "*Unit*", "*Residential Lot*" or "*Residential Unit*".

Section 2.19 "*Manager*" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

Section 2.20 "*Map*" means all final Plats of the subdivided Parcels recorded on a phase by phase basis with the Clerk and Recorder, depicting a plan and elevation schedule of the Property subject to this Declaration and any supplements and amendments thereto.

Section 2.21 "*Member*" means every person or entity that holds membership in the Association.

Section 2.22 "*Mortgage*" means any mortgage, deed of trust or other document pledging any Residential Lot or interest therein as security for payment of a debt or obligation.

Section 2.23 "*Mortgagee*" means any person, firm or entity named as a mortgagee or beneficiary in any Deed of Trust, or any successor to the interest of any such person under such Mortgage.

Section 2.24 "*Owner*" means the owner of record, whether one or more persons or entities, of fee simple title to any Residential Lot, and "Owner" also includes the purchaser under a contract for deed covering a Residential Lot with a current right of possession and interest in the Residential Lot.

Section 2.25 "*Parcel*" means each platted, numbered and recorded division of vacant land as depicted on the Map. In the appropriate context, "parcel" may be synonymous with "Lot".

Section 2.26 "*Project*" means the common interest community created by this Declaration and as shown on the Map, consisting of the Property and the Common Elements. The Project may also be referred to as the "Development" or the "Subdivision" or the "Common Interest Community".

Section 2.27 "*Property*" means the real property described in Exhibit A attached hereto, together with such additional property as is subjected to this Declaration in accordance with Article 15.

Section 2.28 "*Residential Lot*" means one Parcel, together with the appurtenant interest in the Common

Elements. This term is synonymous with "Residential Unit".

Section 2.29 "*Successor Declarant*" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 2.30 "*Supplemental Declaration*" means an instrument which annexes property to this Declaration.

Section 2.31 "*Supplemental Map*" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration. The initial phase recordings are not supplemental and do not require amendment to this document.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

### ARTICLE 3 NAME, DIVISION INTO RESIDENTIAL LOTS, RESTRICTIONS ON USE

Section 3.1 *Name, Character and Location.* The name of the subdivision is Cobble Creek Subdivision commonly known as Cobble Creek Golf Community. The subdivision is a common interest community pursuant to the Act. The Project is located within the City.

Section 3.2 *Association.* The name of the Association is Cobble Creek Home Owners' Association, Inc. Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado.

Section 3.3 *Number of Residential Lots.* The maximum number of Residential Lots in the Project is 625, exclusive of parcels annexed to the Project.

Section 3.4 *Identification of Residential Lots.* The identification number of each Residential Lot is shown on the Map as a lot.

Section 3.5 *Description of Residential Lots.* Each Residential Lot shall consist of surveyed and platted, vacant land.

Section 3.6 *Restrictions on Use.* Use and enjoyment of each Residential Lot shall be subject to the following restrictions and such additional restrictions as the Executive Board may propose and are accepted by the Owners by a vote of sixty seven percent (67%) of all Owners:

3.6.1 *Residential Use.* Each residential lot shall be used for residential purposes only and shall not be used at any time for business, commercial or professional purposes; provided however, that an Owner may use its Lot for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof and no unreasonable inconvenience to other residents is created thereby.

No overnight rentals or rentals of dwellings for rental periods of less than 60 days shall be allowed. Any rental shall be evidenced by written lease that shall provide that the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and all rules and regulations of the Association and the DRC. The rental of any portion of the dwelling or guest house on the Lot shall be prohibited.

3.6.2 *Declarant's Use.* Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the lots owned by Declarant such facilities as Declarant deems reasonably necessary or incidental to the Project, construction and sale of the lots, and development and construction of improvements on the lots, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model homes, construction offices, trailers and temporary sales offices, in such numbers, sizes and such locations as Declarant determines in its reasonable discretion, from time to time.

3.6.3 *Mining and Drilling Activities.* Except as may be granted by Declarant to Cobble Creek Golf Community, any use of the surface of any Lot within the Property for water, oil, gas, mineral, geothermal or oil shale exploration, development, mining or drilling activities of any kind whatsoever is expressly and absolutely prohibited. The above shall not be deemed to exclude geothermal home heating and cooling systems approved by the DRC.

3.6.4 *Nuisances.* No owner shall cause or allow the origination of excessive odors or sounds from its property. No owner shall cause or allow any light to be emitted from its Lot which is unreasonably bright or causes unreasonable glare towards other Lots. Also, no owner shall cause nor allow any other nuisances of any kind whatsoever to exist on its property. Development and sale of Lots on the Property By Declarant is necessary for the completion of the development and is therefore not deemed to be an annoyance or nuisance. Further, construction of homes on Lots is necessary for the completion of the development and is therefore not deemed to be an annoyance or nuisance so long as the rules and regulations adopted from time to time by the Declarant or the Design Review Committee with respect thereto are adhered to.

3.6.5 *Hazardous Activities.* No activities shall be conducted on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property or any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace.

3.6.6 *Motor Vehicles and Recreational Vehicles.* No motorized vehicle which is either non-operational or non-licensed shall be kept or stored on any Lot, unless said vehicle is kept or stored in a fully enclosed garage. No outside storage of buses, trucks larger than  $\frac{3}{4}$  ton, recreational vehicles, boats, campers, house trailers or trailers of any kind or similar vehicles shall be allowed on any Lot or on the streets within the Property. Such vehicles may be parked on lots or streets overnight and for loading and unloading purposes only or may be permanently stored on a Lot only if stored in a fully enclosed garage.

3.6.7 *Household pets.* No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, kept, bred or boarded in or on the Lots; provided, however, that the owners of each Lot may keep a reasonable number of dogs, cats or other domestic animals which are bona fide household pets, so long as such pets are not kept in such number or in such manner as to create a nuisance to any resident in the Property. All dogs must be retained on its home Lot, unless it is leashed and in the company of its owner or the owner's designee. All pet owners shall be responsible for immediately removing any and all excrement deposited by its pet on property other than that of the owner and shall also periodically remove such excrement from its yard. Under no circumstances shall pets be allowed on the golf course.

An owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article 9 hereof.

3.6.8 *Temporary Structures.* Subject to Article 3.6.2 above, 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 Lot; provided, however, that during the actual construction, alteration, repair or re-modeling of an approved structure or other improvements, necessary temporary structures may be erected and maintained by the Declarant, home builders, contractors or person(s) performing such work.

3.6.9 *Trash, Materials and Appearances.* No refuse, garbage, trash lumber, grass clippings, shrubs, tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot, nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably situated solely for the purpose of garbage pickup.

Further, each Lot shall at all times be kept in a clean and slightly condition by the owner of the Lot. Vacant Lots shall be kept clear of weeds and trash. No trash, litter, junk, boxes, containers, bottles, cans, implements, or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction as provided in this Declaration. Each residence shall be maintained in a neat and well kept appearance. Exterior clothes drying is prohibited.

3.6.10 *Antennae and Towers.* No exterior satellite dishes, radio antennae, flag poles, television antennae or audio or visual reception devices of any type shall be erected, placed or maintained on any Lot, or upon the structures constructed thereon, except that satellite dishes 18" in diameter or less may be placed on the Lot or structures at locations approved by the DRC.

3.6.11 *Modular Housing.* No modular homes, mobile homes, manufactured housing or any derivative thereof shall be allowed or constructed on any Lot. This restriction shall not apply to wall sections or panels constructed off site.

3.6.12 *Parking.* All vehicles owned by residents of a home on a Lot shall be parked in garages when said vehicles are not in use. The garage doors shall be kept closed at all times except for those occasional instances where the activities of the Owner reasonably require frequent access to the garage interior from outside the garage.

3.6.13 *Fencing.* No fences shall be permitted without the prior written approval of the DRC. Without limiting the generality of the foregoing, the DRC may at any time, from time to time, promulgate and publish guidelines, rules or regulations regarding the permitted types, locations, materials and other matters having to do with fences or other related improvements.

3.6.14 *Damaged Property.* Any dwelling, garage, building or other improvement damaged by fire or casualty shall be repaired, replaced or removed within six (6) months of the date of damage.

3.6.15 *Signage.* No signage or advertising of any nature may be placed on any vacant Lot other than those of the Declarant or its designee. "For Sale" signage may be placed on a Lot containing a residence; provided the sign is no larger than 24" x 30" in size and is placed adjacent to the driveway and at the back of the sidewalk fronting the Lot. House numbers and street addresses will be in conformance with standards set by the DRC and published in the Design Regulations for the Cobble Creek Golf Community.

3.6.16 *Use of Golf Course.* The following provisions shall apply to the use of the golf course by any Lotowner, resident on the Property or any invitee of any Lot owner:

- a.) No dogs or pets shall be allowed on the golf course at any time. Dogs or pets may be released into back yards of lots adjacent to the golf course without supervision; provided that electronic fencing, or other constraints visually acceptable to the DRC, are installed and in good operating condition. In all cases it shall be the Lot owners responsibility to ensure that its pets are not on the golf course.
- b.) No fishing for balls in any of the lakes, streams or canals shall be allowed. Lost golf balls are the property of the Declarant.
- c.) No bikes, motorized vehicles (other than golf carts and golf course maintenance equipment) or cross country skiing shall be allowed on the golf course at any time.
- d.) No walking or jogging shall be allowed during the hours of operation of the golf course. It shall be the Lot owners responsibility to learn the hours of operation and to inform the members of its household, invitees and guests.
- e.) Golf course rules and regulations will prohibit golfers from entering onto the Lots for any reason.

3.6.17 *Drainage and Erosion.* Each home or building shall be situated on the Lot so that drainage of the Lot is not discharged onto adjacent Lots or other areas not designed for such drainage. Each Owner shall maintain the grading on his Lot at the slope and pitch fixed by the final grading plan approved by the DRC. In the event it is necessary or desirable to change the established drainage over any Lot which an Owner has a duty to maintain, then the party responsible for the maintenance of the Property shall submit a plan to the DRC for its review and approval.

3.6.18 *Landscaping.* Specific landscape requirements will be developed by the DRC and published in the

Design Regulations for the Cobble Creek Golf Community.

3.6.19 *Sidewalk Maintenance.* Each owner of a Lot, upon which is a residential building, shall have the responsibility for keeping the sidewalk clean that borders it's Lot, to include mud, dirt, gravel, stones, snow or other foreign material.

3.6.20 *Rights of the Association.* The Executive Board shall have, and is hereby given, the right and authority to interpret the meaning of the terms and provisions of this Declaration and to determine in its sole discretion compliance with the provisions of this Section 3.6.

#### ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 4.1 *The Association.* Every Owner of a Residential Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Residential Lot.

Section 4.2 *Transfer.* Membership held by the owner of a Lot is an appurtenance to such Lot and shall not be transferred, alienated, or pledged in any way, except upon the sale of such Lot, and then only to the purchaser of such Lot. Any attempt to make a transfer except by the sale of a Lot is void. Reference to the transfer of membership need not be made in an instrument of conveyance or encumbrance of such Lot for the transfer to be effective, and the same shall automatically pass with title to the Lot.

Section 4.3 *Membership.* The Association shall have one (1) class of membership consisting of all Owners. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Article III of the Bylaws. Each Owner is subject to all the rights and duties assigned to Owners under the Association Documents. Persons who hold an interest merely as security for the performance of an obligation shall not be deemed Members.

Section 4.4 *Voting.* There shall be one vote per Residential Lot.

(i) The owner(s) of each Residential Lot shall have one vote per Parcel owned except that the Declarant shall have two votes per Parcel owned until 75% of the Parcels are sold.

(ii) If only one of several owners of a Residential Lot is present at a meeting of the Association, the owner present is entitled to cast all the votes allocated to the Residential Lot. If more than one of the owners are present, the votes allocated to the Residential Lot may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the votes allocated to the Residential Lot without protest being made promptly to the person presiding over the meeting by another owner of the Residential Lot.

Section 4.5 *Declarant Control.* Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act and as set forth in the Association's Articles and or By-Laws.

Section 4.6 *Manager.* The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

Section 4.7 *Notice.* Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or on the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Residential Lot.

Section 4.8 *Taxation of Common Elements.* The property titled in the name of the Association shall be assessed and taxed for ad valorem taxes by the County Treasurer separately from the lots titled to Declarant and Owners.

#### ARTICLE 5

## POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

The Executive Board shall have the power to act on behalf of the Association to:

5.1.1 Pay any real property taxes and other charges assessed against the Common Elements;

5.1.2 Adopt, amend and enforce as well as interpreting any of the provisions hereof, reasonable Bylaws, rules and regulations for the purpose of insuring compliance with this Declaration and for the purposes of controlling and limiting the use of the Common Elements;

5.1.3 Maintain such policies of insurance as deemed necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members, officers and directors;

5.1.4 Incorporate property, pursuant to Article 15, provided such incorporation does not result in an increase in Annual Assessments of more than ten percent (10%) per owner;

5.1.5 Have all the powers, authority and duties permitted by the Act;

5.1.6 Employ or discharge a manager or other persons and contract with independent contractors, collection agents and others to perform and effectuate all or any part of the duties and powers of the Association if deemed necessary by the Executive Board.

5.1.7 Mortgage the Common Elements, provided such mortgage has the consent of sixty-seven percent (67%) of the Owners, other than the Declarant.

## ARTICLE 6 EASEMENTS

Section 6.1 *Easements*. The Property shall be subject to all easements shown on any Map or plat of record, those of record as of the date of the recording hereof, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

Uses in such easements may include installation, replacing, repairing and maintaining utilities, including, but not limited to, irrigation, drainage, water, sewer, gas, telephone, cable TV, electricity, and fences. These easements include uses for future services not presently available to the Commercial or Residential Lots which may reasonably be required in the future. By virtue of these easements, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Commercial or Residential Lots in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

Section 6.2 *Reservation of Easements, Exceptions and Exclusions*. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Residential Lot over and across the Common Elements, appurtenant to that Owner's Residential Lot, which right shall be appurtenant to the Owner's Residential Lot, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association.

## ARTICLE 7 MAINTENANCE

Section 7.1 *Maintenance by Association*. The Association shall be responsible for the maintenance and repair of the Common Elements, including any recreational amenities, drainage structure or facilities and any fences and such maintenance and repair shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, fences, gates, signage, irrigation systems, sidewalks, driveways and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public

organization formed for such purposes), located in the Common Elements. In the event the Association does not maintain or repair the Common Elements, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

Section 7.2 *Association Maintenance as Common Expense.* The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners of Residential Lots that have received final plat approval including Lots owned by Declarant, to be shared by each such Owner equally.

## ARTICLE 8 INSURANCE

Section 8.1 *General Insurance Provisions.* The Association shall acquire and pay for, out of the assessments levied under Article 9 below, any insurance policies required by the Colorado Common Interest Owners Act and such other insurance and bonds as the Executive Board may, within its discretion, determine desirable for the protection of the Common Elements and the Association. Such insurance shall conform to the requirements set forth in C.R.S. § 38-33.3-313(4)(a)-(d). An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit.

Section 8.2 *Common Expenses.* Premiums for insurance and bonds that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

## ARTICLE 9 ASSESSMENTS

Section 9.1 *Obligation.* Each Owner of a Residential Lot with final plat approval, except Declarant, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments. It is understood that any commercial lots, the Common Elements and the golf course are not subject to any Assessment, but are subject to the use restrictions and Article 12 of the Declaration.

Section 9.2 *Declarant's Subsidy.* For every calendar year during which Declarant retains the right to appoint any members to the Executive Board, Declarant shall contribute to the Association all funds in excess of the levied Annual and Special Assessments which shall be necessary to defray the costs, exclusive of reserves, properly paid by the Association for the purposes for which Annual Assessments may be collected. The deficiency contribution for the calendar year during which Declarant's said appointment right terminates shall be prorated to the date of such termination.

Section 9.3 *Budget.* Within thirty (30) days after the adoption of any proposed budget for the Association by the Executive Board pursuant to the terms of Article II, section 2.2 of the Bylaws, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners pursuant to the provisions in the Bylaws. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 9.4 *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid equally by all of the Owners of Residential Lots of final platted Lots excluding those owned by Declarant. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the Property, care of grounds within the Common Elements, routine repairs, replacements and renovations within and of the Common Elements, wages, common water and utility charges for the Common Elements, legal and accounting fees, management fees, expenses, liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve funds for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements, on a periodic basis, as needed and enhancements or improvements to the Common Elements as determined by the Association.



Annual Assessments shall be payable in annual or quarterly installments, as determined by the Board, on a prorated basis in advance and shall be due on the first day of each calendar year or quarter, whichever is applicable. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right to transfer any revenue from Annual Assessments in excess of the actual expenses incurred in any fiscal year to a reserve account.

Section 9.5 *Special Assessments*. In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed equally to Owners of Residential Lots in final plats (excluding the Declarant). Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than twenty (20) days after such notice shall have been given.

Any Special Assessment containing construction of additions to common area improvements or new capital improvements must have the approval of sixty-seven percent (67%) of the Lot Owners other than Declarant, who are voting in person or by proxy, at a meeting duly called for that purpose.

Section 9.6 *Default Assessments*. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Residential Lot which may be foreclosed in accordance with the laws of the State of Colorado as though the lien were a mortgage on real property or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 9.7 *Effect of Nonpayment; Assessment Lien*. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid 30 days after its due date shall constitute a lien and shall bear interest from the due date at the rate of 15% per annum together with a late charge of 5% of the unpaid amount per month for each month the assessment goes unpaid. The Association shall be entitled to recover its reasonable attorney's fees and collection costs in any effort to recover past due assessments. The Board may bring an action at law against the Owner personally, or foreclose the lien as though it were a mortgage on real property. No Owner may waive or escape liability for the assessment provided for by non use of Common Elements, the sale of its Lot or the abandonment of its Lot.

In the event of a foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Residential Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

These collection and lien provisions apply to any charge, fee, fine or other obligation of an Owner incurred pursuant to this Declaration or lawfully imposed by the Association, its Executive Board or DRC.

Section 9.8 *Personal Obligation*. Each Assessment against a Residential Lot is the personal obligation of the person who owned the Residential Lot at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 9.9 *Statement of Status of Assessment Payment*. Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt requested, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Residential Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Residential Lot. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of

delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Residential Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 9.10 *Maximum Annual Assessment.* The maximum annual assessment shall be \$175.00 for all Residential Lots.

- i. The maximum annual assessment may be increased each year by not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
- ii. The maximum annual assessment may be increased above ten percent (10%) by a vote, at a meeting duly called for this purpose, of both 67% of all the members who are voting in person or by proxy and a vote of 67% of the Owners other than the Declarant, who are voting in person or by proxy.
- iii. The Executive Board may fix the annual assessment at an amount less than the maximum.

Section 9.11 *Notice and Quorum for any Action Authorized Under this Article 9.* Written notice of any meeting called for the purpose of taking any action authorized under this Article 9 shall be sent to all Owners entitled to vote not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the vote of Owners entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### ARTICLE 10 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to Article 8, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Nothing in this Article shall be deemed to apply to Owners insurance obtained for their benefit.

#### ARTICLE 11 RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 11.1 *Reserved Rights.* Subject to any applicable zoning or other municipal restrictions, Declarant reserves the right to reconfigure Lots, amend plats and re-designate residential formats to the end that patio homes, town homes, footprint units and other residential alternatives may be applied to Declarant owned Lots. Each such reconfiguration resulting in residential parcels of these types shall be considered "Lots" and the owners thereof are "Owners" as herein defined.

Section 11.2 *Termination of Rights.* The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire as required by the Act. Any management contracts, contracts or leases between the Association and the Declarant or an affiliate of the Declarant, or any contracts or leases may be terminated by the Executive Board after the end of the Declarant control upon not less than 90 days' notice to the other party.

Section 11.3 *Transfer of Records.* Within twenty (20) days after the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property, books and records of the Owners and of the Association held by or controlled by the Declarant.

Section 11.4 *Special Declarant Rights*. Declarant hereby reserves the right, from time to time until the turnover date, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- i. Exercise of Development Rights. The right to exercise any Development Right reserved in this Declaration.
- ii. Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Property or within real estate which may be added to the Property.
- iii. Master Association. The right to make the Property subject to a Master Association.
- iv. Merger. The right to merge or consolidate a Property with another Property of the same form of ownership.
- v. Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

Section 11.5 *Additional Reserved Rights*. In addition to the Special Declarant Rights set forth in 11.4 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

- i. Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, skyways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Property.
- ii. Colorado Common Interest Ownership Act. House Bill 91-1292 enacted the Colorado Common Interest Ownership Act by addition of Article, 33.3 to Title 38, Colorado Revised Statutes which took effect on July 1, 1992. Declarant reserves the right to amend this Declaration to comply with the requirements of the Colorado Common Interest Ownership Act.
- iii. Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 11.6 *Rights Transferable*. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in every County in which any portion of the Property is located. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 12 DESIGN REVIEW COMMITTEE (DRC)

Section 12.1 *Approval Required*. No residence, structure, driveway, fence, patio or other improvement shall be erected, placed, modified or altered on any Lot within the Property unless the exterior building plans, specifications (including colors and materials) and plot plan showing the location and proposed erection, placement, modification or alteration of any such residence, structure, driveway, fence, patio or other improvement has been approved in writing by the DRC.

Section 12.2 *Role of the DRC*. The DRC is fully authorized in its sole discretion to accept or reject applications for approval in total or to require certain specific revisions. The decisions of the DRC shall be final and non-appealable. Every Owner, by acceptance of a deed or other conveyance for itself, its successors, assigns, agents and employees hereby expressly waives any claim against the DRC, the Executive Board or the Association or their respective members, or against Declarant relating to or arising out of any action or inaction on the part of the DRC, including but not limited to any claim such Owner may have subsequent to the date the DRC has acted on the application of an Owner, which might have changed the nature or content of the Owner's application or which might have had the effect of a differing result on the Owner's application had action not taken place until after the occurrence of the change in the guidelines or in the rules and regulations.

Section 12.3 *Membership and Appointment of the DRC*. The DRC shall be a committee of the Association composed of between one (1) and three (3) persons as determined by the Executive Board. The DRC shall be appointed

and replaced by the Executive Board and the Executive Board shall have absolute authority to remove any person on the DRC, with or without cause.

Section 12.4 *Architectural Guidelines*. Declarant may publish architectural and design guidelines and amendments thereto governing all improvements of the Lots. The guidelines shall be available for review at all reasonable times at the offices of the Association and copies shall be available to Owners upon request. At any time, and in any event not later than twelve (12) years after the date hereof, Declarant shall release to the DRC its right to amend the guidelines and after such release, the right to amend shall be vested solely in the DRC.

Section 12.5 *Minimum Standards*. The Standards as set forth in this Declaration shall be deemed to be minimum requirements only. The DRC shall have the right to refuse to approve any plans or specifications submitted to it which are not suitable or desirable, in its sole option, for aesthetic or other reasons. The DRC shall have the right to consider the suitability of proposed buildings, the harmony thereof with the surroundings and the effect of the building on neighboring property. The DRC shall not be arbitrary in its decisions but shall have broad discretion to assure continuity and harmony of design, appearance and location in relation to the other improvements on the property, view preservation and finish grade elevations.

### ARTICLE 13 MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Residential Lots. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 13.1 *Distribution of Insurance or Condemnation Proceeds*. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Residential Lots for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Residential Lot.

Section 13.2 *Liability of First Mortgagee*. Notwithstanding any other provision of this Article 13, a First Mortgagee shall not be liable for any assessment, charge, penalty or fine and the lien for any such assessment, charge, penalty or fine shall be junior to any First Mortgage on a Residential Lot perfected by recording in the office of the Clerk and Recorder for Montrose County, Colorado, prior to the time a lien for failure to pay any such amount is recorded. Any First Mortgagee who acquires title to such Residential Lot by foreclosure or deed in lieu of foreclosure shall acquire title to such Residential Lot free and clear of any lien for unpaid assessments attributable to expenses of the Association arising after the date upon which the First Mortgagee receives a deed to the Residential Lot. The Association shall retain the right to collect all unpaid assessments, charges, penalties or fines from any excess bid at foreclosure.

### ARTICLE 14 DURATION OF COVENANTS AND AMENDMENT

Section 14.1 *Term*. The covenants and restrictions of this Declaration shall run with and bind the land for twenty years and shall be automatically extended for successive twenty-year periods, unless an instrument is signed revoking or terminating the subdivision pursuant to the provisions of Article 14.3 of this Declaration or the Act.

Section 14.2 *Amendment*. This Declaration, or any provision of it, may be amended only in accordance with the Act.

### ARTICLE 15 ADDITIONAL PROPERTY

Section 15.1 *Inclusion Without Approval*. All or any portion of the Additional Property described in Exhibit B to this Declaration may at any time, after recording of this Declaration, be added and made subject to this Declaration and included in the Property, by the Declarant without the consent of any other person or entity. Such addition(s) may be accomplished, if at all, by Declarant recording in Montrose County, Colorado both a supplement to this Declaration and a plat of such property which shall thereupon become subject to all provisions of this Declaration. Without limitation, any supplement or plat may designate additional Lots and/or additional Common Elements.

Section 15.2 *Acquisition of Additional Common Elements*. Declarant may convey additional real estate, improved or unimproved, located within the Additional Property, which upon conveyance or dedication to the Association shall be accepted by the Executive Board on behalf of the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its members as additional Common Elements.

Section 15.3 *Amendment*. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns more than 25% of the Residential Lots.

Section 15.4 *Effect*. The filing of a Supplemental Declaration and Supplemental Map, annexing property to the Association shall not be construed as an amendment to this Declaration requiring a vote of the Owners under Article 14, Section 14.2 of this Declaration. The additional lots created by any such annexation will change the calculation of percentages of ownership by which Declarant control is calculated and may result in restoration of Declarant control after an earlier termination thereof.

## ARTICLE 16 GENERAL PROVISIONS

Section 16.1 *Restriction on Declarant Powers*. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 16.2 *Enforcement*. Except as otherwise provided in this Declaration, the Executive Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 16.3 *Severability*. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 16.4 *Conflicts Between Documents*. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 16.5 *Notice of Sale, Lease or Mortgage*. In the event an Owner sells, mortgages or otherwise disposes of any Lot, the Owner shall promptly furnish to the Association in writing the name and address of such purchaser, mortgagee or transferee.

Section 16.6 *No Trespass*. Whenever the Association or Declarant and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, replace, preserve or do any other action within any portion of the Development, the entering of the Lot within the easements thereon and the taking of such action shall not be deemed to be a trespass.

Section 16.7 *Variances*. The Executive Board or its DRC if appointed as herein authorized shall have the authority to grant variances from the terms and conditions contained in this Declaration so long as such variances do not result in conditions which are inconsistent with the general concept, harmony and values with the Property.

Section 16.8 *Notices*. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as such Owner of the records of the Association at the time of such mailing. Each Owner shall keep the Association informed of any address changes.

Section 16.9 *Singular and Plural*. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 16.10 *Liberal Construction*. The provisions of this Declaration shall be liberally construed to promote and

effectuate the purposes hereof.

Section 16.11 *Golf Balls, Disturbances and Nuisances*. Each Owner shall note that his, her or its Lot may be adjacent to or near the Golf Course and related facilities and that Golf Course-related activities, including, without limitation, regular course play and tournaments, may be held on the course. Each Owner acknowledges that the location of his, her or its Lot relative to the course may result in nuisances or hazards to persons and property on such Lot as a result of normal Golf Course operations or as a result of other Golf Course-related activities. Each Owner covenants for itself, its successors and assigns that it shall assume all risks associated with such location, including, but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such Golf Course-related activities and shall indemnify and hold harmless the Association, Declarant and the Cobble Creek Golf Course from any liability, claims or expenses, including reasonable attorneys' fees and costs, arising from such property damage or personal injury.

Section 16.12 *Operation of the Golf Course*. Each Owner acknowledges that the operation and maintenance of the Golf Course may permit play on the course during extended hours and may require that maintenance personnel and other workers required to operate and maintain the Golf Course will commence work relating to the operation and maintenance of the Golf Course before and after regular business hours on a daily basis.

ARTICLE 17  
ALLOCATED INTERESTS

The undivided interest in the Common Elements, the liability for assessments and votes in the Association allocated to each lot are all of the whole calculated on the basis of an equal share therein of every lot in the Property subject only to Declarant's voting rights and control rights as elsewhere specified in this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers the date and year first above written.

DECLARANT:  
COBBLE CREEK GOLF COMMUNITY, L.L.C.  
St. Colombe, L.L.C., Manager

By: \_\_\_\_\_  
Clifford L. Hayden, President  
of Enclave Development, Inc.,  
Manager of St. Colombe, L.L.C.

STATE OF COLORADO )

) ss.

COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of March, 1999, by Clifford L. Hayden as President of Enclave Development, Inc., a Colorado corporation authorized to do business in Colorado.

Witness my hand and official seal.

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

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