

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

**KINSTON**

Recording Requested by:  
FNTG-NCS Colorado  
F0654297 // N0025629

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR KINSTON**

This Declaration of Covenants, Conditions and Restrictions for Kinston is made and executed as of June 17, 2020, by CENTERRA EAST DEVELOPMENT, INC., a Delaware corporation (“**Founder**”).

**RECITALS**

A. Founder owns the real property located in the City of Loveland, Colorado (the “**City**”) described on Exhibit A attached hereto (the “**Initial Property**”).

B. Founder desires to create a “planned community” under the Colorado Common Interest Ownership Act, Section 38-33.3-101, C.R.S., *et. seq.* (as amended from time to time, “**CCIOA**”), to be known as “Kinston” on the Initial Property and any additional real property later subjected to this Declaration.

**DECLARATION**

**ARTICLE I  
INTERPRETATION AND DEFINITIONS**

1.1 Interpretation.

(a) Certain Terms. As used within this Declaration: (i) the terms “**including**” and “**include**” are deemed to mean “including, without limitation,” and “include, without limitation,” respectively; (ii) the term “**or**” is deemed to mean “and/or”; (iii) the terms “**hereby**,” “**hereunder**” and “**herein**” are deemed to refer to the entirety of this Declaration as opposed to any particular portion of this Declaration; and (iv) each reference herein to a “**Section**,” “**Article**” or “**Exhibit**” is deemed to refer to a Section or Article of this Declaration, or to an Exhibit referenced in and attached to this Declaration, as appropriate.

(b) Singular/Plural. Except as otherwise provided herein or unless the context clearly requires otherwise, the singular of any term includes the plural of such term, and the plural of such term includes the singular of such term.

(c) Exhibits. All exhibits attached to this Declaration are hereby incorporated into and made part of this Declaration.

(d) Recitals. The recitals set forth above are hereby incorporated into and made part of this Declaration.

(e) Statutes. All references herein to statutes shall mean such statutes as amended or replaced from time to time, together with all regulations promulgated thereunder.

(f) **Action.** Except as expressly set forth in the Community Documents, any action that has been or may be taken by Founder, the Design Review Board (as such term is defined below), or the Kinston Community Association (as such term is defined below), or any other Person (as such term is defined below), may be taken “at any time, and from time to time.” Each provision that authorizes, directs or permits an action shall be deemed to include such language.

1.2 **Definitions.** As used in this Declaration, the following terms shall have the meanings given to them in this Section 1.2, unless the context expressly requires otherwise.

“**Activities and Conditions**” has the meaning given to that term in Section 16.2.

“**Administrative Transfer Fee**” has the meaning given to that term in Section 6.8.

“**ADR Party**” has the meaning given to that term in Section 17.1.

“**Affiliate**” means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with the party for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to: (a) vote fifty percent (50%) or more of the securities having ordinary voting power for the election of directors (or comparable positions) of such Person, or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise and either alone or in conjunction with others.

“**Annexable Property**” means the real property described on Exhibit B attached hereto.

“**Arbitration Costs**” has the meaning given to that term in Section 17.7.

“**Arbitration Firm**” has the meaning given to that term in Section 17.7.

“**Articles**” means the Articles of Incorporation of the Kinston Community Association, as the same may be amended from time to time.

“**Assessment**” means a General Assessment, Limited Assessment, Special Assessment, Default Assessment, or Real Estate Transfer Assessment levied pursuant to Article VI.

“**Assessment Lien**” means the lien of the Kinston Community Association on a Site described in Section 6.10.

“**Assessment Units**” has the meaning given to that term in Section 6.3.

“**Association**” has the meaning given to that term in CCIOA.



“**Attached For-Rent Dwelling Unit**” means a Dwelling Unit that is physically connected to one or more other Dwelling Units and intended to be operated as a rental, including without limitation apartment projects.

“**Attached For-Sale Dwelling Unit**” means a Dwelling Unit that is physically connected to one or more other Dwelling Units and intended for owner-occupancy (even if such Dwelling Unit is rented by its Owner from time to time), including without limitation condominiums, duplexes and townhomes to the extent the same are intended for owner-occupancy.

“**Attached For-Sale Site**” means a Site designated on the Property Map to be used and improved with one or more Attached For-Sale Dwelling Units, provided, that when an Attached For-Sale Site is an Improved Attached For-Sale Site, it shall only include one Dwelling Unit which has been legally subdivided (through a subdivision plat or condominium map or similar instrument) from the other Dwelling Units to which it is attached.

“**Award**” has the meaning given to that term in Section 17.7.

“**Board**” means the board of directors of the Kinston Community Association.

“**Builder**” means a Person who, in the ordinary course of such Person’s business: purchases one or more Unimproved Detached For-Sale Sites or Unimproved Attached For-Sale Sites for the purpose of constructing Dwelling Units thereon for later sale to individual purchasers.

“**Bulk Service Agreements**” has the meaning given to that term in Section 16.1.

“**Bylaws**” means the bylaws of the Kinston Community Association, as the same may be amended.

“**Capital Improvements**” means all capital repairs, restoration and replacement of, or additions to, major components of the Common Elements, including major repairs and structural repairs, which the Kinston Community Association is required or may elect to fund, maintain, repair or replace under this Declaration.

“**CCIOA**” has the meaning given to that term in Recital B.

“**CCPA**” means C.R.S. § 6-1-101, *et seq.*, as amended from time to time.

“**CDARA**” means C.R.S. § 13-20-801, *et seq.*, as amended from time to time.

“**CDARA Notice of Claim**” has the meaning given to that term in Section 17.3.

“**CEA**” means Centerra Engagement Assembly, Inc., a Colorado nonprofit corporation.

“**CEA Covenant**” means the Community Engagement Covenant for Centerra Recorded of even date herewith, as amended and supplemented from time to time.

“**CEA Working Capital Fee**” has the meaning assigned to such term in Section 6.15.

“**Centerra Engagement**” means the planned community created by the CEA Covenant.

“**City**” has the meaning given to that term in the Recitals.

“**Claim**” has the meaning given to that term in Section 17.1.

“**Common Elements**” means any real estate within Kinston that is, and any improvements or fixtures located on such real estate that are: (a) owned by the Kinston Community Association; or (b) owned by a Person other than the Kinston Community Association, but in which the Kinston Community Association has rights of use or possession pursuant to this Declaration, or any lease, license, easement or other agreement.

“**Common Expenses**” means:

(a) any and all costs, expenses and liabilities incurred by or on behalf of the Kinston Community Association, including costs, expenses and liabilities for: (i) acquiring, owning, leasing, selling, encumbering, managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements or any other property of the Kinston Community Association, (ii) carrying out any of the purposes of, and exercising any of the powers of, the Kinston Community Association as described in any Community Document, including those purposes and powers described in Section 3.2, (iii) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby, (iv) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto, (v) maintaining and enhancing property values within Kinston, (vi) taking any action it deems necessary or appropriate to protect the general welfare of Owners, Guests and the general public, and (vii) operating the Kinston Community Association, and

(b) reserves for any such costs, expenses and liabilities.

“**Community Documents**” means this Declaration, the Articles, the Bylaws and the Rules, as the same may be amended.

“**Community Facility**” means a facility that is operated exclusively by a nonprofit, not-for-profit, governmental or quasi-municipal entity, and provides athletic, cultural, recreational, entertainment or other services to Owners, Guests or the general public and that is certified as such by the Kinston Community Association, such as, theaters, libraries, meeting facilities, churches, schools, informational facilities,

community centers, recreational facilities, athletic facilities, parks, playing fields, nature centers, trails, and open spaces and wetlands.

**“Community-Wide Standard”** means (a) the standard of use, conduct, architecture, landscaping or aesthetic matters generally prevailing within the Property, or (b) the minimum standard described in this Declaration or the Rules, whichever is higher. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Board’s or the Design Review Board’s discretion. Founder shall initially establish the Community-Wide Standard, however, the Community-Wide Standard may evolve as development progresses and as Kinston changes.

**“Consideration”** means any combination of (a) money paid or to be paid; (b) the value of property delivered or to be delivered; (c) the value of any services delivered or to be delivered; and (d) the amount of any debt assumed or to be assumed, by a Transferee in exchange for the Transfer of a Site.

**“Construction Activities”** has the meaning given to that term in Section 16.2.

**“Construction Defect Action”** has the meaning given to that term in Section 17.1.

**“Construction Defect Dispute Notice”** has the meaning given to that term in Section 17.3.

**“Construction Professional”** has the meaning given to that term in Section 17.1.

**“Declaration”** means this Declaration of Covenants, Conditions and Restrictions for Kinston, together with the Property Map, as each same may be amended or supplemented.

**“Default Assessment”** has the meaning given to that term in Section 6.7.

**“Design Review Board”** has the meaning given to that term in Section 8.1.

**“Detached For-Sale Dwelling Unit”** means a Dwelling Unit not physically connected to any other Dwelling Unit and intended for owner-occupancy (even if such Dwelling Unit is rented by its Owner from time to time).

**“Detached For-Sale Site”** means a Site that is designated on the Property Map to be used and improved with one Detached For-Sale Dwelling Unit, intended for individual sale and owner-occupancy.

**“Detached For-Rent Dwelling Unit”** means a Dwelling Unit not physically connected to any other Dwelling Unit and intended to be operated as a rental unit as part of a unified for-rent residential project, including without limitation detached cottages intended to be operated as rentals.

“**Development Party**” has the meaning given to that term in Section 17.4.

“**Director**” means a duly elected or appointed member of the Board.

“**Dwelling Unit**” means a structure or portion of a structure containing one or more rooms, including a kitchen and at least one bathroom, intended for occupancy as separate quarters for the use of an individual or a family for living, cooking and sanitary purposes.

“**End of Mediation**” has the meaning given to that term in Section 17.2.

“**Exempt Claim**” has the meaning given to that term in Section 17.1.

“**Fair Market Value,**” means the Consideration given by the Transferee to the Transferor in exchange for the Transfer of a Site; *provided, however* if the Board has reason to believe the amount of such Consideration does not reflect the price a Transferee would pay to a Transferor for the subject Site in a bona-fide, arms-length Transfer between unrelated Persons, then the “Fair Market Value” for such Transfer shall be the amount a Transferee would pay a Transferor for the subject Site in a bona-fide, arms-length Transfer between unrelated Persons as determined by the Board.

“**Fee Cap**” has the meaning given to that term in Section 17.4.

“**Fee Estimate**” has the meaning given to that term in Section 17.8.

“**First Mortgage**” means any Mortgage which is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

“**First Mortgagee**” means a Mortgagee with respect to a First Mortgage.

“**Fiscal Year**” means an annual period ending on December 31st of each calendar year, which date may be changed by the Board from time to time in accordance with applicable law.

“**Founder**” has the meaning given to that term in the introductory sentence hereof.

“**Founder Control Period**” has the meaning given to that term in Section 5.4.

“**Founder Rights**” means any rights reserved to Founder under this Declaration, any Supplemental Declaration or any other Community Document, including without limitation those rights reserved to Founder under Article XIV.

“**Founder Rights Period**” has the meaning given to that term in Section 14.5.

“**General Assessment**” has the meaning given to that term in Section 6.3.

“**Guest**” means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.

**“Improved Attached For-Sale Site”** means an Attached For-Sale Site upon which exists improvements for which a temporary or permanent certificate of occupancy has been issued.

**“Improved Detached For-Sale Site”** means a Detached For-Sale Site upon which exists improvements for which a temporary or permanent certificate of occupancy has been issued.

**“Improved Rental Project Site”** means a Rental Project Site upon which exists improvements for which a temporary or permanent certificate of occupancy has been issued.

**“Initial Property”** has the meaning given to that term in the Recitals.

**“Initiating Party”** means an ADR Party with a Claim against any other ADR Party.

**“JAG”** has the meaning given to that term in Section 17.7.

**“Joint Funding Agreement”** means that certain Joint Funding Agreement dated of even date herewith by and among the Kinston Community Association, CEA, and Centerra Commercial Owners Association, Inc., a Colorado nonprofit corporation, as amended from time to time.

**“Kinston”** means the planned community created by this Declaration.

**“Kinston Community Association”** means Kinston Community Association, Inc., a Colorado nonprofit corporation.

**“Kinston Community Association Working Capital Fee”** has the meaning given to that term in Section 6.15.

**“Limited Assessments”** has the meaning given to that term in Section 6.4.

**“Limited Common Element”** means those items included within the definition of “Limited Common Element” in Section 103 of CCIOA, together with those portions of the Property designated as a “Limited Common Element” pursuant to Section 2.2 or Founder’s exercise of any other Special Founder Right.

**“Majority”** (whether capitalized or not) means any percentage greater than fifty percent (50%).

**“Maximum Number of Sites”** has the meaning given to that term in Section 14.2(d).

**“Media and Communications Services”** has the meaning given to that term in Section 16.1(a)(ii).

“**Molds**” has the meaning given to that term in Section 16.10.

“**Mortgage**” means any mortgage, deed of trust or other document pledging any Site or any interest in a Site as security for payment of a debt or obligation.

“**Mortgagee**” means any Person named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person under a Mortgage.

“**Noise Disturbances**” has the meaning given to that term in Section 16.2.

“**Officer**” means a duly elected or appointed officer of the Kinston Community Association.

“**Official Records**” means the official real property records of Larimer County, Colorado.

“**Oil and Gas Wells**” has the meaning given to that term in Section 16.2.

“**Ordinances**” has the meaning given to that term in Section 16.8.

“**Owner**” means the record holder of legal title to the fee simple interest in any Site or portion thereof. If there is more than one record holder of legal title to the fee simple interest in any Site or portion thereof, each record holder shall be an Owner. The term Owner includes Founder to the extent that Founder is the record holder of legal title to the fee simple interest in any Site or portion thereof.

“**Owners Meeting**” means any meeting of the Owners called in accordance with this Declaration, the Bylaws, and applicable law.

“**Person**” means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-municipal entity or any other person or entity recognized as being capable of owning real property under the laws of the State of Colorado.

“**Property**” means the Initial Property and any portion of the Annexable Property that has been made subject to this Declaration from time to time.

“**Property Map**” has the meaning given to that term in Section 2.2.

“**Property Risks**” has the meaning given to that term in Section 16.13.

“**Public Facilities**” has the meaning given to that term in Section 16.3.

“**Purchaser**” means a Person, other than Founder or a Successor Founder, who acquires legal title to the fee simple interest in any Site or portion thereof.

“**Qualified Individual**” has the meaning given to that term in Section 17.1.

“**Real Estate Transfer Assessment**” has the meaning given to that term in Section 6.8.

“**Real Estate Transfer Assessment Rate**” has the meaning given to that term in Section 6.8(g).

“**Recorded,**” “**Record,**” “**Recording**” and “**Recordation**” means recorded, record, recording or recordation, as appropriate, in the Official Records.

“**Rental Access Agreement**” means an agreement between the Owner of a Rental Project Site and the Kinston Community Association pursuant to which the Owner of such Rental Project Site and its Guests may use and access all Common Elements (not just the parks, trails and open spaces as provided for in Section 10.2(a)(ii)), and participate in community events in the Common Elements sponsored by the Kinston Community Association.

“**Rental Project Site**” means a Site designated on the Property Map to be used and improved with one or more Attached For-Rent Dwelling Units or Detached For-Rent Dwelling Units that are collectively intended to be operated as a unified for-rent residential project.

“**Reserve Account**” has the meaning given to that term in Section 6.13.

“**Reserves**” has the meaning given to that term in Section 6.14.

“**Residential Cap**” has the meaning given to that term in the CEA Covenant.

“**Residential Lease**” has the meaning given to that term in Section 9.7.

“**Responding Party**” means any ADR Party against whom an Initiating Party has a Claim.

“**RETA Account**” has the meaning given to that term in Section 6.8.

“**Rules**” means any instrument adopted by the Board for the regulation or management of Kinston, and any instrument adopted by the Design Review Board which sets forth design guidelines, design approvals, rules, regulations or any other matters related thereto, as the same may be amended.

“**Services**” means any services the Kinston Community Association chooses to provide for any Owner or Guest, including trash collection, security and snow removal services.

“**Site**” means any lot, parcel or tract comprising all or a portion of the Property, whether or not platted. A Site is either a Detached For-Sale Site, an Attached For-Sale Site, or a Rental Project Site. Notwithstanding the foregoing, each lot, parcel or tract comprising all or any portion of the Property that is owned, held or used in its entirety (a) by the Kinston Community Association, (b) as common elements for a Sub-Community,

(c) by any governmental or quasi-municipal entity, (d) solely for or in connection with the distribution of electricity, gas, water, sewer, telephone, cable television or any other utility service, including Media and Communications Services, or (e) solely for access to or through any portion of the Property, shall not be considered a Site.

“**Social and Commercial Activities**” has the meaning given to that term in Section 16.2.

“**Social and Commercial Activity Areas**” has the meaning given to that term in Section 16.2.

“**Special Assessments**” has the meaning given to that term in Section 6.5.

“**Special Declarant Rights**” has the meaning given to that term in CCIOA.

“**Standard Claim**” has the meaning given to that term in Section 17.1.

“**Standard Claim Dispute Notice**” has the meaning given to that term in Section 17.2.

“**Sub-Association**” means the property owners association for any Sub-Community.

“**Sub-Community**” means a common interest community, other than Kinston or CEA that includes any portion of the Property.

“**Successor Founder**” means any Person who succeeds to any rights of Founder hereunder in accordance with the terms and conditions of this Declaration and applicable law.

“**Supplemental Declaration**” means additional or modified covenants, conditions, restrictions or reservation of rights, including Founder Rights, which may be placed on any portion of the Property or modified with respect to any portion of the Property, as appropriate, by one or more instruments Recorded that are approved by: (a) the Owner of such portion of the Property to be burdened thereby, and (b) Founder.

“**Total Expenditure Amount**” has the meaning given to that term in Section 6.2.

“**Transfer**” means any sale, conveyance, assignment, lease or other transfer of legal or beneficial ownership a Site whether in one transaction or in a series of related transactions. The term Transfer includes:

- (a) the conveyance of any fee simple interest in a Site,
- (b) the transfer of more than fifty percent (50%) of the outstanding shares of the voting stock of a corporation that owns, directly or indirectly, a Site, and



(c) the transfer of more than fifty percent (50%) of the interest in net profits or net losses of any limited liability company, partnership, joint venture or other entity that owns, directly or indirectly, a Site.

“**Transferee**” means each and every Person to whom an interest passes by a Transfer.

“**Transferor**” means each and every Person from whom an interest passes by a Transfer.

“**Tree Lawn Areas**” means any portion of the Property designated by the Owner of such portion of the Property and by Founder as a “Tree Lawn Area” in a Recorded Supplemental Declaration.

“**Unimproved Attached For-Sale Site**” means an Attached For-Sale Site that is not an Improved Attached For-Sale Site.

“**Unimproved Detached For-Sale Site**” means a Detached For-Sale Site that is not an Improved Detached For-Sale Site.

“**Unimproved Rental Project Site**” means a Rental Project Site that is not an Improved Rental Project Site.

“**Verified List**” has the meaning given to that term in Section 17.4.

“**Visible From Neighboring Property**” means, with respect to any given object, that such object is or would be visible to a natural Person with eye-level at a height of six (6) feet standing on any public right-of-way, any private street, alley or drive, any sidewalk, or any portion of the Property owned by the Kinston Community Association.

## ARTICLE II DECLARATION

2.1 Purpose and Declaration; Running with the Land. This Declaration is executed and recorded to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners and to establish procedures for the overall development, administration, maintenance and preservation of the Property. Upon the Recording of this Declaration, the Property will be a “planned community” pursuant to CCIOA, and the name of the planned community will be “Kinston.” Kinston is situated entirely within the City of Loveland, County of Larimer, State of Colorado. The Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration. The obligations, rights, burdens, benefits created by this Declaration and all other provisions of this Declaration shall bind and inure to the benefit of Founder, the Owners, all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

2.2 Property Map; Initial Number of Sites and Common Elements. The common interest community map of Kinston, which describes the boundaries and identifying numbers of the Sites and Common Elements is attached hereto as Exhibit C (the “**Property Map**”). The Property Map designates each portion of the Property as either an Unimproved Detached For-Sale Site, an Unimproved Attached For-Sale Site, an Unimproved Rental Project Site, an Improved Detached For-Sale Site, an Improved Attached For-Sale Site, an Improved Rental Project Site, a Community Facility, a Limited Common Element or a Common Element. If a Community Facility is also a Common Element, the Property Map shall also note such fact. The Property Map shall be deemed included within, and a part of, this Declaration. As reflected on the Property Map, there is initially one Site which is an Unimproved Detached For-Sale Site, and one Common Element which is an area designated for a park. If applicable, Founder shall update the Property Map in connection with exercise of its Founders Rights pursuant to Article XIV. Either Founder or Kinston Community Association may update the Property Map from time to time to reflect that status of each Site previously annexed into Kinston (i.e., unimproved to improved), by recording a Supplemental Declaration.

### ARTICLE III THE KINSTON COMMUNITY ASSOCIATION

3.1 Formation of the Kinston Community Association. Prior to the time Founder first conveys title to the fee simple interest in any Site or portion thereof to any Person, Founder shall cause the Kinston Community Association to be formed.

3.2 Purposes and Powers.

(a) Purposes. The Kinston Community Association’s purposes are:

(i) to acquire, own, lease, sell, transfer, grant easements over, encumber, manage, control, operate, insure, improve, repair, replace and maintain the Common Elements and all other property owned by the Kinston Community Association,

(ii) to provide facilities and services to Owners, Guests and the general public,

(iii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby,

(iv) to adopt Rules from time to time, for the regulation and management of Kinston,

(v) to levy, collect and enforce the Assessments, charges, other amounts, and liens imposed or impossible pursuant hereto,

(vi) to contribute to the maintenance and enhancement of property values within Kinston,

(vii) to take any action it deems necessary or appropriate to protect the general welfare of Owners and Guests,

(viii) to enter into agreements and other instruments with or for the benefit of other Persons, including agreements and other instruments with or for the benefit of any Sub-Association or with or for the benefit of any governmental and quasi-municipal entity that provides for the sharing of expenses among the Kinston Community Association and such other Person for improvements, facilities and services that serve the Kinston Community Association or such other Person, and

(ix) to regulate and manage Kinston.

(b) Powers. Unless expressly prohibited by law or any of the Community Documents, the Kinston Community Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes, including the hiring and termination of employees, agents and independent contractors,

(ii) exercise any powers conferred by CCIOA or any Community Document,

(iii) exercise all powers that may be exercised by Colorado nonprofit corporations including the power to borrow money and to secure any such borrowing with any or all of the Common Elements and the Kinston Community Association's other assets, and

(iv) provide the following facilities and services to Owners, Guests and the general public:

(A) safety facilities and services, such as security, fire protection, traffic control, waste control and disposal and rodent, pest, mosquito and other animal control facilities and services,

(B) roads and road maintenance, facilities and services,

(C) transportation facilities and services,

(D) snow removal and storage services,

(E) parking facilities services and facilities and services,

(F) lighting and signage facilities and services,

(G) site furnishings and streetscape facilities and services,

(H) playgrounds, ponds and improvements and other recreational amenities, and service related thereto,

(I) utility facilities and services, such as electric, natural gas, water, sewer, telephone, internet, communications, data transmission and cable television facilities and services, and

(J) event and attraction planning and staging;

(v) to enter into the Joint Funding Agreement;

(vi) to enter into Rental Access Agreements pursuant to Section 10.2(c);

(vii) to operate and maintain any property or improvements owned by a metropolitan district adjacent to or in the vicinity of the Property, including without limitation parks, trails, open spaces, alleys and similar elements, all pursuant to a written agreement;

(viii) charge use fees for the use of any Common Elements and for the use of any facilities or services provided by the Declaration, and

(ix) subject to the availability of budgeted funds, reimburse Directors for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of planned community associations.

3.3 Community Documents. If there is any conflict or inconsistency between or among the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules, the terms and conditions of this Declaration, then the Articles, then the Bylaws, and then the Rules shall control in that order.

3.4 Books and Records.

(a) Maintenance of Books and Records. The Kinston Community Association shall keep and maintain books and records in accordance with the requirement of CCIOA.

(b) Audit and Review. The books and records of the Kinston Community Association shall be subject to (i) an audit, using generally accepted auditing standards; or (ii) a review using statements on standards for accounting and review services, in either case, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. Such audit or review report shall cover the Kinston Community Association's financial statements, which shall be prepared using Generally Accepted Accounting Principles or the cash or tax basis of accounting; *provided, however*, that an audit shall be required hereunder only if: (A) at such time, the Kinston Community Association has annual revenue or expenditures of at least two hundred fifty thousand dollars (\$250,000), and (B) such audit is requested by Owners of at least one-third (1/3) of the Sites; *provided, further* that nothing in this Section 3.4 shall preclude the Board from requesting an audit or review of the Kinston Community Association's books and records from time to time on conditions established by the Board. Copies of the results of an

audit or review prepared pursuant to this subsection shall be made available upon request of any Owner beginning no later than thirty (30) days after its completion.

3.5 Owner Education. To the extent required by CCIOA, at least once per calendar year, the Kinston Community Association shall provide at no cost (other than through Assessments), or cause to be provided at no cost (other than through Assessments), education to Owners as to the general operations of the Kinston Community Association and the legal responsibilities of Owners, the Kinston Community Association and the Board.

#### ARTICLE IV MEMBERSHIP AND VOTING

4.1 Membership. Every Owner shall be a member of the Kinston Community Association, and a Person who is not an Owner may not be a member of the Kinston Community Association.

4.2 Voting in General.

(a) Inseparable. The votes allocated to a Site shall be held by the Owner(s) of such Site and may not be separated from the Site to which the votes are allocated. The vote(s) allocated to a Site may be transferred or encumbered only in connection with the conveyance or encumbrance of the fee simple interest in such Site. Any transfer or encumbrance of votes in the Kinston Community Association, other than as permitted in this Section 4.2(a), shall be void and have no force or effect.

(b) Proxies. Notwithstanding the terms and conditions of Section 4.2(a), but subject to the others provisions of the Community Documents, the Owner of a Site, may appoint an agent to cast vote(s) allocated to the Owner's Site by a duly executed proxy, in such form as the Board may reasonably require, duly delivered to the Kinston Community Association in the time and manner specified by the Board.

(c) Sites Owned by the Kinston Community Association. Notwithstanding any other provision of the Community Documents, no votes allocated to a Site owned by the Kinston Community Association may be cast.

(d) Cumulative Voting. Cumulative voting shall not be allowed in the election of Directors or for any other purpose.

4.3 Allocation of Votes. Except as otherwise expressly set forth in Section 4.3(b), votes in the Kinston Community Association shall be allocated among the Sites as set forth in this Section 4.3(a). Each Detached For-Sale Site shall be allocated one vote. Each Unimproved Attached For-Sale Site shall be allocated one vote for each Dwelling Unit intended to be constructed thereon, as reflected on the Property Map. After a certificate of occupancy is issued for Dwelling Units constructed on an Unimproved Attached For-Sale Site and such Site is subdivided into multiple Attached For-Sale Sites, each resulting Improved Attached For-Sale Site shall be allocated one vote. Except as provided for below, each Rental Project Site shall be allocated a number of votes equal to the total number of Dwelling Units on that Site for which the City has issued a temporary or permanent certificate of occupancy, divided by four. Prior to the issuance of a temporary or permanent certificate of occupancy for improvements on a Rental Project Site, the vote for a Rental Project Site will be calculated based on the planned number of Dwelling Units for such Rental Project Site, as reflected in the Supplemental Declaration annexing such Rental Project Site into the Property. The number of votes allocated to any Site pursuant to Section 4.3(a)(i) shall be the same regardless of the number of Owners of such Site. If the number of votes allocated to any Site results in a fraction of a vote, such fraction shall be rounded to the nearest whole number (with one-half (0.5) being rounded up).

4.4 Fractional Voting. Fractional voting (meaning a Person casting only a portion of the votes such Person is entitled to cast one way, and casting another portion the votes such Person is entitled to cast a different way) shall not be allowed for any vote(s) allocated to any Site. If the co-Owners of a Site cannot agree among themselves as to how to cast their vote(s) on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Site casts the vote(s) for such Site, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Site, unless an Owner of that Site makes an objection thereto to the Person presiding over the meeting at which such vote(s) is/are cast. If any vote(s) is/are cast more than once for any Site, none of such votes shall be counted and all of such votes shall be deemed null and void.

## ARTICLE V BOARD

### 5.1 Powers of the Board.

(a) General Authority. Except as otherwise provided in this Declaration, the Articles and the Bylaws, the Board may act on behalf of the Kinston Community Association in all instances without vote or approval of Owners.

(b) Restrictions on Authority. In addition to restrictions provided in other provisions of the Community Documents, the Board may not act on behalf of the Kinston Community Association to:

- (i) amend this Declaration,
- (ii) terminate the Kinston Community Association, this Declaration or the planned community created by this Declaration,
- (iii) elect, remove or replace Directors,

(iv) determine the qualifications, powers and duties or terms of office of Directors, or

(v) change quorum requirements for Owners or Board meetings.

5.2 Number of Directors. The Board shall consist of three (3) Directors.

5.3 Election of Directors. Subject to the terms and conditions of Sections 5.4, the Directors shall be appointed and elected as set forth in the Bylaws. Each Director shall hold office until that Director's successor is appointed or elected, as appropriate, and qualified, or until such Director's earlier death, resignation or removal, as set forth in the Bylaws.

5.4 Founder Control Period.

(a) Right to Appoint and Remove Directors and Officers. Subject to the terms and conditions of Sections 5.4(b)-(e), but notwithstanding anything else to the contrary contained in this Declaration or in any other Community Document, Founder shall have the exclusive right to appoint and remove all Directors and Officers during the Founder Control Period.

(b) Term. The term "Founder Control Period" means the period commencing on the date on which the Kinston Community Association is formed and ending on the earliest to occur of:

(i) the date that is sixty (60) days after conveyance to Purchasers of seventy-five percent (75%) of the Maximum Number of Sites,

(ii) the date that is two (2) years after the last conveyance of a Site by Founder or a Successor Founder in the ordinary course of business, or

(iii) the date that is two (2) years after any right to add new Site or Sites was last exercised.

(c) Voluntary Surrender. Founder may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Founder Control Period, but, in that event, Founder may require, for the remainder of the Founder Control Period, that specific actions of the Kinston Community Association or the Board, as described in a Recorded instrument executed by Founder, be approved by Founder before they become effective.

(d) Partial Turnover. Notwithstanding Section 5.4(a), not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Sites that may be created under the Declaration to Purchasers, one Director appointed by Founder shall be replaced with a Director elected by Owners other than Founder.

(e) Electing Board Upon Expiration of Founder Control Period. During the thirty (30)-day period immediately preceding the date on which the Founder Control Period expires, the Owners shall elect a Board of three (3) Directors, pursuant to the terms of the Community Documents, at least a majority of whom must be Owners other than Founder or

designated representatives of Owners other than Founder. Such Directors shall take office upon election.

(f) Deliveries. To the extent required by CCIOA, not later than sixty (60) days after Owners other than Founder elect a majority of the members of the Board, Founder shall deliver to the Kinston Community Association all property of the Owners and of the Kinston Community Association held by or controlled by Founder, including the following items:

(i) the original or a certified copy of this Declaration as amended, the Articles, the Bylaws, minute books, other books and records, and any Rules which may have been promulgated,

(ii) an accounting for Kinston Community Association funds and financial statements, from the date the Kinston Community Association received funds and ending on the date of expiration of the Founder Control Period; the financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Kinston Community Association in conformity with Generally Accepted Accounting Principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with Generally Accepted Accounting Principles and the reasons therefor, with the expense of such audit shall not be paid for or charged to the Kinston Community Association,

(iii) the Kinston Community Association funds or control thereof,

(iv) all of Founder's tangible personal property that has been represented by Founder to be the property of the Kinston Community Association or all of Founder's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties,

(v) a copy, for the nonexclusive use by the Kinston Community Association, of any plans and specifications used in the construction of the improvements in Kinston,

(vi) all insurance policies then in force, in which the Owners, the Kinston Community Association, or the Directors and Officers are named as insured persons,

(vii) copies of any certificates of occupancy that may have been issued with respect to any improvements comprising Kinston,

(viii) any other permits issued by governmental bodies applicable to Kinston and which are currently in force or which were issued within one year prior to the date Owners other than Founder elect a majority of the members of the Board,



(ix) written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective,

(x) a roster of Owners and mortgagees and their addresses and telephone numbers, if known, as shown on Founder's records,

(xi) employment contracts in which the Kinston Community Association is a contracting party,

(xii) each service contract in which the Kinston Community Association is a contracting party or in which the Kinston Community Association or the Owners have any obligation to pay a fee to the persons performing the services, and

(xiii) copies of all Recorded deeds and all Recorded and unrecorded leases evidencing ownership or leasehold rights of the Kinston Community Association in all Common Elements.

(g) Updated Information.

(i) Within ninety (90) days after expiration of the Founder Control Period, the Kinston Community Association shall make the information set forth in Sections 5.4(g)(i)(A) through (F) available to Owners upon reasonable notice in accordance with Section 5.4(i).

(A) the name of the Kinston Community Association,

(B) the name of the Kinston Community Association's designated agent or management company, if any, together with the agent's or management company's license number if the agent or management company is subject to licensure under C.R.S., Title 12, Article 61, Part 10,

(C) a valid physical address and telephone number for both the Kinston Community Association and the designated agent or management company, if any,

(D) the name of the common interest community created by this Declaration,

(E) the initial date this Declaration was Recorded, and

(F) the reception number at which this Declaration was initially Recorded.

(ii) If the Kinston Community Association's address, designated agent, or management company changes, the Kinston Community Association shall make updated information therefor available to Owners within ninety (90) days after the change.

(h) Additional Information. Within ninety (90) days after the end of the Founder Control Period, and within ninety (90) days after the end of each Fiscal Year thereafter, the Kinston Community Association shall make the following information available to Owners upon reasonable notice in accordance with Section 5.4(i):

- (i) the date on which the Fiscal Year commences,
- (ii) the Kinston Community Association's operating budget for the current Fiscal Year,
- (iii) a list, by Site type, of current Assessments, including both General Assessments, Limited Assessments, and Special Assessments,
- (iv) the Kinston Community Association's annual financial statements, including any amounts held in reserve for the Fiscal Year immediately preceding the current annual disclosure,
- (v) the results of its most-recent available financial audit or review,
- (vi) a list of all Kinston Community Association insurance policies, including property, general liability, Director and Officer professional liability, and fidelity policies, including the insurance company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed,
- (vii) the Bylaws, Articles and the Kinston Community Association's Rules,
- (viii) the minutes of all Owners Meetings and meetings of the Board for the Fiscal Year immediately preceding the current annual disclosure, and
- (ix) the Kinston Community Association's responsible governance policies adopted under Section 209.5 of CCIOA.

(i) Method of Delivery. The information described in Section 5.4(g) and Section 5.4(h) shall be provided to Owners by either: (i) posting such information on an internet web page with accompanying notice of the web address delivered to the Owners via first-class mail or e-mail, (ii) placing such information on a literature table or in a binder at the Kinston Community Association's principal place of business, (iii) mail or personal delivery; or (iv) such other method as may be permitted under CCIOA. The cost of such distribution shall be accounted for as a Common Expense.

## **ARTICLE VI ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS**

### **6.1 Obligations for Assessments and Other Charges.**

(a) Obligation. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have covenanted and agreed to pay to the Kinston Community

Association all Assessments and other charges that the Kinston Community Association is required or permitted to levy or impose on such Owner or such Owner's Site pursuant to this Declaration or any other Community Document. Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Site during the period of such Owner's ownership of the Site beginning from the date of such Owner's deed to any portion of the Property. In addition, the Board may accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once.

(b) Liability Upon Foreclosure or Deed in Lieu. Notwithstanding the definition of the term Owner:

(i) a Person who acquires a Site in a foreclosure sale shall be personally liable for all Assessments and other charges that the Kinston Community Association is required or permitted to levy or impose on that Site or on the Owner of that Site commencing on the date of the foreclosure sale, and

(ii) a Person who acquires a Site by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Kinston Community Association is required or permitted to levy or impose on that Site or on the Owner of that Site commencing on the date on which the Owner of that Site executes the deed-in-lieu of foreclosure.

(c) No Exemption for Waiver. No Owner shall be exempt from liability for any Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Site against which such Assessments or other charges are made. The obligation to pay Assessments is a covenant, separate and independent of any obligation of the Board or the Association herein, for which each Owner is jointly and severally liable. No deduction, diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes, or for any other reason.

(d) Joint and Several. If there is more than one Owner of a Site, each Owner shall be jointly and severally liable with the other Owners of the Site for all Assessments and other charges levied on the Site or any Owner of the Site.

(e) Monetary Judgment. Each Assessment or other charge, together with interest thereon and all costs and expenses incurred by the Kinston Community Association to collect such Assessment or other charge, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Kinston Community Association in connection therewith, may be recovered by a suit for a money judgment by the Kinston Community Association without foreclosing or waiving any Assessment Lien securing the same.

(f) Exemptions from Assessments.

(i) Except as set forth in Section 6.1(g), but notwithstanding any other provision herein, the Kinston Community Association may not levy or collect any General Assessment, Limited Assessment or Special Assessment with respect to any Community Facility, any Real Estate Transfer Assessment with respect to the Transfer of any Community Facility, and as otherwise set forth in Section 6.8 with respect to Community Facilities.

(ii) Notwithstanding any other provision herein, the Kinston Community Association shall be exempt from all Assessments.

(iii) Notwithstanding any other provision herein, the Kinston Community Association may grant an exemption from the obligation to pay any General Assessment, Special Assessment, or Limited Assessment for any Site that is exempt from taxation pursuant to C.R.S. § 39-3-101, et seq., as the same may be amended, or any comparable statute.

(iv) Notwithstanding any other provision herein, because during initial construction of improvements on a Site, an Owner may not benefit from all of the services provided by the Kinston Community Association, no General Assessment, Special Assessment, or Limited Assessment shall be levied on any Unimproved Detached For-Sale Site or any Unimproved Attached For-Sale Site until that date which is the earlier of (A) six (6) months after annexation into Kinston, or (B) the date that such Unimproved Attached For-Sale Site is in a building permit ready state. After such period, there shall be no further exemption, even if construction of improvements on the Site are not completed.

(v) Notwithstanding any other provision herein, because during initial construction of improvements on a Site, an Owner may not benefit from all of the services provided by the Kinston Community Association, no General Assessment, Special Assessment, or Limited Assessment shall be levied on any Unimproved Rental Project Site until that date which is the earlier of (A) twelve (12) months after annexation into Kinston, or (B) the date that such Unimproved Rental Project Site is in a building permit ready state. After such period, there shall be no further exemption, even if construction of improvements on the Site are not completed.

(g) Subsequent Failure to Qualify as a Community Facility. Notwithstanding anything to the contrary contained in Section 6.1(f), if, after a Transfer of a Community Facility, such Site ceases to be a Community Facility, then the Kinston Community Association may levy and collect, and the Transferee of the Site shall be liable for:

(i) all General Assessments, Limited Assessments and Special Assessments with respect to the Site, commencing on the date on the Transferee acquires such Site, and

(ii) a Real Estate Transfer Assessment with respect to the Fair Market Value of the Site, which will be due and payable to the Kinston Community Association on the date Transferee acquires or acquired such Site.

6.2 Budgets.

(a) Board Action. Prior to the first levy of any Assessment, and at least once during each Fiscal Year thereafter, the Board (subject to Sections 6.2(b) through 6.2(d)) shall propose and adopt by Majority vote a proposed annual budget for the Kinston Community Association for the following Fiscal Year that sets forth:

(i) an estimate of the costs and expenses to be incurred by the Kinston Community Association for the next Fiscal Year, including the Board's estimate of: (A) costs and expenses for Capital Improvements, (B) amounts to be paid to CEA pursuant to the Joint Funding Agreement, and (C) the amount the Kinston Community Association will deposit into the Reserve Account for such Fiscal year (collectively, the "**Total Expenditure Amount**"),

(ii) each of the total amount of General Assessments, the total amount of Limited Assessments, and the total amount of Special Assessments the Board estimates must be levied to pay the Total Expenditure Amount for the next Fiscal Year,

(iii) a summary of matters relating to the Reserves, which shall include all of the following:

(A) the current estimated replacement cost, remaining life and useful life of each major component of the Common Elements,

(B) as of the end of the Fiscal Year for which the summary is prepared: (1) the current estimate of the cost of repairing, replacing or restoring each major component of the Common Elements, (2) the cost to undertake any additional proposed Capital Improvements, (3) the amounts that should be set aside in each Reserve Account to pay for repairing, replacing and restoring the major components of the Common Elements and other proposed Capital Improvements, (4) the current amount of accumulated Reserves actually set aside to undertake such repairs, replacements and restorations and such additional proposed Capital Improvements, and (5) an estimate of the total annual Assessments that may be required to cover the costs of such repairs, replacements and restorations and such additional Capital Improvements (after considering amounts in the Reserve Account), and

(C) a general statement addressing the procedures used for calculating and establishing the amount of the Reserves, and

(iv) a statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to fund the Reserve Account or to make any Capital Improvements.

(b) Summary Delivered / Owners Meeting Called. Within ninety (90) days after any proposed annual budget (or any proposed amendment to any annual budget) is approved by the Board, the Board shall (i) mail by first-class mail, or otherwise deliver, including posting the proposed annual budget (or proposed amendment to an annual budget) on the Kinston Community Association's website, a summary of the proposed annual budget (or budget amendment) to all Owners, and (ii) set a date for a meeting of the Owners to consider the proposed annual budget or budget amendment.

(c) Owner Action. The Owners Meeting to consider a proposed annual budget or any proposed amendment to an annual budget must occur within a reasonable time after mailing or other delivery to the Owners of such proposed budget or budget amendment, or as otherwise allowed in the Bylaws.

(d) Approval. Unless at the Owners Meeting votes held by Owners owning a Majority of the Sites, whether or not a quorum is present, are cast to reject the proposed annual budget or proposed budget amendment, the proposed annual budget or proposed budget amendment, as appropriate, shall be deemed approved; *provided, however*, at the Board's discretion, any portion of the proposed annual budget or budget amendment that sets forth costs or expenses to be paid by a Limited Assessment shall be deemed approved unless at the Owner's meeting votes held by Owners owning a Majority of the Sites to which such Limited Assessment are allocated, whether or not a quorum of such Owners is present, are cast to reject such proposed Limited Assessment. For purposes of this Section 6.2(d), each Site shall be allocated one vote, regardless of the number of Owners of such Site.

(e) Effect of Rejection. If any portion of the proposed annual budget or budget amendment is rejected as provided in Section 6.2(d), then the portion of the budget last proposed by the Board that addresses (in the judgment of the Board) the same subject matter as the rejected portion (*e.g.*, capital improvements) that was not rejected by the Owners in accordance with Section 6.2(d), shall be deemed renewed for the next Fiscal Year and shall remain in full force and effect until such time as the Board proposes a new annual budget or budget amendment that is not rejected by the Owners as set forth in Section 6.2(d).

### 6.3 General Assessments.

(a) Levy. On the first day of each calendar month or on such other day or in such other intervals as determined by the Board, the Kinston Community Association shall levy and collect from each Owner, with respect to each Site owned by such Owner, an annual assessment to be used by the Kinston Community Association for: (i) the maintenance and ownership of the Common Elements, (ii) providing Services to the extent costs and expenses are incurred by the Kinston Community Association therefor that benefit the Owners or their Guests as determined by the Board, or (iii) any other purpose permitted by law (in any case to be paid in twelve (12) equal monthly installments or in such other installments as determined by the Board) (a "**General Assessment**") in the amount calculated pursuant to Section 6.3(b).

(b) Allocation of Assessment Units. The allocation among the Owners of liability for the Common Expenses (and for certain Assessments) as set forth herein is based on the Owners respective pro rata share of assessment units allocated to each Owner's Site pursuant

to this Section 6.3(b) (“**Assessment Units**”). Subject to the exemptions from Assessments set forth in Section 6.1(f), each Site is allocated the number of Assessment Units equal to the number of votes in the Kinston Community Association allocated to such Site pursuant to Section 4.3.

(c) Allocation of Liability for General Assessments. For each Fiscal Year, the Kinston Community Association shall levy and collect from each Owner a General Assessment, with respect to each Site in the amount equal to the product of: (i) the total amount of General Assessments for such Fiscal Year as set forth in the Kinston Community Association’s annual budget for such Fiscal Year, and (ii) a fraction, the numerator of which is the number of Assessment Units allocated to such Site pursuant to Section 6.3(b), and the denominator of which is the total number of Assessment Units allocated to all Sites.

(d) No Waiver. The failure of Kinston Community Association to levy a General Assessment shall not be deemed a waiver, modification or release of an Owner’s liability for the Common Expense for which such General Assessment is or would be attributable.

#### 6.4 Limited Assessments.

(a) Levy. The Assessments the Kinston Community Association may levy pursuant to this Section 6.4 are referred to in this Declaration as “**Limited Assessments.**”

(b) Allocation of Liability for Limited Assessments. Notwithstanding anything to the contrary contained in Section 6.3, if any Common Expense or other charge incurred by the Kinston Community Association is attributable to (i) the provision of any facilities or services to one or more but fewer than all of the Sites or Owners, or (ii) the management, operation, construction, maintenance, repair, replacement, alteration or improvement of a Limited Common Element, then Kinston Community Association may levy and collect an Assessment for such Common Expense or other charge against each such Site or Owner, as appropriate, to which such facilities or services are provided or to which such Limited Common Element is appurtenant, as appropriate, in an amount equal to either: (A) the product of: (1) the amount of such Common Expense or other charge, and (2) a fraction, the numerator of which is the number of Assessments Units allocated to such Owner’s Site pursuant to Section 6.1(f), and the denominator of which is the number of all Assessment Units allocated (pursuant to Section 6.1(f)) to all Sites to which such Common Expense or other charge is attributable, or (B) any other equitable proportion as the Board reasonably deems appropriate.

(c) Budget. Limited Assessments must be shown on an annual budget, or an amendment to an annual budget deemed approved by the Owners pursuant to Section 6.2, and shall be paid in twelve (12) equal monthly installments or in such other installments as determined by the Board and shall be due on the first day of each calendar month or on such other day as determined by the Board.

(d) No Waiver. The failure of the Kinston Community Association to levy a Limited Assessment shall not be deemed a waiver, modification, or release of an Owner’s

liability for the Common Expense for which such Limited Assessment is or would be attributable.

6.5 Special Assessments.

(a) Levy. The Assessments the Kinston Community Association may levy and collect pursuant to this Section 6.5 are referred to in this Declaration as “**Special Assessments.**”

(b) Shortfall. If the Kinston Community Association’s revenues (including revenues from Assessments) are not sufficient to pay the Common Expenses in accordance with the provisions of this Declaration, then the Board may cause the Kinston Community Association to levy and collect a Special Assessment against the some or all of the Sites, in an amount equal to such shortfall, *provided, however*, that any such Special Assessment shall be deemed a “budget amendment” (as such term is used in Section 6.2) and, therefore, shall not be effective unless and until the applicable procedures and requirements set forth in such Section 6.2 have been observed and satisfied. Special assessments shall be paid in twelve (12) equal monthly installments or in such other installments as determined by the Board and shall be due on the first day of each calendar month or such other day as determined by the Board.

(c) Allocation of Liability for Special Assessments. With respect to each Special Assessment, the Kinston Community Association shall levy and collect from each Owner of a Site a Special Assessment, with respect to such Site, in the amount equal to the product of: (i) the total amount of such Special Assessments, and (ii) a fraction, the numerator of which is the number of Assessment Units allocated to such Owner’s Site, and the denominator of which is the number of Assessment Units allocated to all Sites.

6.6 Reconciliation. As soon as reasonably possible after the end of each Fiscal Year, the Board will cause the actual amount of costs and expenses incurred by the Kinston Community Association for such Fiscal Year, including costs and expenses for Capital Improvements, amounts paid pursuant to the Joint Funding Agreement, and the amount of funds deposited into the Reserve Account for such Fiscal Year, to be reconciled against the amount of Assessments received by the Kinston Community Association for such Fiscal Year. If there is a surplus of funds at the end of such Fiscal Year, the Board may deposit all or a portion of such surplus into the Reserve Account or may return all or any portion of such the surplus to the Owners either directly or as a credit against future Assessments, in proportion to their respective number of Assessment Units. If any Owner has overpaid General Assessments, Limited Assessments or Special Assessments allocated to such Owner’s Sites, the Board may either refund the overpayment to such Owner or credit such overpayment against such Owner’s obligation to pay Assessments for the following Fiscal Year. To the extent any Owner has underpaid the General Assessments, Limited Assessments or Special Assessments allocated to such Owner’s Sites, the Board may either demand in writing that such Owner pay the deficiency to the Kinston Community Association within a specified period of time, as determined by the Board, after the Board notifies such Owner of such underpayment (which period of time may not be less than thirty (30) days), or the Board may include such underpayment in such Owner’s obligations for General Assessments, Limited Assessments or Special Assessments for the following Fiscal Year.



6.7 Default Assessments.

(a) Levy. Notwithstanding any provision herein, if any Common Expense is caused by: (i) the negligence or misconduct of an Owner or such Owner's Guest, or (ii) a violation of any covenant or condition of a Community Document by an Owner or such Owner's Guest, including failure to timely pay any Assessment or any other amount due to the Kinston Community Association, then the Kinston Community Association may levy an assessment against such Owner's Site. Any such Assessment levied by the Kinston Community Association and each fine, penalty, and fee, and all collection costs and reasonable attorneys' fees, costs, and expenses and other charges imposed upon an Owner for the violation of any covenant or condition of any Community Document by an Owner or such Owner's Guest are each referred to herein as a "**Default Assessment.**" Owners of Sites against which Default Assessments have been levied shall pay such Default Assessments when required by the Board.

(b) Notice and Opportunity to be Heard. With respect to any Default Assessment, or portion thereof, levied other than as a late charge, returned-check charge or interest, the notice and hearing procedures set forth in the Rules shall be followed.

6.8 Real Estate Transfer Assessments.

(a) Obligation. Subject to the terms and conditions of Section 6.8(c), upon the occurrence of any Transfer of any Site, the Transferee shall pay to the Kinston Community Association an assessment (a "**Real Estate Transfer Assessment**") in an amount equal to the sum of: (i) an amount to pay the Kinston Community Association's administrative expenses related to a Transfer (an "**Administrative Transfer Fee**") in the amount of two hundred dollars (\$200) or such different amount as may be established by the Board; provided, however the Administrative Transfer Fee at any given time shall not exceed two hundred dollars (\$200) increased by the Consumer Price Index for Denver-Aurora-Lakewood, All Urban Consumers, All Items (1982-1984=100), as published by the Bureau of Labor Statistics of the United States Department of Labor, plus (ii) the product of: (A) the Fair Market Value of the Site that is the subject of the Transfer, multiplied by (B) the Real Estate Transfer Assessment Rate applicable for that Site.

(b) Joint and Several. In respect of any Transfer subject to a Real Estate Transfer Assessment where the Transferee does not timely pay the Real Estate Transfer Assessment therefor, then each Person included within the term Transferee and Transferor, with respect to such Transfer, shall be jointly and severally liable for payment of such Real Estate Transfer Assessment.

(c) Exemptions. Notwithstanding anything to the contrary contained in this Section 6.8, the Kinston Community Association shall not levy or collect a Real Estate Transfer Assessment for any of the Transfers described below, unless, with respect to clauses (iv) through (xxi), the Transfer was made for the purpose of avoiding the Real Estate Transfer Assessment.

- (i) Any Transfer from Founder or an Affiliate of Founder to a Builder.
- (ii) Any Transfer to or from Founder or an Affiliate of Founder.

(iii) Any Transfer to (A) the United States or any agency or instrumentality thereof, or (B) the State of Colorado or any county, city and county, municipality, metropolitan or other special district or other political subdivision of the State of Colorado.

(iv) Any Transfer to the Kinston Community Association or CEA.

(v) Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's relatives, but only if the Consideration for the Transfer is no greater than ten percent (10%) of the Fair Market Value of the Site or portion thereof Transferred. For the purposes of this exclusion, (A) the relatives of a Transferor shall include all lineal descendants of any grandparent of the Transferor, and the spouses of such descendants, and (B) stepchildren and adopted children shall be considered lineal descendants. A distribution from a trust shall be treated as a Transfer made by the grantors of the trust to the beneficiaries of the trust.

(vi) Any Transfer arising only from the termination of a joint tenancy of a Site or the partition of a Site held under common ownership, except to the extent that additional Consideration is given in connection therewith.

(vii) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a Site by the estate of an Owner.

(viii) Any Transfer made by (A) a subsidiary to a parent corporation that owns more than fifty percent (50%) of the outstanding stock of the subsidiary, or (B) by a parent corporation to a subsidiary in which the parent corporation owns more than fifty percent (50%) of the outstanding stock, on the condition that there is no Consideration for the Transfer, other than the issuance, cancellation or surrender of the subsidiary's stock.

(ix) Any Transfer made by (A) a partner, joint venturer or member to a partnership, joint venture or limited liability company in which the partner, joint venturer or member has not less than a fifty percent (50%) interest, or (B) by a partnership, joint venture or limited liability company to a partner, joint-venturer or member holding not less than a fifty percent (50%) interest in the partnership, joint venture or limited liability company, on the condition that there is no Consideration for the Transfer, other than the issuance, cancellation or surrender of equity interests in the partnership, joint venture or limited liability company.

(x) Any Transfer made by a corporation to its shareholders in connection with the liquidation of the corporation or other distribution or dividend in kind to its shareholders, on the condition that the Site, or portion thereof, is transferred generally pro rata to its shareholders and no Consideration is paid for the Transfer, other than the cancellation of such corporation's stock.

(xi) Any Transfer made by a partnership, joint venture or limited liability company to its partners, joint venturers or members in connection with the liquidation of the partnership, joint venture or limited liability company or other

distribution of property to the partners, joint venturers or members, on the condition that the Site or portion thereof is transferred generally pro rata to its partners, joint venturers or members and no Consideration is paid for the Transfer, other than the cancellation of the partners', joint venturers' or members' interests in the partnership, joint venture or limited liability company.

(xii) Any Transfer made by a Person owning a Site, or portion thereof, to a corporation, partnership, joint venture, limited liability company or other entity, on the conditions that (A) the corporation, partnership, joint venture, limited liability company or other entity is owned in its entirety by the Person transferring the Site, or portion thereof, (B) such Person has the same relative interest in the Transferee as they had in the Site or portion thereof immediately prior to such Transfer, and (C) no Consideration is paid for the Transfer, other than the issuance of each such Person's respective stock or other ownership interests in the Transferee.

(xiii) Any Transfer made by any Person to any other Person, whether in a single Transfer or a series of transactions where the Transferor and the Transferee are and remain under common ownership and control as determined by the Board, on the condition that no such Transfer or series of transactions shall be exempt, unless the Board finds that such Transfer or series of transactions (A) is for no Consideration, other than the issuance, cancellation or surrender of stock or other ownership interest in the Transferor or the Transferee, as appropriate, (B) is not inconsistent with the intent and meaning of this Section 6.8, and (C) is for a valid business purpose and is not for the purposes of avoiding the obligation to pay the Real Estate Transfer Assessment.

(xiv) Any Transfer made only 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 and any exchange of Sites between Founder and any original Purchaser from Founder of the Sites being Transferred to Founder in such exchange. To the extent that Consideration in addition to previously purchased Sites is paid to Founder in such an exchange, the additional Consideration shall be subject to the Real Estate Transfer Assessment. To the extent that Founder, in acquiring by exchange Sites previously purchased from Founder, pays Consideration in addition to transferring Sites, the original Purchaser shall be entitled to a refund from the Kinston Community Association in an amount equal to the product obtained by multiplying (A) the amount of the additional Consideration, by (B) the Real Estate Transfer Assessment Rate that was in effect as of the date of the original Transfer.

(xv) Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second Transfer subject to the Real Estate Transfer Assessment in a series of transactions which includes only one effective Transfer of the right to use or enjoy a Site.

(xvi) Any lease of any Site or portion thereof (or assignment or transfer of any interest in any such lease) for a period of less than thirty (30) years.

(xvii) Any Transfer only of minerals or interests in minerals.

(xviii) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

(xix) Any Transfer in connection with (A) the foreclosure of a deed of trust or mortgage, or (B) a deed given in lieu of foreclosure.

(xx) The Transfer of a Site or portion thereof to a qualified intermediary in connection with a tax deferred exchange of real property under Section 1031 of the Internal Revenue Code of 1986, as amended, on the condition that the Transferee of the qualified intermediary pays the Real Estate Transfer Assessment.

(xxi) Any Transfer made by a corporation or other entity, for Consideration, (A) to any other corporation or entity which owns, directly or indirectly, one hundred percent (100%) of the Transferor's equity securities; or (B) to a corporation or entity whose equity securities are owned, directly or indirectly, one hundred percent (100%) by the corporation or entity that owns one hundred percent (100%) of the Transferor's equity securities.

(xxii) Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where Consideration is paid for, or in connection with, such Transfer, on the condition that, unless such Transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the Transferee in the Transferor immediately prior to the Transfer. For example, if corporation A owns sixty percent (60%) of corporation B, and corporation B owns one hundred percent (100%) of corporation C and corporation C conveys a Site to corporation A for two million dollars (\$2,000,000), sixty percent (60%) of the Real Estate Transfer Assessment would be exempt and a Real Estate Transfer Assessment would be payable only on eight hundred thousand dollars (\$800,000) (*i.e.*, forty percent (40%) of the two million dollars (\$2,000,000) Consideration).

(d) Without Consideration. For purposes of Section 6.8(c), a Transfer shall be deemed to be without Consideration only if:

(i) the only Consideration is a book entry made in connection with an intercompany transaction in accordance with Generally Accepted Accounting Principles, or no Person which does not own a direct or indirect equity interest in the Site immediately prior to the Transfer becomes the owner of a direct or indirect equity interest in the Site by virtue of the Transfer,

(ii) the aggregate interest immediately prior to the Transfer of all direct and indirect Owners whose equity interest is increased on account of the Transfer does not increase by more than twenty percent (20%) (out of the total one hundred percent (100%) equity interest in the Site), and

(iii) no Person is entitled to receive directly or indirectly any other Consideration in connection with the Transfer.

In connection with considering any requests for an exemption under Section 6.8(c), the Board may require the applicant to submit true, correct and certified copies of all relevant documents relating to the Transfer and an opinion of the applicant's counsel, in form and substance satisfactory to the Board, (A) setting forth all relevant facts regarding the Transfer; (B) stating that in their opinion the Transfer is exempt under Section 6.8(c); and (C) setting forth the basis for such opinion.

(e) When Due. A Real Estate Transfer Assessment shall be due and payable by the Transferee to the Kinston Community Association at the time of the Transfer giving rise to such Real Estate Transfer Assessment.

(f) Report Required. With such payment the Transferee shall make a written report to the Kinston Community Association on forms prescribed by the Kinston Community Association, fully describing the Transfer and setting forth the true, complete and actual Consideration for the Transfer, the names of the parties thereto, the legal description of the Site transferred, and such other information as the Kinston Community Association may reasonably require.

(g) Real Estate Transfer Assessment Rate.

(i) With respect to Attached For-Sale Sites and Detached For-Sale Sites, the "**Real Estate Transfer Assessment Rate**" shall be one half of one percent (0.50%) unless and until the Board adopts a different rate, subject to the prior written consent of Founder. With respect to Rental Project Sites, the Real Estate Transfer Assessment Rate shall be one-quarter of the Real Estate Transfer Assessment Rate for Attached For-Sale Sites and Detached For-Sale Sites then in effect. For example, if the Real Estate Transfer Assessment Rate for Attached For-Sale Sites and Detached For-Sale Sites is one percent (1%), the Real Estate Transfer Assessment Rate for a Rental Project Site shall be one quarter of one percent (0.25%).

(ii) In no event shall the Real Estate Transfer Assessment Rate for any Site exceed three percent (3%).

(iii) Subject to Section 6.8(g)(ii), the Board may establish different Real Estate Transfer Rates for different type of Transfers or with respect to different types of Sites.

(h) Use of Proceeds. The Kinston Community Association shall maintain a bank account to hold all Real Estate Transfer Assessments, and interest thereon (the "**RETA Account**"). No funds other than funds Real Estate Transfer Assessments, and interest thereon, shall be deposited into the RETA Account. Real Estate Transfer Assessments, and interest thereon, shall be used to pay all sums due and owing from Kinston Community Association under the Joint Funding Agreement. If the Joint Funding Agreement is terminated for any reason, funds in the RETA Account may be used for any legal purpose.

6.9 Assignment of Assessments. The Board shall have an unrestricted right to assign the Kinston Community Association's right to receive Assessments and other future income, either as security for obligations of the Kinston Community Association or otherwise.

6.10 Assessment Lien.

(a) Creation of Lien. The Kinston Community Association shall have a lien on each Site securing each Assessment levied against that Site and any fines, late charges, penalties, interest, attorneys' fees, disbursements and costs of collection imposed against its Owner under any Community Document. The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien secures each installment from the time it becomes due, including the due dates set by any valid Kinston Community Association acceleration of installment obligations.

(b) Priority. An Assessment Lien is prior to all other liens and encumbrances on a Site except:

(i) liens and encumbrances Recorded prior to the Recordation of this Declaration,

(ii) a First Mortgage which was Recorded before the date on which the Assessment sought to be enforced became delinquent; *provided, however,* that the Assessment Lien for an amount equal to the Assessments which would have become due, in the absence of any acceleration, during the six (6) - month period immediately preceding institution of an action to enforce the lien or to extinguish the lien shall be prior to such First Mortgage, and

(iii) liens for real estate taxes and other governmental assessments or charges against the Site.

(c) Perfection and Recording. The Recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Site. No further Recordation of any notice or claim of any Assessment Lien is required.

(d) Extinguishment of Lien. An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment Lien secured thereby becomes due.

(e) Other Remedies. This Section 6.10 does not prohibit:

(i) actions or suits to recover sums secured by an Assessment Lien; or  
(ii) the Kinston Community Association from taking a deed in lieu of foreclosure.

(f) Receiver. In any action by the Kinston Community Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint

a receiver with respect to a Site to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Kinston Community Association during the pendency of the action to the extent of the Kinston Community Association's Assessments.

(g) Method of Foreclosure. An Assessment Lien shall be foreclosed in like manner as a mortgage on real estate, except that, to the extent required by Section 316(11)(a) of CCIOA, the Kinston Community Association or a holder or assignee of the Assessment Lien, whether the holder or assignee of the Assessment Lien is an entity or a natural person, may only foreclose on the lien if:

(i) the balance of the assessments and charges secured by such Assessment Lien equals or exceeds six (6) months of common expense assessments based on a budget adopted by the Kinston Community Association, and

(ii) the Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific Site on an individual basis. Notwithstanding any other provision in the Community Documents, the Board may not delegate its duty to act under this Section 6.10(g)(ii) to any attorney, insurer, manager, or other Person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the Kinston Community Association or a holder or assignee of the Assessment Lien connection with an action that is dismissed for this reason may be assessed against the Owner.

6.11 Waiver of Homestead Exemption. By acceptance of the deed or other instrument of transfer of a Site, an Owner irrevocably waives the homestead exemption provided by C.R.S. § 38-41-201, et seq., as amended.

6.12 Estoppel Certificates; Notices to Mortgagees.

(a) Requirement to Deliver Estoppel Certificates. The Kinston Community Association shall furnish to an Owner or its designee or to a Mortgagee or its designee, upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Kinston Community Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Site. The statement shall be furnished within fourteen (14) calendar days after the Kinston Community Association's receipt of the request and shall be binding on the Kinston Community Association, the Board, every Owner and Mortgagee. If no statement is furnished to the Owner, the Mortgagee or its designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, then the Kinston Community Association shall have no right to assert an Assessment Lien upon the Site for unpaid Assessments which were due as of the date of the request.

(b) First Mortgagees. The Kinston Community Association shall report to any First Mortgagee any unpaid Assessments remaining unpaid for more than ninety (90) days after the same shall have become due, if such First Mortgagee first shall have delivered to the

Kinston Community Association a written request for notice of unpaid Assessments. Any First Mortgagee holding a lien on a Site may pay any unpaid Assessment with respect to such Site, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Site for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

6.13 Administration of Assessments.

(a) Right to Records. The Kinston Community Association shall have the right to inspect and copy all records of any Owner that are related to the Owner's obligation to pay any Assessment or to deliver any information to the Kinston Community Association under this Article VI.

(b) Rules. The Kinston Community Association may adopt any Rules that the Board deems necessary or appropriate with respect to the administration of the Assessments, including Rules that:

(i) require Owners to report information regarding Assessments to the Kinston Community Association, including, information that an Owner must obtain from the Owner's lessees, shareholders, partners or members, and

(ii) relate to the Kinston Community Association's right to inspect and copy all records of any Owner that are related to the Owner's obligation to pay any Assessment or to deliver any information to the Kinston Community Association under this Article VI.

(c) Disputes and Questions. The Board shall resolve any dispute or question regarding the imposition, application, determination, administration, payment or collection of any Assessment. Any decision made in that regard shall be final and binding on the Kinston Community Association and the Owners.

6.14 Reserves; Reserve Account. The Board shall maintain a reserve account to hold and accumulate funds required to undertake Capital Improvements (the "**Reserve Account**"). Funds set aside or to be set aside for Capital Improvements are referred to herein as the "**Reserve**". Funds may be withdrawn from the Reserve Account only upon approval of the Board and may be used only for making Capital Improvements, but shall not be used for litigation, arbitration or other dispute resolution relating to the Capital Improvements or for any purpose other than making Capital Improvements, without the express written consent of at least sixty-seven percent (67%) of the votes in the Kinston Community Association.

6.15 Working Capital Fees.

(a) Kinston Community Association. To provide the Kinston Community Association with sufficient working capital and funds to cover the cost of unforeseen expenditures, to defray operating expenses, to purchase additional equipment or services, or to fund the general operations and obligations of the Kinston Community Association a fee is hereby established in an amount equal to three (3) months' General Assessments based on the



then-current budget for the Kinston Community Association (the “**Kinston Community Association Working Capital Fee**”). At the closing of the sale of an Improved Detached For-Sale Site or an Improved Attached For-Sale Site by Builder to the first owner after Builder, the Owner of such Site shall be required to pay the Kinston Community Association Working Capital Fee. The Kinston Community Association Working Capital Fee shall be enforceable in the same manner as a General Assessment. There shall be no Kinston Community Association Working Capital Fee due with respect to any Rental Project Site.

(b) CEA. To provide CEA with sufficient working capital and funds to cover the cost of unforeseen expenditures, to defray operating expenses, or to fund the general operations and obligations of CEA, certain fees are hereby established (“**CEA Working Capital Fees**”). At the closing of the sale of an Improved Detached For-Sale Site or Improved Attached For-Sale Site by Builder to the first owner after Builder, the Owner of such Site shall be required to pay the Kinston Community Association Working Capital Fee in an amount equal to one-half (1/2) of the then-current amount of the Residential Cap. The CEA Working Capital Fee shall be enforceable in the same manner as a General Assessment. There shall be no CEA Working Capital Fee due with respect to any Rental Project Site.

(c) Additional Provisions regarding Working Capital Fees. No Owner shall be entitled to a refund of any amount contributed as a Kinston Community Association Working Capital Fee or a CEA Working Capital Fee paid by such Owner or such Owner’s transferee upon the subsequent transfer of any Site. Any amounts contributed as a Kinston Community Association Working Capital Fee or a CEA Working Capital Fee shall not constitute an advance payment of any Assessment any amount due under the Joint Funding Agreement, or any other fee or charge. The Kinston Community Association is not required to maintain a separate account for Kinston Community Association Working Capital Fees. Notwithstanding any other provision herein, no CEA Working Capital Fees shall be due or payable to the extent doing so would cause the Residential Cap to be exceeded in the opinion of CEA’s board of directors. Notwithstanding any provision herein, neither Section 6.15(b) nor this Section 6.15(c) with respect to CEA Working Capital Fees shall be amended without the prior Recorded written consent of CEA. CEA is an intended third-party beneficiary of this Section 6.15.

## ARTICLE VII MAINTENANCE OF COMMON ELEMENTS AND SITES

7.1 Maintenance of Common Elements. Except as otherwise provided in this Declaration, the Kinston Community Association, or its duly designated agent, shall maintain all Common Elements and the improvements and landscaping located thereon in good order and repair and otherwise in accordance with the Community-Wide Standard, and shall otherwise manage and operate all Common Elements as it deems necessary or appropriate. In this regard the Kinston Community Association may: (a) construct, modify, add to, remove, replace, repair or renovate any improvements that are located on, or constitute a part of, any Common Element, (b) plant, irrigate and otherwise maintain and replace trees, shrubs and other vegetation on any Common Element, (c) place, maintain and replace signs upon any Common Element, (d) adopt and enforce Rules regulating the use of Common Elements, (e) impose and collect fees for the use of any Common Element, and (f) take any other actions that the Board deems necessary or appropriate to protect, maintain, operate, manage or regulate the use of Common Elements.

7.2 Maintenance of Sites and Sub-Association Common Elements.

(a) Sites; Tree Lawn Areas. Each Owner shall, at such Owner's sole cost and expense, maintain such Owner's Site and the improvements and landscaping located thereon or thereunder in a neat, safe and attractive condition, in good order and repair and otherwise in accordance with the Community-Wide Standard. In addition, each Owner, at such Owner's sole cost and expense, shall maintain the Tree Lawn Area adjacent to such Owner's Site, except to the extent such Tree Lawn Area is maintained by a metropolitan or other special district, a Sub-Association or, pursuant to a Supplemental Declaration, the Kinston Community Association. As indicated above, to the extent provided in any Supplemental Declaration, Kinston Community Association may maintain specific Tree Lawn Areas, and the costs associated with such maintenance shall be part of the General Assessments.

(b) Sub-Community Common Elements. Each Sub-Association shall, at such Sub-Association's sole cost and expense, maintain such Sub-Association's common elements, in a neat, safe and attractive condition, in good order and repair and otherwise in accordance with the Community-Wide Standard.

(c) Self Help. If, in the judgment of the Board or any management company to which the Board delegates such authority, an Owner fails to maintain its Site or the improvements or landscaping located thereon or thereunder or any Sub-Association fails to maintain its common elements, in a neat, safe and attractive condition, in good order and repair and otherwise in accordance with the Community-Wide Standard, and such failure remains uncured for more than thirty (30) days after the Kinston Community Association's delivery of written notice thereof to such Owner or Sub-Association, then the Kinston Community Association or any management company to which the Board delegates such authority may enter upon such Site (or common elements) and perform such maintenance, repairs or replacement as the Kinston Community Association, or such management company, deems necessary or appropriate to satisfy the Owner's or Sub-Association's obligations under Section 7.2 and all other provisions of the Community Documents. All costs and expenses incurred by the Kinston Community Association, or such management company, in connection with performing an Owner's or Sub-Association's obligations set forth in this Section 7.2 or other provisions of the Community Documents plus fifteen percent (15%) of the total amount of such costs and expenses, or such other administrative fee as may be established by the Kinston Community Association for time to time, may be charged to such Owner, such Sub-Association, or directly to such Sub-Association's members as a Default Assessment.

(d) Emergency Repairs. The Kinston Community Association may, without notice, make emergency repairs to and maintain any Site or improvement located thereon or any Common Element, as may be, in its judgment, necessary for the safety of any Person or to prevent damage to any other property. The cost of such maintenance and repair shall be charged to the Owner of the Site or such Sub-Association's members as a Default Assessment.

**ARTICLE VIII  
DESIGN REVIEW**

8.1 Design Review Board.

(a) Established. Kinston shall have a design review board (the “**Design Review Board**”) consisting of between three (3) and seven (7) individuals appointed by Founder. Founder may remove or replace any member of the Design Review Board with or without cause. Founder may cause the Design Review Board to incorporate, in which case all references herein to the Design Review Board shall be deemed to refer to the board of directors of such corporation. Regardless of whether the Design Review Board is incorporated, the Design Review Board is separate and apart from the Board and, specifically, is not a committee of the Board.

(b) Governance. The Design Review Board shall select its own chairperson from its members. The chairperson shall be the presiding officer of its meetings. In the absence of the chairperson from a meeting, the members present shall appoint a member to serve as acting chairperson at such meeting. Meetings shall be held upon call of the chairperson at the offices of the Kinston Community Association or at such other location selected by the chairperson. A Majority of members of the Design Review Board shall constitute a quorum for the transaction of business. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a Majority of the members of the Design Review Board shall constitute the action of the Design Review Board on any matter before it, without any requirement for ratification by the Board. Except as set forth above, the Design Review Board shall operate in accordance with its own Rules, and be filed with the Kinston Community Association and maintained in the records of the Kinston Community Association and be subject to inspection by all Owners and Mortgagees. The Design Review Board may amend its Rules and shall deliver any such amendment to the Kinston Community Association.

(c) Consultants. Subject to budgets established by the Board, the Design Review Board is hereby authorized to retain the services of one or more consulting architects, landscape architects, urban designers or other professionals and consultants to advise and assist the Design Review Board in performing the design review functions described in this Article VIII. The Design Review Board is also authorized to hire Persons to perform the design review functions described in this Article VIII. Notwithstanding the foregoing, a member of the Design Review Board may be compensated for services performed for the Kinston Community Association which are separate and distinct from such member’s duties as a member of the Design Review Board.

8.2 Approval and Oversight.

(a) Prohibition. No Person may:

- (i) perform any earth movement, vegetation removal, paving or drainage modification,
- (ii) construct any building, structure or other improvement,

(iii) subject to Section 8.2(c), make any physical or cosmetic alteration or modification to existing buildings, structures or improvements,

(iv) install or alter any exterior or interior signage that is visible from the outside of any building, structure or improvement,

(v) install or alter any landscaping or exterior furniture, fixtures, equipment or art, or

(vi) change the exterior appearance of any land or any building, structure or improvement located thereon,

within the Property, without the prior written consent of the Design Review Board.

(b) Exemptions. Notwithstanding any provision herein, improvements, alterations, modifications, installations, furniture and fixtures that:

(i) are completely within a building, structure or other improvement,

(ii) do not change the exterior appearance of a building, structure or other improvement and are not visible from the outdoors, and

(iii) do not change the number of Sites,

may be undertaken without Design Review Board consent, but are subject to all other covenants, conditions and restrictions contained in this Declaration.

(c) Decisions Binding. The decisions of the Design Review Board shall be conclusive and binding on all interested parties, subject only to the right of appeal to and review by the Board as described in Section 8.3.

(d) Rules. The Design Review Board may adopt such Rules it deems necessary. Each Owner shall comply with the Rules of the Design Review Board, as the same may be amended by the Design Review Board.

(e) Variances. The Design Review Board may, but under no circumstance is obligated to, grant reasonable variances or adjustments from any conditions and restrictions imposed by the Rules it adopts, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of such Rules. Such variances or adjustments will be granted in the Design Review Board's sole and absolute discretion.

(f) Waivers; No Precedent. No approval, variance or waiver granted by the Design Review Board with respect to any matter shall be deemed to constitute a precedent or waiver as to any other matter.

(g) Monitoring. The Design Review Board or its designated representative may monitor any approved project to the extent required to ensure the construction or work on such project complies with any and all approved plans and construction procedures. The Design Review Board or its designated representatives may enter upon any Site at any reasonable time or times to inspect the progress, work status or completion of any project.

(h) Stop-work and Approval Withdrawal. In addition to the remedies described in Section 8.4, the Design Review Board may withdraw approval of any project and require all activity at such project to be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled within twenty-four (24) hours after written notification to the Owner specifying such deviations.

(i) Conditions to Consents and Approvals. The Design Review Board may, as a condition to any consent or approval, require an Owner to enter into a written agreement with the Kinston Community Association containing such covenants, conditions and restrictions as the Design Review Board deems necessary or appropriate, including penalties for failures to comply.

(j) Founder's Exemption. Notwithstanding any provision to the contrary contained in this Article VIII, Founder and Founder's designees shall be exempt from the provisions of this Article VIII with respect to all matters.

8.3 Appeal to Board. Any Owner aggrieved by a decision of the Design Review Board specifically concerning such Owner may appeal the decision to the Board in accordance with procedures to be established by the Board. Such appeal shall be in writing and shall be filed within thirty (30) days after the decision of the Design Review Board. The Board may overrule the Design Review Board on any issue or question, on the condition that a Majority of the Directors vote to do so. In the event the decision of the Design Review Board is overruled by the Board on any issue or question, the prior decision of the Design Review Board shall be deemed modified to the extent specified by the Board and such decision, as so modified, shall thereafter be deemed the decision of the Design Review Board. All decisions of the Board shall be final and binding on all Owners.

8.4 Enforcement of Restrictions. If an Owner violates any term or condition set forth in this Article VIII or in the Rules of the Design Review Board, the Kinston Community Association and the Design Review Board shall have the following rights and remedies:

(a) The Kinston Community Association or the Design Review Board may, by written notice to the Owner, revoke any approval previously granted to the Owner by the Design Review Board, in which event the Owner shall, upon receipt of such notice, immediately cease any construction, alteration or landscaping covered by the approval so revoked.

(b) The Kinston Community Association may, but is not obligated to, enter upon the Owner's Site and cure such violation at the Owner's sole cost and expense. If the Kinston Community Association cures any such violation, the Owner shall pay to the Kinston Community Association the amount of all costs and expenses incurred by the Kinston Community Association in connection therewith within thirty (30) days after the Owner receives a Default Assessment thereof from the Kinston Community Association.

(c) The Kinston Community Association or the Design Review Board may sue the Owner to enjoin such violation.

(d) The Rules may provide additional remedies for the Kinston Community Association and the Design Review Board.

(e) Each of the Kinston Community Association and the Design Review Board shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies of the Kinston Community Association and the Design Review Board shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

8.5 Fees. The Design Review Board may establish reasonable processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted or at such other times set forth in the Rules adopted by the Design Review Board. The Design Review Board may also establish a requirement for the escrowing of funds in an amount sufficient to guarantee completion of a proposed project, landscaping or other finish work included as part of construction plans which have been presented to or approved by the Design Review Board.

8.6 Lapse of Approval. Any approval issued by the Design Review Board shall lapse and become void in accordance with the terms and conditions of the Rules adopted by the Design Review Board and the terms and conditions of any consents, approvals or permits issued by the Design Review Board. In addition, an approval issued by the Design Review Board for a project will lapse and become void if any building permit or approval issued by a governmental or quasi-municipal entity for the same project lapses or is revoked or suspended.

8.7 Liability. Neither Founder, the Kinston Community Association, the Design Review Board nor any of their respective officers, directors, employees, shareholders, members, contractors or agents shall be responsible or liable for any defects, errors or omissions in any plans or specifications submitted, revised or approved under this Article VIII, nor for any defects, errors or omissions in construction pursuant to such plans and specifications. A consent or approval issued by the Design Review Board or the Kinston Community Association means only that the Design Review Board or Kinston Community Association believes that the construction, alteration, installation or other work for which the consent or approval was requested complies with the Rules adopted by the Design Review Board and the Kinston Community Association. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby (a) complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-municipal authority or any applicable covenants, conditions or restrictions, (b) is free from defects, errors or

omissions, or (c) lies within the boundaries of the Site. No consent, approval or permit issued by the Design Review Board or the Kinston Community Association shall relieve Owners or other Persons of their obligations to comply with laws, rules, regulations, ordinances and other requirements of governmental or quasi-municipal authorities and any applicable covenants, conditions and restrictions.

8.8 Indemnity. By acceptance of deed to any portion of the Property, the Owner of such portion of the Property shall be deemed to have agreed to indemnify and hold harmless the Design Review Board, the Kinston Community Association, and each of their directors, officers, employees, shareholders, members, contractors and agents, and their heirs and legal representatives, against all contractual and other liabilities to others arising in connection with any injury, damages or loss arising out of any activities conducted by or on behalf of such Owner, including injury, damages or loss related to any defect in any documents approved by the Design Review Board except to the extent caused by or arising from the gross negligence or willful misconduct of the Person to be indemnified. The foregoing indemnification shall include indemnification against all fees, charges, costs and expenses (including attorneys', consultants' and experts' fees, charges, costs and expenses), and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding in which any of Persons indemnified by this Section 8.8 may be involved.

#### ARTICLE IX COVENANTS, CONDITIONS AND RESTRICTIONS

9.1 Applicability of Covenants, Conditions and Restrictions. Except as otherwise provided herein, the covenants, conditions and restrictions set forth in this Article IX shall apply to all portions of the Property.

9.2 Adding Property to Kinston/Supplemental Declarations.

(a) Adding Property. Any portion of the Annexable Property and other real property may be added to Kinston after the date this Declaration is Recorded only with the written consent of Founder and of the owner of such property, by Recording a Supplemental Declaration, in accordance with Article XIV. Each Supplemental Declaration shall specify therein by legal description, the property being added to Kinston and shall include an updated Property Map, which shall specify whether such property is a Detached For-Sale Site, an Attached For-Sale Site, a Rental Project Site, a Community Facility or a Common Element. With respect to each Unimproved Attached For-Sale Site or Unimproved Rental Project Site, the Property Map shall specify the number of Dwelling Units intended to be constructed on such Unimproved Attached For-Sale Site or Unimproved Rental Project Site.

(b) Supplemental Declarations Binding. In addition to the covenants, conditions, restrictions and reservations of rights found in this Article IX or elsewhere herein, all Owners and all Sub-Associations within Kinston shall comply with all covenants, conditions, restrictions and reservations of rights set forth in all Supplemental Declarations or any portion thereof that apply to such Owners or Sub-Associations, as applicable. Each Owner and Sub-Association shall require that its Guests comply with all provisions of the Supplemental Declaration that apply to such Owner or Sub-Association, as applicable.

9.3 Community Documents. Except as otherwise provided herein, each Owner and each Sub-Association shall comply with all provisions of the Community Documents that apply to such Owner, such Owner's Sites, such Sub-Association or such Sub-Association's common elements. Each Owner and each Sub-Association shall require that its Guests comply with all provisions of the Community Documents.

9.4 Construction and Alterations. Except as otherwise provided in this Declaration: (a) no Person shall perform any construction, alterations, installations or other work within Kinston, except in accordance with this Declaration and the applicable Rules, and (b) no Person shall construct or allow within Kinston the existence of any temporary structures of any sort, except those permitted by this Declaration and the applicable Rules.

9.5 Uses Inconsistent with Zoning. Unless otherwise approved by Founder in writing, the Property shall not be used for any purpose not permitted by applicable zoning laws.

9.6 Residential and Home Office Uses. Use of the Sites is restricted to residential purposes. No business or trade, may be conducted in or from any Site, except that an Owner or occupant residing in a dwelling on a Site may maintain a home office within such dwelling so long as: (i) the existence or operation of the home office is not apparent or detectable by sight, sound, smell or vibration from outside the dwelling, (ii) the home office conforms to all applicable zoning and other legal requirements, (iii) the home office does not involve regular visitation to the dwelling by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property, and (iv) the home office is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole and absolute discretion of the Board.

9.7 Leasing of Dwellings. For purposes of this Section 9.7, the term "**Residential Lease**" shall mean an agreement (including a sublease) between the Owner or occupant of a dwelling within the Property and another Person whereby such other Person is granted a right of occupancy with respect to all or any portion of such Owner's or occupant's dwelling, for which such Owner receives any consideration or benefit including rent, or any other fee, service, gratuity or emolument. Unless otherwise approved in writing by Founder during the Founder Rights Period, or the Board thereafter, as appropriate, all Residential Leases must (a) be in writing, (b) be expressly subject to the Community Documents, (c) provide that failure by the lessee under such Residential Lease or such lessee's Guests to comply with the Community Documents shall be a default under such Residential Lease, and (d) be effective for an initial term of no less than six (6) months (not including renewal periods, extension terms or month-to-month periods after the expiration of the initial term). The Owner or such occupant shall be liable for any violation of the Community Documents committed by its lessees or such lessees' Guests, without prejudice to such Owner's or such occupant's right to collect any sums paid by such lessees. The Owner shall make available to its lessees copies of this Declaration, the Bylaws and the Rules. Within fifteen (15) days after entering into any Residential Lease, the Owner of the leased premises (whether leased by Owner or any occupant) shall deliver to the Kinston Community Association a signed memorandum certifying to the name and contact information of the lessee, the date the initial term of the lease, sublease or other agreement



expires, and the length of each renewal period and each extension term with respect thereto, if any.

9.8 Condominiums, Cooperatives and Time-Sharing.

(a) Condominiums and Cooperative. During the Founder Rights Period, no portion of the Property shall be included within a condominium, cooperative or other common interest community without the written, Recorded consent of Founder. After the Founder Rights Period, no portion of the Property shall be included within a condominium, cooperative or other common interest community without the written, Recorded consent of the Board, unless such portion of the Property was included within a condominium, cooperative or other common interest community, respectively, during the Founder Rights Period.

(b) Timeshares. Except as approved by Founder pursuant to a separate written Recorded document, no portion of the Property may be used for the creation of any "time share estate" as defined in C.R.S. § 38-33-110, or any other time share, interval ownership, vacation club, or similar estate or interest in any portion of the Property, no matter how described or classified, by which a purchaser, investor, tenant or licensee obtains the right to exclusive use of any portion of the Property on a recurring basis for a certain period of time or has the right, as a member of a vacation or similar club or organization, to make reservations to use such portion of the Property, as a result of membership in such vacation club or similar organization.

9.9 Nuisances, Hazardous Activities and Unsightliness.

(a) Prohibition of Nuisances. No Person shall conduct any activity in Kinston which creates a nuisance. Without limiting the generality of the foregoing:

(i) no lights shall be emitted which are unreasonably bright or cause unreasonable glare,

(ii) no sound shall be emitted which is unreasonably loud or annoying,  
and

(iii) no odor shall be emitted which is unreasonably offensive to others.

(b) Prohibition of Hazardous Activities. No Person shall conduct any activity in Kinston which is or might be hazardous to any Person or property. Without limiting the generality of the foregoing:

(i) no open fires shall be allowed to exist, unless contained in a customary barbecue grill or other structure approved by the Design Review Board,

(ii) no firearms shall be discharged, and

(iii) no hunting shall be conducted.

(c) Prohibition of Unsightliness. No unsightliness shall be permitted in Kinston. Without limiting the generality of the foregoing:

(i) all exterior mechanical equipment lines, wires, pipes and other facilities shall either be buried or enclosed within a structure approved by the Design Review Board;

(ii) following its collection, all trash, garbage and other waste materials shall be kept in sanitary containers enclosed and screened from public view and protected from disturbance in such places and manners as shall be approved by the Design Review Board. No burning of trash, garbage or waste materials shall be permitted within Kinston;

(iii) all composting containers or bins must be located in an interior side yard or screened in the rear yard. No such containers or bins may be located in any setback area.

(d) Temporary Structures. No structure of a temporary character, including a house, trailer, shack, mobile home, storage shed, portable toilet or outbuilding may be placed or erected upon any Site except (i) by Founder or Founder's designees, or (ii) by any Owner during construction, alteration, repair or remodeling of permitted improvements on such Owner's Site, but only to the extent necessary to timely complete such construction, alteration, repair or remodeling.

(e) Variiances. The Board shall have the power to grant variances from the terms and conditions of this Section 9.9 from time to time as it deems necessary. Normal construction activities shall not be considered to violate the terms and conditions of this Section 9.9.

#### 9.10 Signs.

(a) Prohibition. No signs whatsoever shall be erected or maintained in Kinston, except:

(i) signs permitted by Section 14.3,

(ii) signs required by law or by legal proceedings,

(iii) such other signs that both (A) comply with all regulations adopted by the Design Review Board, and (B) are approved in advance and in writing by the Design Review Board, *provided, however,* that, neither the Design Review Board nor the Kinston Community Association shall prohibit those patriotic and political expressions in violation of Section 106.5 of CCIOA, and

(iv) such other signs that are permitted under the Rules.

(b) For Sale, For Rent and Open House Signs. Without limiting the generality of the foregoing, no "For Sale," "For Rent," "Open," "Open House" or similar signs shall be displayed on the exterior or interior of any Site, except as permitted under the Rules.

9.11 Compliance With Laws. Nothing shall be done or kept within Kinston in violation of any law, ordinance, rule or regulation of any governmental or quasi-municipal authority.

9.12 Compliance With Insurance. Except as may be approved in writing by the Board, nothing shall be done or kept on the Property that may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Kinston Community Association.

9.13 Restriction on Subdivision, Rezoning and Boundary Changes.

(a) Subdivision, Condominiums and Cooperatives; Changes from Rental to For-Sale. During the Founder Rights Period, no portion of the Property shall be subdivided, or included within a condominium, cooperative or other common interest community, nor shall the boundary of any Site shall be changed, nor shall a Rental Project Site be converted to a For-Sale Attached Site or a For-Sale Detached Site, without the Recorded consent of Founder, in the form of Supplemental Declaration. With respect to the conversion of a Rental Project Site to a condominium, cooperative or other common interest community or the conversion of a Rental Project Site to a series of Attached For-Sale Sites or Detached For-Sale Sites, such Supplemental Declaration shall specify that the Rental Project Site shall thereafter be a number of separate Attached For-Sale Sites or Detached For-Sale Sites, as applicable, and the allocation of votes and Assessments shall be updated accordingly. After the Founder Rights Period, the Board's written consent shall be required in lieu of Founder's.

(b) Rezoning, Variances and Permits. Except as may be permitted under a declaration for a Sub-Community that Founder, or an Affiliate of Founder, Records, no application for rezoning of any portion of the Property, and no applications for variances, use permits or special event permits on any portion of the Property, shall be filed with any governmental authority during the Founder Rights Period, unless the proposed use of that portion of the Property has been approved in writing by Founder and the proposed use otherwise complies with this Declaration and all other Community Documents.

9.14 Mineral Exploration. No portion of the Property shall be used by any Person other than Founder or Founder's designees in any manner to explore for or to remove any water, oil or other hydrocarbons or minerals (including sand and gravel).

9.15 Water Wells. During the Founder Rights Period, no water wells shall be permitted on any portion of the Property without the prior written approval of Founder.

9.16 Water and Sewer. During the Founder Rights Period, all buildings, structures and improvements shall be connected to such water and sewer services as Founder may require.

9.17 Vehicles and Equipment. Except as required by applicable law, including Section 106.5 of CCIOA, no automobile, truck, pickup, camper, motorbike, motorcycle, trailbike, trailer,

mobile home, tractor, golf cart, snowmobile, boat or any other vehicle of any type shall be parked or operated within Kinston, except in accordance with the Rules adopted by the Board.

9.18 Deliveries. All deliveries made within Kinston shall be made in accordance with the Rules adopted by the Board.

9.19 Trash. By acceptance of a deed to, or entering into a lease for, a Site or portion of a Site, an Owner or lessee shall be deemed to have agreed that any or all trash removal services within the Property: (a) may be restricted to one or more providers approved by the Board, (b) may be provided exclusively through the Kinston Community Association, and (c) are otherwise subject to all provisions of the Community Documents, including Rules adopted by the Board.

9.20 Trademarks. Those service marks and trademarks set forth on Exhibit D are owned by Founder and its Affiliates, and the Kinston Community Association's use of any such service mark or trademark, or any other term, logo or insignia that is used by Founder or any of its Affiliates in connection with Kinston, is wholly contingent upon the Board's agreement to enter and be bound by the terms and conditions set forth in a license agreement between the Kinston Community Association and Founder. No Owner shall use the logos, insignias, service marks or trademarks of Founder or any of its Affiliates without the prior written permission of Founder or such Affiliate, as appropriate.

9.21 Animals.

(a) Prohibition. Except as set forth in Sections 9.21(b) and 9.21(c), no animals of any kind shall be raised, bred or housed within the Property without the prior written consent of the Board and, if required, the Colorado Division of Wildlife, and in all events in conformity with the Rules.

(b) Exemptions. Notwithstanding Section 9.21(a):

(i) an Owner shall be permitted to house on its Site up to three (3) domestic pets (which shall mean only domesticated dogs, cats and other animals defined as domestic pets in the Rules) and such additional animals as may be expressly permitted by the Rules,

(ii) an Owner shall be permitted to keep on its Site a reasonable (as determined by the Board) number of bees subject to the Rules, and

(iii) disabled persons shall be permitted to keep service and other animals on the Property in compliance with the Fair Housing Act and the Americans with Disabilities Act.

(c) Founder's Exemption. The provisions of Section 9.21(a) shall not apply to Founder and its Guests and designees.

9.22 Storage Tanks. Except as provided in the Rules, no tanks for the storage of gas, fuel, oil, or other materials may be erected, placed, or permitted above or below the surface of

any Site (other than reasonably-sized propane tanks intended for use with gas grills, but only if and as specifically allowed in the Rules).

9.23 Repair of Improvements. No improvements hereafter constructed upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good order and repair and maintained in accordance with the Community-Wide Standard.

9.24 Additional Covenants and Sub-communities. During the Founder's Rights Period, no Person shall Record: (a) any declaration, plat, map or other document creating, by itself or in combination with one or more other documents, a Sub-Community, or (b) any restrictive covenant or equitable servitude, without first obtaining Founder's prior written consent thereto and Recording such consent. Any such declaration, plat, map, restrictive covenant, equitable servitude, or other document Recorded without Founder's consent also being Recorded shall be deemed void and of no force or effect.

9.25 Restrictions on Access. Vehicular access to and from Sites, Community Facilities and Common Elements within the Property shall be limited to curb cuts and driveways approved by the Design Review Committee.

9.26 Clothes Drying Facilities. No outside clotheslines or other facilities for drying clothes shall be placed on the Property except those that are retractable.

9.27 Machinery and Equipment. No machinery or equipment of any kind shall be placed, stored or maintained upon the Property so as to Visible From Neighboring Property, except machinery or equipment: (a) as is usual and customary in connection with the construction (during the period of construction) or repair (during the period of repair) of improvements on the Property, and (b) which Founder, the Kinston Community Association or any of their designees may require for the development, operation or maintenance of the Property or other property. Notwithstanding the foregoing, transformers and gas, electric or other meters of any type may be hung on exterior walls so as to be Visible From Neighboring Property so long as the same have been approved by the Design Review Committee, and solar energy collectors or panels may be installed so as to be Visible From Neighboring Property if harmoniously done and if approved by the Design Review Committee in its sole discretion.

9.28 Window Coverings. No external window covering or reflective covering may be placed, or permitted to remain, on any window of any building, structure or other improvement within the Property without the prior written approval of the Design Review Committee.

9.29 Founder's Exemption. Nothing contained in this Declaration or any other Community Document shall be construed to prevent, hinder or limit: (a) Founder's exercise or enjoyment of any Founder Right, (b) any action approved by Founder's written and Recorded consent, or (c) the conduct of any activity by Founder, Founder's Affiliates or the employees or agents of Founder or its Affiliates, including the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within Kinston.

**ARTICLE X  
EASEMENTS AND RESERVATIONS**

10.1 Founder's Easements.

(a) Easement. There is hereby reserved for Founder and its designees a general easement over and under:

(i) the Property (except any portion of the Property within a building footprint) to exercise any of Founder's rights under this Declaration,

(ii) the Common Elements to make, construct or alter improvements on or under the Property, the Annexable Property, or any real estate owned by Founder or Founder's designees, and

(iii) the right to use the Common Elements to hold or allow special events as Founder determines in its sole and absolute discretion.

(b) Additional Easements and Rights. There is hereby reserved for Founder the right to:

(i) establish from time to time, in locations reasonably determined by Founder, utility and other easements, permits or licenses over, across, through and under the Common Elements (including easements for construction and staging purposes), and

(ii) create other reservations, exceptions and exclusions for the best interest of the Kinston Community Association.

(c) Added and Withdrawn Property. In addition, until such time as Founder adds any portion of the Annexable Property to Kinston, and after such time as Founder withdraws any portion of the Property from Kinston, Founder shall have whatever easements are reasonably necessary or desirable across the Property (except for those portions of the Property within a building footprint) for access to and utility services for the Annexable Property or the portion of the Property withdrawn from Kinston, as the case may be.

10.2 Owners' Easements Over Common Elements.

(a) Easement. Subject to the terms and conditions of this Declaration and all other Community Documents, each Owner shall have a nonexclusive easement over and through the Common Elements:

(i) for ingress to and egress from their Sites, and

(ii) to use and enjoy the Common Elements; provided that in no event shall the Owner of a Rental Project Site or its Guests have access to or a right to use and enjoy any Common Element other than parks, trails and open spaces, or the right to participate in any non-public community events in the Common Elements sponsored by the Kinston Community Association, except pursuant to Rental Access Agreement.

(b) Guests. Each Owner may grant its rights of use under this Section 10.2 to any Guest of such Owner.

(c) Rental Access Agreements. The Board, in its discretion, may enter into a Rental Access Agreement with the Owner of a Rental Project Site, on terms and conditions as the Board determines are commercially reasonable under the circumstances. Without limiting the foregoing, Rental Access Agreements shall require payments from the Owner of the Rental Project Site to the Kinston Community Association, in amount which the Board reasonably determines to be appropriate under the circumstances, which may be based on some increased participation in and payment of General Assessments or the Real Estate Transfer Assessment, or may be calculated on some other reasonable basis.

### 10.3 Utility Easement.

(a) General Easement. Subject to the terms and conditions of this Declaration and all other Community Documents, Founder hereby creates a general easement over and under all of the Property, for ingress to, egress from, and installation, replacement, removal, repair and maintenance of, all utility and service lines and systems, including water, sewer, gas, telephone, electricity, fiber optic, cable and similar communication services serving Kinston or any portion thereof, including the Media and Communications Services. The Board may, but is not obligated to, authorize the release of portions of the general easement created by this Section 10.3 upon the request of any Owner showing good cause therefor.

(b) Rights. Pursuant to this easement, a utility or service company may install, remove and maintain facilities and equipment on the Property to provide service to any portion of the Property or other property designated by Founder; *provided, however*, that all such facilities and equipment shall comply with the provisions of the Community Documents, which may require such facilities and equipment to be installed underground. Notwithstanding anything to the contrary contained in this Section 10.3, no sewers, electrical lines, water lines, telephone lines or other utility or service lines shall be installed or relocated on any portion of the Property, except as approved by the Design Review Board. Any utility or service company using this general easement shall use its best efforts to install, repair, replace, remove and maintain its lines and systems without unreasonably disturbing the uses of Owners, the Kinston Community Association, Founder and other utility and service companies.

(c) Specific Easements. If any utility or service company furnishing utilities or services to Kinston or any portion thereof requests a specific easement by a separate Recordable document, the Kinston Community Association shall have the right and authority, but not the obligation, to grant such easement over or under any portion of the Property.

### 10.4 Easements for the Kinston Community Association and the Design Review Board.

(a) Easement. There is hereby granted to the Kinston Community Association and the Design Review Board and each of their designees an easement over and under all of the Property, except for the interior of any dwelling unit, to:

(i) exercise any right held by the Kinston Community Association or the Design Review Board, as appropriate, under CCIOA or any Community Document, and

(ii) perform any obligation imposed upon the Kinston Community Association or the Design Review Board, as appropriate, by CCIOA or any Community Document.

(b) Entry. Notwithstanding the foregoing, neither the Kinston Community Association nor the Design Review Board shall enter upon any Site without reasonable prior notice to the Owner of the Site, except in cases of emergency and except as permitted under Section 8.4.

10.5 Emergency Access Easement. There is hereby granted a general easement to all police, sheriff, fire protection, ambulance and other similar emergency agencies or Persons to enter upon the Property in the proper performance of its duties.

10.6 Metropolitan District Easement. There is hereby granted a general easement to any metropolitan district or other special district providing services or facilities to any portion of Kinston to enter upon the Property, except for the interior of any dwelling unit, in the proper performance of its duties.

10.7 Easement for Encroachments. There is hereby granted an easement to all Sub-Associations for, and to all Owners of Sites within, any Sub-Community created by Founder or an Affiliate of Founder, for any inadvertent encroachments of any improvements within any such Sub-Community constructed by Founder or any Affiliate of Founder over, on or under or any Common Element or any Site, except for the interior of any dwelling unit, *provided, however*, that such easement for encroachments shall exist only to the extent that such encroachments are caused by minor inaccuracies in legal descriptions or unintentional minor deviations in construction, repair or reconstruction or the subsequent shifting or settlement of any such improvements and that do not cause damage to, or unreasonably impede or impair the use of improvements on the property upon which the encroachment has occurred.

10.8 Easements for Water Use and Development and Flood Control. Founder reserves for itself and its successors, assigns and designees, and Founder hereby establishes and grants to the Kinston Community Association, the nonexclusive right and easement, but not the obligation, to enter upon any lakes, reservoirs, ponds, streams, drainage ditches, irrigation ditches and wetlands located within the Common Elements: (a) to provide water for the irrigation of any of the Common Elements or Site, (b) to alter drainage and water flow, (c) to construct, maintain, operate and repair any bulkhead, wall, dam or other structure retaining water, (d) to develop, maintain, rehabilitate, restore, repair and protect wetlands, shorelines, beaches, waterways and other lakefront and reservoir-front areas, and (e) to remove trash and other debris therefrom. Such easement shall include an access easement over and across the Property, to the extent reasonably necessary to exercise rights granted under this Section 10.8, and in order to maintain and landscape the slopes and banks pertaining to such lakes, reservoirs, ponds, streams, drainage ditches and wetlands. To the extent the exercise of such easement is anticipated to materially diminish the value of or unreasonably interfere with the use of any Site,



the consent of the Owner of such Site shall be required before such exercise. Nothing herein shall be construed to make Founder or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

## ARTICLE XI INSURANCE

### 11.1 Required Insurance.

(a) Required by CCIOA or the Board. The Kinston Community Association shall obtain and maintain all insurance as required under CCIOA, including fidelity insurance as required by Sections 306 and 313 of CCIOA, and any additional insurance the Board deems necessary.

(b) Required by this Declaration. In addition to the insurance required pursuant to Section 11.1(a), the Kinston Community Association shall obtain and maintain:

(i) property insurance for the Common Elements for broad form covered causes of loss, except that the total amount of insurance must not be less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies, and

(ii) commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and all activities of the Kinston Community Association in an amount equal to two million dollars (\$2,000,000) per occurrence with a five million dollar (\$5,000,000) umbrella policy or as otherwise deemed sufficient in the judgment of the Board insuring the Board, the Kinston Community Association, the Design Review Board, and their respective employees, agents and all Persons acting as any of their agents. The Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. Founder shall be included as an additional insured in Founder's capacity as an Owner. Such insurance shall cover claims of one or more insured parties against other insured parties.

11.2 Adjustments. Any loss covered by insurance maintained by the Kinston Community Association shall be adjusted with the Kinston Community Association in accordance with the terms and conditions of CCIOA. The insurance proceeds payable for any such loss shall be paid in accordance with the terms and conditions of CCIOA and, to the extent not provided in CCIOA, as determined by the Board.

11.3 Additional Insurance Requirements. All insurance policies maintained by the Kinston Community Association shall be primary and non-contributing and shall contain waivers of subrogation for all covered losses and claims, including those waivers required by Section 313(4)(b) of CCIOA.

## ARTICLE XII CASUALTY

12.1 Casualty to Common Elements of Kinston. The Kinston Community Association shall respond to any damage to, or destruction of, any Common Elements in accordance with the terms and conditions of CCIOA and, to the extent not provided in CCIOA, as determined by the Board.

12.2 Casualty to a Site or to Common Elements within any Sub-Community. Each Owner shall be responsible for repairing or replacing any damage to, or destruction of, such Owner's Site. Any Sub-Association shall be responsible for repairing and replacing any damage to, or destruction of, the common elements within the applicable Sub-Community. If an Owner or a Sub-Association elects not to repair or replace any such damage or destruction, such Owner or Sub-Association, as appropriate shall: (a) landscape such Site or common elements, as appropriate, in accordance with plans approved by the Design Review Board, and (b) maintain such Site or common elements, as appropriate, in a neat and attractive condition, free of hazards.

## ARTICLE XIII CONDEMNATION

13.1 Condemnation of All Sites. If all Sites within Kinston are taken by condemnation or similar proceeding, Kinston and this Declaration shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be paid to the Kinston Community Association and then disbursed by the Kinston Community Association in accordance with the terms and conditions of CCIOA; *provided, however*, that to the extent CCIOA does not provide for the manner of disbursement, then as determined by the Board.

13.2 Condemnation of Fewer Than All Sites. If one or more Sites, but fewer than all Sites, are taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Owner(s) of such Sites in accordance with the terms and conditions of CCIOA; *provided, however*, that to the extent CCIOA does not provide for the manner of such payment to the Owner(s) of such Sites, then as determined by the Board.

13.3 Condemnation of Common Elements. If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Kinston Community Association and used by the Kinston Community Association: (a) first, to repair or replace any damage to Common Elements resulting from the condemnation or similar taking, and (b) second, for any other Common Expenses.

## ARTICLE XIV FOUNDER RIGHTS

14.1 Improvements. There is hereby reserved for Founder and its designees the right to construct or remove any improvements that it deems necessary or appropriate on the Common Elements and on any Sites owned by Founder.

14.2 Development Rights.

(a) Reservation of Rights. There is hereby reserved for Founder the following rights, which may be exercised by Founder at any time and from time to time:

(i) the right to complete improvements indicated on the Property Map, if any,

(ii) the right to amend this Declaration to add to Kinston all or any portion of the Annexable Property or certain other unspecified real estate pursuant to CCIOA, subject to the provisions of Section 9.2 and Section 14.2(d),

(iii) the right to create up to the Maximum Number of Sites within Kinston and to create Common Elements (including Limited Common Elements) on the Property including all or any portion of the Annexable Property or any other unspecified real estate, if any, that Founder may add to Kinston pursuant to Section 14.2(a)(i),

(iv) the right to subdivide any Site owned by Founder, or to change the boundaries of any Site owned by Founder,

(v) the right to withdraw from Kinston: (A) all or any portion of the Property as such "portion" may be designated by Founder and the then-current Owner of such portion of the Property (which may be Founder), and (B) such other portions of the Property as may be permitted by applicable law.

(vi) the right to designate those Sites to which a Limited Common Element created, pursuant to Sections 2.2 or Section 14.2(a)(iii), are allocated,

(vii) the right to combine any Sites owned by Founder,

(viii) pursuant to Section 2.2, the right to convert any Site owned by Founder into Common Elements, and the right to convert other Sites into Common Elements with the consent of the Owner of such Site,

(ix) the right to expand the boundaries of any Common Element and to convert all or any portion of any Site into a Common Element or a Limited Common Element or to convert any Common Element into a Limited Common Element, and to designate the Sites to which any such Limited Common Element are allocated pursuant to Section 2.2,

(x) the right to amend this Declaration to conform to or take advantage of applicable law,

(xi) the right to create easements, permits, licenses and other property rights and reservations as described in Article X,

(xii) the right to dedicate to designate any portion of the Property owned by Founder for public or quasi-public purposes, and

(xiii) the right to exercise any and all other rights granted to, or otherwise available to, Founder pursuant to or under CCIOA.

(b) Designated Portions of the Property.

(i) Founder may designate all the Property or any real property interests constituting less than all of the Property (including all or a portion of any platted or unplatted lot, parcel or tract) as a separate "portion" of the Property for purposes of C.R.S. § 38-33.3-210, any part of this Declaration or any Supplemental Declaration, any other portion of CCIOA, or otherwise as Founder so desires pursuant to a Recorded Supplemental Declaration or other Recorded amendment hereto or thereto.

(ii) Founder may modify the configuration of any "portion" of the Property designated as such for purposes of C.R.S. § 38-33.3-210 or otherwise by the same process as such designation was originally made, on the condition that the then-Owner of such "portion" of the Property consents to such reconfiguration pursuant to a Recorded instrument.

(c) Amendments to the Declaration. In exercising any development right reserved under this Section 14.2, Founder shall execute and Record an amendment to this Declaration in accordance with the requirements of CCIOA; *provided, however*, Founder may, but need not, execute and Record an amendment to this Declaration with respect to exercising any right described in Section 14.2(a)(xii) or 14.2(a)(xiii).

(d) Maximum Number of Sites. Founder hereby reserves the right to create within, or add to, Kinston up to three thousand five hundred fifty (3,550) Sites, which is referred to herein as the "Maximum Number of Sites."

14.3 Special Declarant Rights; Sales Offices, Management Offices and Model Homes. There is hereby reserved for Founder: (a) the right to exercise any Special Declarant Rights, (b) the right to maintain sales offices, management offices and models within any Site owned by Founder, and (c) the right to construct and maintain signs advertising Kinston, or any project therein, on any and all Common Elements.

14.4 Merger. There is hereby reserved for Founder the right to merge or consolidate Kinston with any other planned community.

14.5 Exercising Founder Rights. Founder may exercise its Founder Rights, at any time and from time to time, in any order and no assurance is given as to the order in which Founder will exercise its Founder Rights. If Founder exercises any Founder Right with respect to any portion of the Property or the Annexable Property, Founder may, but is not obligated to, exercise that Founder Right with respect to any other portion of the Property or the Annexable Property. Notwithstanding anything to the contrary contained in this Declaration, Founder may exercise any Founder Right, without the consent of the Kinston Community Association, the Board or any of the Owners. Notwithstanding the foregoing, Founder may exercise any Founder Right at any time and from time to time; *provided, however*, the Founder Rights set forth in Sections 14.2 through 14.4 and all other Special Declaration Rights must be exercised, if at all, no later than fifty (50) years following the date this Declaration is Recorded. The period of time between the

date this Declaration is Recorded and the date that is fifty (50) years after such Recording is referred to herein as the “**Founder Rights Period.**”

14.6 Interference with Founder Rights. Without Founder’s prior written consent, neither the Kinston Community Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with, hinders, or diminishes any Founder Right.

## ARTICLE XV TERM AND AMENDMENTS

15.1 Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until this Declaration is terminated.

15.2 Termination. The Owners may terminate Kinston and this Declaration by a seventy-five (75%) or greater vote of all votes in the Kinston Community Association. If the necessary votes are obtained, the agreement of the Owners to terminate Kinston and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the terms and conditions of CCIOA. Upon Recordation of the termination agreement Kinston shall be terminated, this Declaration shall have no further force or effect, and the Kinston Community Association shall be dissolved.

15.3 Amendments.

(a) Amendments by Owners.

(i) Subject to Sections 15.3(a)(ii) and 15.3(a)(iii), and Sections 15.3(b)-(d), the Owners may amend any provision of this Declaration (including the Property Map) at any time by a Majority of all votes in the Kinston Community Association. If the necessary votes are obtained, the Kinston Community Association shall cause to be Recorded an amendment to this Declaration in accordance with the terms and conditions of CCIOA. Notwithstanding the immediately preceding sentence, the percentage of votes necessary to amend any specific portion of this Declaration that sets forth a specific percentage of affirmative votes required to take any action shall not be less than such specific percentage.

(ii) Notwithstanding Section 15.3(a)(i), but subject to Sections 15.3(b)-(d), except to the extent permitted or required by CCIOA, any amendment to this Declaration (including the Property Map) that creates or increases any Special Declarant Rights, increases the Maximum Number of Sites, changes the boundaries of any Site, or changes the votes or Assessments allocated to any Site must be approved by the vote or written consent of Owners of Sites to which at least sixty-seven percent (67%) of the votes in the Kinston Community Association, including at least sixty-seven percent (67%) of the votes allocated to Sites not owned by Founder, are allocated.

(iii) Notwithstanding Section 15.3(a)(i), but subject to Sections 15.3(b)-(d), any amendment to this Declaration (including the Property Map) that changes the uses to which any Site in restricted must be approved by the vote or written Consent of

Owners of Sites to which at least sixty-seven percent (67%) of the votes in the Kinston Community Association are allocated.

(b) Amendments by Founder. Notwithstanding Section 15.3(a), Founder unilaterally may amend this Declaration (including the Property Map), without the approval of the Owners: (i) in connection with the exercise of any right reserved to Founder hereunder (including Founder's exercise of any Special Declarant Right), (ii) to conform to requirements of any Mortgagees or loan guarantors or to satisfy the requirements of any governmental financing program, (iii) to comply with applicable law, (iv) to correct any clerical, typographical or technical errors in this Declaration, (v) as otherwise provided herein, and (vi) as otherwise permitted by CCIOA or other applicable law.

(c) Founder's Consent Required. Notwithstanding any other provision of any Community Document:

(i) no provision of this Declaration (including the Property Map) that expressly requires Founder's consent to amend may be amended without Founder's Recorded written consent thereto; and any amendment that requires Founder's written consent thereto shall be void and of no force or effect if Founder's consent thereto is not Recorded,

(ii) no portion of Articles I and II, Sections 3.3, 5.1, or 5.2, Articles VI and VIII, Section 9.2, 9.6, 9.7, 9.8, 9.13, 9.14, 9.20, 9.21, or 9.24 or Articles X and XIV-XVII, or Sections 18.1-18.7, or 18.13 may be amended without Founder's Recorded consent thereto,

(iii) neither the definition of Community-Wide Standard set forth herein nor any provision herein applying or affecting the Community-Wide Standard may be amended, eliminated or replaced without Founder's Recorded consent thereto,

(iv) this Declaration (including the Property Map) may not be amended in manner that would hinder, impact, modify or otherwise affect the rights or obligations of Founder, the Kinston Community Association, the Design Review Board, the Board or any Director, without Founder's Recorded consent thereto, and

(v) this Declaration (including the Property Map) may not be amended in manner that would affect the allocation of votes in the Kinston Community Association without Founder's prior Recorded written consent thereto.

(d) Amendments to Community-Wide Standard. Any amendment or modification to the definition of Community-Wide Standard set forth herein shall be in writing.

## ARTICLE XVI DISCLOSURES, ACKNOWLEDGMENTS AND WAIVERS

16.1 Media and Communication Services. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed to the provisions set forth in this Section 16.1.

(a) Certain Agreements.

(i) Founder or any of its Affiliates may enter into one or more agreements with providers of cable television, Internet, telephone, security monitoring and/or other Media and Communication Services, which may entitle Founder, or any of its Affiliates to receive certain proceeds from the use of media and communications infrastructure. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that that such proceeds may be paid to Founder or any of its Affiliates and agrees to release and waive any claims such Owner may have as a result of such payments to Founder or its Affiliates.

(ii) Kinston Community Association may enter into one or more bulk service agreements with one or more service providers ("**Bulk Service Agreements**") to provide any Sites with a fiber-optic media and communications network capable of providing cable television, high speed internet/intranet, local and long distance telephone services, security monitoring services and/or other media and communications services (the "**Media and Communications Services**") to the extent allowed by applicable law. The Kinston Community Association expressly reserves the right to enter into exclusive or non-exclusive Bulk Service Agreements for Media and Communications Services on such terms, and with affiliated or non-affiliated third parties, as may be determined by the Kinston Community Association in its sole discretion.

(b) Exclusive Marketing Rights for Service Providers. Founder and its Affiliates and the Kinston Community Association may grant the exclusive right to market and promote the Media and Communications Services on or within the Common Elements to service providers and infrastructure facilities providers under Bulk Service Agreements or other agreements.

(c) Percentage of Premiums Paid to Founder or Affiliates. Founder, its Affiliates, or any metropolitan or other special district may fund the cost of, or any portion thereof, the installation and construction of equipment and infrastructure necessary for the provision of Media and Communications Services to Sites. In the event that the Kinston Community Association elects to enter into any Bulk Service Agreement with any service provider, Founder, its Affiliates, or any metropolitan or other special district may recover its costs for funding the installation and constructions of such media and communications infrastructure plus a reasonable return on their investment by entering an agreement to receive payment of a percentage of the premiums paid by Owners of Sites for Optional Services. Each Owner acknowledges those payments to Founder, its Affiliates and such metropolitan or other special districts, and agrees to release and waive any claims such Owner may have as a result of those payments to Founder, its Affiliates or such metropolitan or other special districts.

(d) Systems. Each Owner acknowledges that interruptions in Media and Communication Services and other services and systems will occur from time to time. Neither Founder, any of its Affiliates, any metropolitan or other special district, the Kinston Community Association, nor any of their respective successors or assigns shall be liable for, and no Owner or Guest shall be entitled to a refund, rebate, discount or offset in applicable fees from the Kinston Community Association for, any interruption in such systems and services, regardless of whether

such interruption is caused by reasons within any of their control or within the control of any other Person.

16.2 Construction Activities, Social and Commercial Activities and Noise.

(a) Construction Activities. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that (i) Kinston is located in an area that is subject to or near ongoing construction activities (the “**Construction Activities**”), (ii) the Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances, (iii) the Construction Activities may include: (A) construction traffic (including construction vehicles, equipment and vehicles used or owned by Founder, its Affiliates, another Owner, adjacent landowners, and their lessees employees, agents and contractors, and (B) grading, excavation, clearing, site work, relocation of roadways and utilities, and construction activities) within or relating to Kinston or other properties, and (iv) the Construction Activities may result in interference with access and temporary interruptions of utility services.

(b) Social and Commercial Activities. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that (i) Social and Commercial Activities and events, including the: (A) operation of full-service hotels with associated swimming pools and other outdoor recreational facilities, (B) the holding of meetings, conferences, banquets and other group events, (C) operation of full-service shopping malls and other retail businesses, including grocery stores, (D) operation of various businesses, including banks and other financial service providers, real estate and mortgage brokers, and other general office uses, (E) indoor and outdoor restaurant and bar operations (including the sale of food and alcoholic and non-alcoholic beverages for on-site and off-site consumption) and preparation of hot and cold food (through the use of barbecue grills, fire pits and other smoke and/or odor producing means) and beverages at indoor and outdoor facilities which may include outdoor music, smoking and deliveries, (F) parking activities, including special event parking and after hours parking, (G) the installation, operation and maintenance of illuminated (including electronic media displays) and non-illuminated signage, (H) concerts, sporting events and other outdoor and indoor entertainment, performances and events, (I) operation, repair, maintenance, construction, replacement, expansion, alteration and use of the Property and improvements thereon and thereunder, (J) operation, repair, maintenance, construction, replacement, expansion, alteration and use of Interstate 25, the Northwest Parkway, and other streets and highways, light rail, commuter or heavy rail trains and other modes of transit, including buses and shuttles and related equipment and improvements, (K) the use of bicycles and other recreational equipment, and (L) any other uses or activities permitted by law (the “**Social and Commercial Activities**”) are and may be conducted within or nearby Kinston (the “**Social and Commercial Activity Areas**”), (ii) the Social and Commercial Activities are expected to generate an unpredictable amount of visible, audible, odorous, and other sensory and non-sensory impacts and disturbances, and (iii) the Social and Commercial Activities may occur during daytime and nighttime.

(c) Noise Disturbances. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (i) the Sites are located in a high-density suburban location and are part of a mixed-use development with retail,



commercial, health care, hotel, industrial and office uses as well as residential and other uses, (ii) its Site may share common walls, ceilings or floors with the other Sites, (iii) due to these factors, there may be a certain amount of unpredictable noise disturbances within Kinston (the “**Noise Disturbances**”), and (iv) the Noise Disturbances may include (A) street noise from pedestrians and automobiles, and general traffic noise from nearby interstates or other arterial roads, (B) noise from other adjacent Sites, Common Elements and other property, including voices, music, televisions, walking, running, and other recreational activities, (C) noise from outdoor or indoor art, food, music or other types of festivals, gatherings and events within or near Kinston, (D) noise from concerts, sporting events and other outdoor and indoor entertainment, performances and events in or near Kinston, (E) noise from light rail, commuter or heavy rail trains and from other modes of transit, including buses and shuttles in or near Kinston, (F) noise related to sirens from fire trucks, police cars, ambulances and other emergency service providers in or near Kinston, (G) noise generated from nearby parks and children and adults utilizing such parks, and (H) noise from any other of the Social and Commercial Activities in or near Kinston.

(d) Oil and Gas Wells. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that (a) THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE MAY NOT INCLUDE TRANSFER OF THE MINERAL ESTATE, (b) THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OR OTHER MINERALS UNDER THE SURFACE OF THE PROPERTY, AND THEY MAY ENTER AND USE THE SURFACE ESTATE TO ACCESS THE MINERAL ESTATE, (c) THE USE OF THE SURFACE ESTATE TO ACCESS THE MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE LARIMER COUNTY CLERK AND RECORDER, (d) THE OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES, AND (e) EACH OWNER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION. In addition, and without limiting the foregoing, by acceptance of a deed to any portion of the Property, each Owner shall be deemed to have specifically acknowledged and agreed that oil and/or gas wells are or may be located on or nearby the Property (the “**Oil and Gas Wells**”), which Oil and Gas Wells may, from time to time, be in the process of being drilled, be operating or be plugged and abandoned, or in any other condition.

(e) Use Rights. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that no right is created or arises from ownership of a Site or membership in the Kinston Community Association, to use Social and Commercial Activity Areas or to any waiver or discount of the prices or other fees charged to users of the Social and Commercial Activity Areas.

16.3 Facilities and Services Open to Public. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that certain facilities and services within the Property, including certain Common Elements, may be open for use and enjoyment by the public (the “**Public Facilities**”).

16.4 Safety. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) such Owner and its Guests shall be responsible for their own personal safety and the security of their property, (b) the Kinston Community Association may, but shall not be obligated to, maintain or support certain activities within Kinston designed to promote or enhance the level of safety or security therein, (c) in the event that Founder or the Kinston Community Association causes a security booth, gate or fence to be constructed on or about any portion of the Property or operates a controlled access entrance to the Property, such actions shall not be deemed under any circumstances as an undertaking by Founder or the Kinston Community Association to guarantee the safety and security of Owners or their Sites or the security of the property of any Persons. No Person shall be entitled to rely upon such security booth, gate or fence constructed on the Property as a guarantee of safety and security, (d) neither the Kinston Community Association, Founder or its Affiliates shall in any way be considered insurers or guarantors of safety or security within Kinston, nor shall they be liable for any injury, loss or damage to persons or property by reason of failure to provide adequate security or the ineffectiveness of security measures undertaken, (e) no representation or warranty has been made or is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended, and (f) that it is responsible for informing its Guests that neither the Kinston Community Association nor Founder or its Affiliates are insurers or guarantors of security or safety and that each Person within the Property assumes all risks or personal injury and loss or damage to property resulting from the acts of third Persons.

16.5 Development Plans. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) the plans presently envisioned for completion of Kinston may change, and (b) neither Founder or its Affiliates has made, or makes, any warranty or representation whatsoever that the plan presently envisioned for the completion of Kinston (or any part thereof) can or will be carried out or that any land now owned or hereafter acquired by Founder or its Affiliates is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that, if such land is once used for a particular use, such use will continue in effect.

16.6 Non-potable Water for Landscaping and Irrigation. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that non-potable water may be used for purposes of landscaping and irrigation within and in the vicinity of the Property.

16.7 Views. Notwithstanding anything contained in this Declaration to the contrary, by acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) there is no easement or other right, express or implied, for the

benefit of any Owner or its Site for light, view or air included in or created by this Declaration or as a result of ownership of the Site, and (b) any view, sight lines, or openings for light or air available from any Site, or anywhere else in Kinston, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including future construction or expansion of buildings or facilities or improvements. BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER SHALL BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED THAT SUCH OWNER DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW IN SUCH OWNER'S SITE, ACCEPTS SUCH DISCLAIMER, AND AGREES THAT FOUNDER OR ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST FOUNDER OR ITS AFFILIATES, OR GUESTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT ANY SITE OR OTHER LOCATION.

16.8 Other Properties. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) other properties are located adjacent to and in the general vicinity of Kinston (the "**Other Properties**") and that the Other Properties may be developed pursuant to the land uses permitted by the City's zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, the "**Ordinances**"), (b) neither Founder nor its Affiliates, employees or agents makes any representation concerning the development of Other Properties or the planned uses of the Other Properties, (c) the zoning for Kinston and the Other Properties is established and governed by the Ordinances, (d) any amendment of those Ordinances requires approval of the City, and (e) it has not relied upon any statements or representations regarding Kinston or the Other Properties, including any representations made by Founder or its Affiliates, employees or agents or any real estate agency or any agent.

16.9 Soils and Radon.

(a) Acknowledgment. BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER SHALL BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED THAT: (i) THE SOILS WITHIN COLORADO CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS WHICH MAY ADVERSELY AFFECT THE INTEGRITY OF A SITE OR A COMMON ELEMENT IF SUCH SITE OR COMMON ELEMENT IS NOT PROPERLY MAINTAINED, (ii) EXPANSIVE SOILS CONTAIN CLAY WHICH HAVE THE CHARACTERISTIC OF CHANGING VOLUME WITH THE ADDITION OR SUBTRACTION OF MOISTURE, THEREBY RESULTING IN SWELLING AND/OR SHRINKING SOILS, and (iii) THE ADDITION OF MOISTURE TO LOW-DENSITY SOILS CAUSES A RE-ALIGNMENT OF SOIL GRAINS, THEREBY RESULTING IN CONSOLIDATION AND/OR COLLAPSE OF THE SOILS.

(b) Waiver of Liability of Founder. BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER SHALL BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED THAT SUCH OWNER HAS WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES AGAINST

FOUNDER OR ITS AFFILIATES AND THE MANAGERS, MEMBERS, EMPLOYEES AND AGENTS OF FOUNDER AND ITS AFFILIATES, FOR ANY LOSS OR DAMAGE TO ANY PORTION OF THE SITE OR ANY COMMON ELEMENTS CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH SOIL CONDITIONS, INCLUDING THE PRESENCE OF EXPANSIVE SOILS AND RADON GAS.

16.10 Molds. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) molds, mildew, fungi, bacteria and microbiologic organisms (collectively, "Molds") are present in soil, air and elsewhere in the environment, (b) Molds can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions, (c) certain parties have expressed concerns about the possible adverse effects on human health from exposure to Molds, (d) due to various reasons, including the varying sensitivities of different individuals to various types of Molds and other contaminants, as of the date this Declaration is Recorded there currently exist no Colorado or federal standards regarding acceptable levels of exposure to Molds, (e) according to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants, including some forms of Molds, (f) as of the date this Declaration is Recorded, it is unknown how many potential health problems relate primarily or exclusively to Molds, (g) by acquiring a Site, each Owner acknowledges and agrees that Founder is not qualified and has not undertaken to evaluate all aspects of this very complex issue, and (h) FOUNDER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING, THE PAST, CURRENT OR FUTURE, PRESENCE OR ABSENCE OF MOLDS IN OR IN THE VICINITY OF ANY SITE. Founder recommends that each Owner, at such Owner's expense, conduct its own investigation and consult with such experts as such Owner deems appropriate regarding the occurrence and effects of Molds, the potential sensitivity or special risk individuals who will occupy any Site or the improvements thereon may have with respect to Molds, and methods to reduce or limit Molds within such Site or the improvements thereon.

16.11 Subsurface Rights. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) subsurface rights, including those pertaining to it, natural gas, other hydrocarbon, and minerals, underneath the surface of the Property may be owned by Persons other than the owners of the surface of the Property, and (b) the owners of such subsurface rights may have rights to explore, extract and remove the same in accordance with applicable law.

16.12 Retention Ponds and Detention Ponds. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) in furtherance of developing the Property, retention ponds and/or detention ponds may be constructed within or in proximity to the boundaries of the Property to hold and release storm water, (b) with the presence of retention ponds or detention ponds, surface water may accumulate 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, (c) certain risks and dangers of physical injury and property damage are inherent in the physical configuration of a retention pond and a detention pond, and (d) such Owner hereby releases Founder, Founder's Affiliates, the Kinston Community Association, and the Design Review Board from any and all

liability for any injury, loss or damage arising from such flooding or otherwise arising from the retention ponds or detention ponds.

16.13 No Liability for Condition of the Property/Nuisances/Hazards Associated with Other Properties. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) its Site may be located adjacent to or in relatively close proximity to Other Properties utilized for commercial and other non-residential uses and further its Site may be affected by amendment to the land or soil conditions (including expansive soils corrections) resulting from construction, engineering, grading, and soil preparation, (b) that such Owner recognizes and assumes the risks of owning property adjacent to or within relatively close proximity to the Other Properties and the risks of the condition of the land and soils including: (i) expansive soils conditions and drainage issues on or under the Property, and (ii) injury to person and property arising out of, or resulting from, the operation, maintenance and use of the Other Properties, noise associated with the Other Properties, noise, odors, and attractive nuisances to children (all of the above being collectively referred to as the “**Property Risks**”), (c) neither Founder, Founder’s Affiliates, the Kinston Community Association or the Design Review Board shall have any liability for any personal injury or property damage resulting from the Property Risks, and (d) such Owner for itself and its heirs, personal representatives, executors, tenants, successors, assigns, invitees and licensees: (i) assumes the risk of loss, injury or damage to property or persons resulting from the Property Risks, (ii) agrees to obtain such policies of insurance as may be necessary to insure such Owner and such other Persons from injury or damage to property or person resulting from the Property Risks, (iii) releases and holds harmless Founder, Founder’s Affiliates, the Kinston Community Association and the Design Review Board and discharges them from any liability for any personal injury or property damage resulting from the Property Risks, including that arising from the negligence of Founder’s, agents, contractors, subcontractors, employees, officers, successors, assigns, guests, or invitees, and (iv) indemnifies (including the payment of reasonable costs and attorneys’ fees) Founder, Founder’s Affiliates, the Kinston Community Association and the Design Review Board from and against any claims, actions, suits, demands and compensations, either at law or in equity, brought against or incurred by Founder, Founder’s Affiliates, the Kinston Community Association and the Design Review Board for or on account of any damage, loss, or injury either to person or property, or both, resulting directly or indirectly from the Property Risks.

16.14 Waiver and Release. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) the Construction Activities, the Social and Commercial Activities, the Noise Disturbances, the Public Facilities, the use of non-potable water, the development of Other Properties, Molds, the Property Rights and the Oil and Gas Wells (collectively, the “**Activities and Conditions**”), and the impacts and disturbances generated by or incurred in connection with the Activities and Conditions may occur in and around Kinston, and may occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time, and (b) such Owner (unless such owner is Founder) forever waives and releases all actions and claims such Owner and its successors and assigns may have against Founder, any Affiliate of Founder or the other Owners and their Guests and each of their successors and assigns that in any way arise out of the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Activities and Conditions.

16.15 Disclaimer. By acceptance of a deed to any portion of the Property, each Owner shall be deemed to have acknowledged and agreed that: (a) neither Founder nor its Affiliates makes any representation, covenant or warranty to any Owner concerning, the occurrence or non-occurrence, nature, scope, schedule or continuation of Activities and Conditions and the Social and Commercial Activities, (b) the Activities and Conditions may not be operated or occur on or during the same hours, days or months as any schedule in effect or contemplated at any time, and (c) Activities and Conditions exist or may occur or be conducted at any time both daytime and nighttime.

16.16 Conflicts with Applicable Law. IN THE EVENT THAT ANY PROVISION IN THIS ARTICLE XVII CONFLICTS WITH ANY APPLICABLE FEDERAL OR COLORADO STATUTES WHICH PROVIDE NON-WAIVABLE LEGAL RIGHTS, INCLUDING THE CDARA OR CCPA, THEN THE NON-WAIVABLE TERMS OF SUCH STATUTE SHALL CONTROL.

## ARTICLE XVII DISPUTE RESOLUTION AND REMEDIES

### 17.1 Procedures for Disputes.

#### (a) Applicability.

(i) Founder, the Kinston Community Association, the Design Review Board, each Officer, Director, member of the Design Review Board, member of any committee of the Board, Owner, and Guest, each other Person subject to this Declaration, as well as each Person not otherwise subject to this Declaration who commits in writing to be bound by the provisions of this Article XVII, regardless of whether such commitment is made directly to less than all of the other ADR Parties (each, a “**ADR Party**”) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation, and accordingly, agrees to resolve all Claims between or among the ADR Parties exclusively pursuant to the provisions of this Article XVII. Each Initiating Party’s ability to obtain any remedy from any ADR Party with respect to any Claim, or any other relief with respect to such Claim, is conditioned upon such Initiating Party processing such Claim exclusively pursuant to, and otherwise complying with, the provisions of this Article XVII.

(ii) No ADR Party shall submit any Claim to a court of law or equity.

(iii) Exempt Claims may be submitted to a court of law or equity.

(iv) Notwithstanding any other provision herein, all provisions of this Article XVII shall apply to all Exempt Claims, except Sections 17.2, 17.3, 17.4, 17.5, and 17.7, which shall not apply to Exempt Claims.

#### (b) Definitions.

(i) The term “**Claim**” means each claim, grievance or dispute arising out of, relating to, or constituting: (A) a Construction Defect Action, regardless of

whether any alleged defect in design or construction occurred after the date this Declaration is Recorded, (B) the interpretation, application or enforcement of the Community Documents, or (C) the rights, obligations and duties of any ADR Party under this Declaration, *provided, however*, the term "Claim" not does include Exempt Claims.

(ii) "**Construction Defect Action**" (a) means any proceeding for damages, indemnity, subrogation, or contribution brought against a Construction Professional to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property, regardless of the theory of liability, and (b) includes any related, ancillary, or derivative claim, and any claim for breach of fiduciary duty or an act or omission of a Director, that arises from an alleged construction defect that seeks the same of similar damages.

(iii) "**Construction Professional**" means: (a) an architect, contractor, subcontractor, developer, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property; *provided*, if the improvement to real property is to a property that is zoned to permit commercial, industrial or offer types of uses, then term "Construction Professional" shall also include any prior owner of the such real property other than the claimant, at the time the work was performed, and (b) any other Person identified as a "Construction Professional" pursuant to the terms of Section 802.5 of CDARA.

(iv) The term "**Exempt Claim**" means a claim, grievance or dispute: (A) regarding enforcement of the terms of any Award, arbitration agreement or written settlement agreement, (B) by the Kinston Community Association against any Person to enforce the payment of Assessments or any other amount allegedly owed to the Kinston Community Association or the Design Review Board, (C) by the Kinston Community Association, Design Review Board or Founder to obtain a temporary restraining order, injunction or any other form of injunctive or equitable relief and such other ancillary relief as the court may deem necessary, (D) solely between or among Owners and not involving Founder, the Design Review Board or any Construction Professional, to the extent such claim, grievance or dispute which would constitute a cause of action independent of this Declaration, , or (E) which is a counter claim, cross-claim or third-party claim brought by any ADR Party in proceedings instituted against such ADR Party. In no event shall any portion of this Article XVII apply to any claim solely between a lender and a grantor under a deed of trust or similar instrument encumbering all or a portion of the Property.

(v) The term "**Party**", with respect to any Claim, means the Initiating Party or a Responding Party with respect to such Claim, and "**Parties**" means both the Initiating Party and the Responding Parties with respect to such Claim.

(vi) The term “**Qualified Individual**”, with respect to any Claim, means an individual who: (A) is, and has been for at least twenty (20) years, a practicing attorney in the State of Colorado; *provided, however*, if such Claim is a Construction Defect Action, such individual’s legal practice is, and has been for at least fifteen (15) years, primarily within the area of real estate development or construction, (B) is impartial and independent of all Parties involved in such Claim, and (C) is available to arbitrate such Claim within the timeframes set forth in this Declaration or such other Person who the Parties to the Claim have agreed in writing to be the arbitrator for such Claim.

(vii) The term “**Standard Claim**” means a Claim other than a Construction Defect Action.

17.2 Procedures for Standard Claims.

(a) Dispute Notice for Standard Claims. To initiate resolution of a Standard Claim, the Initiating Party for such Standard Claim shall deliver to all Persons whom the Initiating Party designates as a Responding Party written notice of such Standard Claim (a “**Standard Claim Dispute Notice**”), stating plainly and concisely: (i) the nature of the Standard Claim, including the Persons involved and the Responding Party’s role in such Standard Claim, (ii) the legal basis of such Standard Claim (*i.e.*, the specific authority out of which such Standard Claim arises), (iii) the proposed remedy, and (iv) the fact that the Initiating Party will meet with the Responding Party to discuss in good faith ways to resolve such Standard Claim.

(b) Negotiation and Mediation for Standard Claims.

(i) After the Responding Party’s receipt of a Standard Claim Dispute Notice, the Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the subject Standard Claim by good-faith negotiation. If requested in writing by the Parties to such Standard Claim, accompanied by a copy of the Standard Claim Dispute Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve a Standard Claim within thirty (30) days after the date the Responding Party receives a Standard Claim Dispute Notice in respect thereof, then the Initiating Party shall have an additional ten (10) days to submit such Claim to mediation under the auspices of an independent mediation service designated by the Parties, or if the Parties cannot agree on a mediation service then as designated jointly by each of the Parties’ desired mediation service, and providing dispute resolution services in the greater Denver, Colorado metropolitan area. The mediation service selected or designated as the service through which a Standard Claim will be mediated shall appoint a Qualified Individual associated with such service to serve as the mediator with respect to such Standard Claim. If the Initiating Party does not submit such Standard Claim to mediation within such additional ten (10)-day period or fails to have at least one Person with authority to fully and finally settle, on behalf of the Initiating Party, the Standard Claim that is the subject of such mediation attend the entirety of each stage of the mediation, then the Initiating Party shall be deemed to have



waived such Standard Claim (on behalf of itself and any Person for whom the Initiating Party is asserting such Standard Claim) and the Responding Party shall be deemed released and discharged from any and all liability to the Initiating Party and all Persons for whom the Initiating Party is asserting such Claim.

(iii) With respect to each Standard Claim, the Parties thereto will share equally all charges rendered by the mediator.

(iv) Any settlement of a Standard Claim through mediation shall be documented in writing by the mediator and signed by the Parties. The mediation will be deemed terminated (“**End of Mediation**”) on the earlier to occur of: (A) thirty (30) days after submission of the Claim to mediation, or (B) a date to which the Parties have agreed in writing. Upon End of Mediation, the Parties thereto will jointly request and require the mediator to deliver to each of them a written notice stating that such Parties are at an impasse and setting forth the date the mediation was terminated.

(c) Final and Binding Arbitration for Standard Claims. If the Parties do not agree in writing to a settlement of a Standard Claim within ten (10) days after the End of Mediation, then, within such ten (10)-day period, the Initiating Party may submit such Standard Claim to arbitration in accordance with this Section 17.2(c). If the Initiating Party does not submit such Standard Claim to arbitration within such ten (10)-day period, or fails to have at least one Person with authority to fully and finally settle, on behalf of the Initiating Party, the Standard Claim that is the subject of such arbitration attend the entirety of each stage of the arbitration, then the Initiating Party shall be deemed to have waived such Standard Claim, on behalf of itself and any Person for whom the Initiating Party is asserting such Standard Claim, and the Responding Party shall be deemed released and discharged from any and all liability to the Initiating Party (and all Persons for whom the Initiating Party is asserting such Standard Claim).

### 17.3 Procedures for Construction Defect Actions.

(a) Dispute Notice for Construction Defect Actions. To initiate resolution of a Construction Defect Action, the Initiating Party for any Construction Defect Action shall deliver to all Persons whom the Initiating Party designates as a Responding Party written notice of such Claim (a “**Construction Defect Dispute Notice**”), stating plainly and concisely: (i) the nature of the Construction Defect Action, including the Persons involved and the Responding Party’s role in such Construction Defect Action, (ii) the legal basis of such Construction Defect Action (*i.e.*, the specific authority out of which such Construction Defect Action arises), (iii) the proposed remedy, and (iv) the fact that the Initiating Party will meet with the Responding Party to discuss in good faith ways to resolve such Construction Defect Action.

#### (b) Mediation for Construction Defect Actions.

(i) Construction Defect Actions are subject to CDARA, including: (A) the requirements that an Initiating Party deliver a notice to Construction Professionals pursuant to Section 803.5 of CDARA prior to the filing a Construction Defect Action (a “**CDARA Notice of Claim**”), (B) an opportunity for Construction Professionals to

inspect the subject property, and (C) a requirement that the parties complete their agreed-upon mediation procedure, prior to the Initiating Party filing any Claim.

(ii) If, in respect of any Construction Defect Action, all Construction Professionals to whom the Initiating Party has delivered a Construction Defect Dispute Notice and a CDARA Notice of Claim are ADR Parties with respect to such Construction Defect Action, then:

(A) the ADR Parties shall be deemed to have agreed that mediation procedure set forth in this Section 17.3(b) shall be the Parties' agreed-upon mediation procedure referenced in Section 803.5(6) of CDARA,

(B) if: (1) an offer of settlement by a Construction Professional is not made in accordance with and by the deadline set forth in Section 803.5(3) of CDARA, (2) the Initiating Party rejects a timely-delivered offer of settlement as set forth in Section 803.5(6) of CDARA, or (3) the Initiating Party is deemed to have rejected a timely-delivered offer of settlement pursuant to Section 803.5(4) of CDARA, then the Initiating Party and the applicable Construction Professional shall submit such Construction Defect Action to mediation under the auspices of an independent mediation service designated by the Parties, or if the Parties cannot agree on a mediation service then as designated jointly by each of the Parties' desired mediation service, and providing dispute resolution services in the greater Denver, Colorado metropolitan area,

(C) the mediation service selected or designated as the service through which a Construction Defect Action will be mediated shall appoint a Qualified Individual associated with such service to serve as the mediator with respect to such Construction Defect Action,

(D) the Initiating Party and the applicable Construction Professionals shall send to all mediation proceedings at least one Person who has the authority to fully and finally settle the Construction Defect Action on its behalf,

(E) with respect to each Construction Defect Action, the Parties thereto will share equally all charges rendered by the mediator,

(F) any settlement of a Construction Defect Action through mediation shall be documented in writing by the mediator and signed by the Parties,

(G) the End of Mediation, with respect to mediation conducted pursuant to this Section 17.3(b), shall be the earlier to occur of: (1) ninety (90) days after submission of the Construction Defect Action to mediation, or (2) a date to which the Parties have agreed in writing, and

(H) upon the End of Mediation, the Parties thereto will jointly request and require the mediator to deliver to each of them a written notice stating that such Parties are at an impasse and setting forth the date the mediation was terminated.

(c) Final and Binding Arbitration for Construction Defect Actions. If, with respect to a Construction Defect Action: (i) the Initiating Party has satisfied its obligations herein with respect to the mediation of such Construction Defect Action, and (ii) the Parties have not agreed in writing to a settlement of such Construction Defect Action within ten (10) days after the End of Mediation with respect to a Construction Defect Action mediated pursuant to Section 17.3(b)(ii), or the end of mediation with respect to a Construction Defect Action not mediated pursuant to Section 17.3(b)(ii), then the Initiating Party shall be permitted to, and only then shall the Initiating Party be permitted to, mail or deliver notices pursuant to Section 17.4(a)(i) with respect thereto.

17.4 Additional Requirements to be Satisfied Prior to Submitting a Construction Defect Action to Arbitration. Before the Kinston Community Association pays, or commits to pay, any amount to any attorney representing the Kinston Community Association in any Construction Defect Action, or otherwise institutes a Construction Defect Action, the Board shall comply with this Section 17.4 and Section 17.6.

(a) Required Notices of Proposed Construction Defect Action.

(i) The Board shall mail or deliver written a notice of the anticipated commencement of the Construction Defect Action to each Owner at such Owner's last-known address described in the Kinston Community Association's records and to the last-known address of each Construction Professional against whom a Construction Defect Action is proposed, except that this notice requirement does not apply to:

(A) Construction Professionals identified after the notice is mailed; *provided, however,* the Board shall mail or deliver a notice pursuant to Section 17.4(a)(i) to each such Construction Professional within five (5) days after any Officer, Director, agent or employee of the Kinston Community Association or the managing agent of the Kinston Community Association becomes aware that such Construction Professional may be involved with respect to such Construction Defect Action, or

(B) joined parties in a Construction Defect Action previously approved by Owners pursuant to Section 17.4(g)(i).

(ii) The timing for the delivery of any notice pursuant to Section 17.4(a)(i) is subject to the provisions of Section 17.4(b).

(iii) The Kinston Community Association shall be required to include in the notice required pursuant to Section 17.4(a)(i) any documents that any Construction Professional requests be included therein at least two (2) days before the date of mailing.

(iv) At least twenty-five (25) business days before the mailing of the notice required by Section 17.4(a)(i), the Kinston Community Association shall notify each Construction Professional against whom a Construction Defect Action is proposed by mail, at its last-known address, of the date and time of the meeting called to consider the Construction Defect Action pursuant to Section 17.4(a)(i).

(b) Owners Meeting. The notice given pursuant to Section 17.4(a)(i) must call an Owners Meeting, which must be held no less than ten (10) days and no more than fifteen (15) days after the mailing date of such notice, to consider whether to submit a Construction Defect Action to arbitration. A failure to hold such Owners Meeting within this time period voids the subsequent vote. A quorum is not required at such Owners Meeting. In no event shall the time period for providing the notice required pursuant Section 17.4(a)(i), holding the meeting required pursuant to this Section 17.4(b), and voting as required by Section 17.4(g) exceed ninety (90) days.

(c) Contents of Notice. The notice required by Section 17.4(a)(i) must state that:

(i) the conclusion of Owners Meeting initiates the voting period, during which the Kinston Community Association will accept votes for and against proceeding with the Construction Defect Action. The disclosure and voting period shall end ninety (90) days after the mailing date of the notice required by Section 17.4(a)(i) or when the Kinston Community Association determines that the Construction Defect Action is either approved or disapproved, whichever occurs first,

(ii) the Construction Professional against whom the Construction Defect Action is proposed will be invited to attend and will have an opportunity to address the Owners concerning the alleged construction defect, and

(iii) the presentation at the meeting by the Construction Professional or the Construction Professional's designee or designees may, but is not required to, include an offer to remedy any defect in accordance with CDARA.

(d) Additional Notice Requirements and Disclosures. Each notice required by Section 17.4(a)(i) must:

(i) contain a description of the nature of the Construction Defect Action, which description identifies alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved and any other pertinent information,

(ii) include the following disclosures, without any changes in content, except for filling in placeholders set forth below, without any changed in the order of appearance, in at least twelve (12)-point font, and in a prominent place within such notice:

(A) Owners are not required to cast their vote(s) at the end of the Owners Meeting. Such vote(s) may be cast at any time prior to [insert the date that is the expiration of voting period], and it may be advisable to obtain additional information prior to casting your vote(s).

(B) The Board (intends to enter) (has entered) into a fee arrangement with the attorneys representing the Kinston Community Association, under which (the attorneys will be paid a contingency fee equal to ----- percent of the (net) (gross) recovery of the amount the Kinston Community Association recovers from the defendant(s) (the Kinston Community Association's attorneys will be paid (an hourly fee of \$ -----) (a fixed fee of \$ -----)), and pursuant to all agreements with the attorneys representing the Kinston Community Association, the following sets forth in reasonable detail all other means by which the attorneys representing the Kinston Community Association may receive any form of compensation or reimbursement in connection with the proposed Construction Defect Action: (-----, -----, and -----).

(C) In addition to attorney fees, the Kinston Community Association may incur up to \$ ----- for legal costs, including expert witnesses, depositions, and filing fees. The amount will not be exceeded without the Board's further written authority.

(D) The Board expects the fees and costs the Kinston Community Association will incur if it proceeds with the proposed Construction Defect Action, not including amounts due as part of a percentage of the amount awarded to or recovered by the Kinston Community Association, will not exceed (\$----) (the "Fee Cap").

(E) If the Kinston Community Association elects to initiate the Construction Defect Action, and the legal costs and fees and such action (other than the amounts due as part of a percentage of the amount awarded to or recovered by the Kinston Community Association) exceed the Fee Cap, and the Board and the Owners do not approve an increase to the Fee Cap,

(1) the Kinston Community Association may have to withdraw from such action,

(2) the Kinston Community Association may have to pay its attorneys all of their fees and costs, and

(3) the construction defects will likely remain unrepaired until the Kinston Community Association levies a special assessment on the Owners to its attorneys' fees and costs and pay for the repairs.

(F) The Kinston Community Association may not proceed with the Construction Defect Action without the Approval of Owners.

(G) The Owners shall be deemed to have approved initiating the Construction Defect Action if a majority of the votes allocated to Owners are cast in favor of initiating the Construction Defect Action.

(H) If the Kinston Community Association prevails on its claim, the amount the Kinston Community Association will receive will be reduced by: (1) the amount equal to ----- percent of the (net) (gross) recovery of the amount the Kinston Community Association recovers from the defendant(s)) (the Kinston Community Association's attorneys will be paid (an hourly fee of \$ - ----) (a fixed fee of \$ -----)), and (2) all other cost and expenses incurred in connection with the claim including expert fees, deposition costs, filing fees and other costs and expenses of the Kinston Community Association's attorneys.

(I) Even if the Kinston Community Association prevails on its claim, the amount the Kinston Community Association will receive will likely not be sufficient to pay all the costs of the construction defects and the Kinston Community Association may be forced to levy a Special Assessment on the Owners for the deficit.

(J) There is no guarantee that the Kinston Community Association will recover enough funds to repair the claimed construction defect(s). If the claimed defects are not repaired, additional damage to property and a reduction in the useful life of the common elements might occur.

(K) Until the claimed construction defects are repaired, or until the construction defect claim is concluded, the market value of the units in the Kinston Community Association might be adversely affected.

(L) The alleged construction defects might result in increased costs to the Kinston Community Association in maintenance or repair or cause an increase in assessments to cover the cost of repairs.

(M) If the Kinston Community Association does not file a claim before the applicable legal deadlines, the claim will expire.

(N) Until the alleged defects are repaired, sellers of Sites within Kinston might owe Site buyers a duty to disclose known defects.

(O) Until the claimed construction defect(s) are repaired, or until the construction defect(s) claim is concluded, Owners might have difficulty refinancing and prospective buyers might have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed, and certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed. UNTIL THE CONSTRUCTION DEFECT ACTION IS RESOLVED, THESE FEDERAL LENDING GUIDELINES WILL LIKELY PREVENT AN OWNER FROM REFINANCING A LOAN ENCUMBERING ITS SITE AND MAY PREVENT

PROSPECTIVE BUYERS OF AN OWNER'S SITE FROM OBTAINING A LOAN TO PURCHASE AN OWNER'S SITE, EVEN IF THE CLAIMED CONSTRUCTION DEFECT DOES NOT AFFECT SUCH OWNER'S SITE.

(P) If the Kinston Community Association does not prevail on its claim, the Kinston Community Association may be responsible for paying these legal expenses, and the construction defects will not be repaired.

(Q) If the Kinston Community Association does not prevail on its claim, the Kinston Community Association may be responsible for paying its attorney fees and all the costs and expenses incurred by such attorneys, including expert witness fees, deposition expenses, travel expenses, and filing fees.

(R) If the Kinston Community Association does not prevail on its claim, a court or arbitrator sometimes awards costs and attorney fees to the opposing party. Should that happen in this case, the Kinston Community Association may be responsible for paying the opposing party's costs and fees as a result of such award.

(e) Verified Mailing List.

(i) The Kinston Community Association shall maintain a verified Owner mailing list that identifies the Owners to whom the Kinston Community Association mailed the notice required pursuant to Section 17.4(a)(i) and the date(s) upon which such mailing to each occurred (a "Verified List"). The Verified List shall include: (A) for each Owner, the address, if any, to which the Kinston Community Association mailed the notice required pursuant to Section 17.4(a)(i), (B) the number of votes appurtenant to each Site, and (C) a designation of any votes that may not be cast pursuant to the terms of the Community Documents. The Kinston Community Association shall deliver, by nationally-recognized overnight courier, and shall also provide a copy of the Verified List to each Construction Professional who is sent a notice pursuant to Section 17.4(a)(i) and at the Owner Meeting required under Section 17.4(b). An Owner and Director mailing list shall be deemed verified if a specimen copy of the mailing list is certified correct and complete by an Officer or an agent of the Kinston Community Association.

(ii) If the Kinston Community Association commences a Construction Defect Action against any Construction Professional, the Kinston Community Association shall file its Verified List and records of votes received from Owners during the voting period with the appropriate forum under seal.

(f) Amended or Supplemented Claim. The substance of a proposed Construction Defect Action may be amended or supplemented after the Owners Meeting held pursuant to Section 17.4(b), but an amended or supplemented claim does not extend the voting period. The Board shall give notice to all Owners of any amended or supplemented claim, within thirty (30) days after such amendment or supplement is filed with the arbitrator, and shall maintain records of its communications with Owners. Approval pursuant to Section 17.4(g)(i) is

not required for amendments or supplements to a Construction Defect Action made after the notice pursuant to Section 17.4(a)(i).

(g) Approval Required to Proceed with Construction Defect Action.

(i) Notwithstanding any requirement in the Kinston Community Association's governing documents, the Board may initiate a Construction Defect Action only if authorized within the voting period by Owners to which a majority of votes in the Kinston Community Association are allocated. Such approval is not required for the Kinston Community Association to proceed with a Construction Defect Action if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the alleged defect does not exceed fifty thousand dollars (\$50,000). Such approval is not required for the Kinston Community Association to proceed with a Construction Defect Action when the Kinston Community Association is the contracting party for the performance of labor or purchase of services or materials.

(ii) Each Owner's vote shall be submitted only once and may be obtained in any written format confirming the Owner's vote to approve or reject the proposed Construction Defect Action.

(iii) The Kinston Community Association shall maintain a record of all votes until the conclusion of the Construction Defect Action, including all appeals, if any.

(iv) For purposes of calculating the required majority vote under this Section 17.4(g) only, the following votes are excluded:

(A) Any votes allocated to Sites owned by a Development Party. As used in this Section 17.4(g)(iv)(A): (1) the term "**Development Party**" means a contractor, subcontractor, developer, or builder responsible for any part of the design, construction, or repair of any portion of Kinston and any of that party's affiliates, and (2) "affiliate" includes an entity controlled or owned, in whole or in part, by any person that controls or owns a Development Party or by the spouse of a Development Party.

(B) Any votes allocated to Sites owned by banking institutions, unless a vote from such an institution is actually received by the Kinston Community Association.

(C) Any votes allocated to Sites owned by Owners who are deemed nonresponsive. If the status of the nonresponsive Owners is challenged in court or in an arbitration, the court shall consider whether the Board has made diligent efforts to contact the Owner regarding the vote and may consider: Whether a mailing was returned as undeliverable, whether the Owner appears to be residing at the Site, and whether the Kinston Community Association has used other contact information, such as an electronic mail address or telephone number for the Owner. The Kinston Community Association, at its sole cost and expense, shall provide each Construction Professional so requesting with real time updates



regarding whether each Owner has voted, whether each Owner has voted for or against proceeding with the Construction Defect Action, the actions taken by the Kinston Community Association to contact Owners and facts related thereto (including whether a mailing was returned as undeliverable or whether the Owner appears to be residing at the Site), and all other matters with respect to the Owners' vote on whether to proceed with the Construction Defect Action.

(h) If, for any reason (including due to Section 303.5(4) of CCIOA), the entirety of Section 303.5 of CCIOA is held invalid, then notwithstanding such invalidation all provisions of this Declaration and the other Community Documents shall remain in full force and effect except:

(i) Section 17.4(b) shall be deemed deleted and replaced with the following language:

“Owners Meeting. The notice given pursuant to Section 17.4(a)(i) must call an Owners Meeting, which must be held no less than sixty (60) days and no more than one hundred eighty (180) days after the mailing date of such notice, to consider whether to submit a Construction Defect Action to arbitration. A failure to hold such Owners Meeting within this time period voids the subsequent vote. A quorum at such Owners Meeting shall be required. For purposes of this Owners Meeting, a quorum at such Owners Meeting shall be constituted by, and only by, the presence, in person or by proxy, of Owners of Sites holding at least a Majority of the votes of Owners entitled to vote. In no event shall the time period for providing the notice required pursuant Section 17.4(a)(i), holding the meeting required pursuant to this Section 17.4(b), and voting as required by Section 17.4(g) exceed one hundred eighty (180) days.”,

and

(ii) Section 17.4(g)(iv) shall be deemed deleted.

#### 17.5 Additional Provisions Regarding Construction Defect Actions.

(a) Duty to Update Verified List. If any Director, Officer, employee of the Kinston Community Association, or employee of the Kinston Community Association's management company becomes aware that any Verified List delivered to any Construction Professional is or has become incorrect, then the Kinston Community Association shall deliver, by nationally-recognized overnight courier, an updated and correct copy of the Verified List to each Construction Professional at the earliest to occur of: (i) earliest time reasonably possible, (ii) two (2) days after such Person became so aware; or (iii) the commencement of the Owners Meeting referenced in Section 17.4(b).

(b) Owners Meeting. At the Owners meeting described in Section 17.4(b), each Construction Professional against whom the Construction Defect Action is proposed shall be given the greater of: (i) one hour; or (ii) the amount of time provided to proponents of instituting a Construction Defect Action. Construction Professional shall be provided an equivalent opportunity to address the Owners as is provided to any Director, the Board, the attorneys for the Kinston Community Association, or any other Person. Such equivalency shall be with respect to all parameters including use of audio and visual equipment and displays. No later than fifteen (15) days prior to the Owners meeting, the Board shall send written notice to all Construction Professional setting forth all such parameters and shall not change such parameters over the objections of any Construction Professional. A Construction Professional may cede its right to such equivalent opportunity (including time allocated to such Construction Professional) to another Construction Professional or any other Person.

(c) Fee Cap and Other Budget Estimates.

(i) The Kinston Community Association shall not pay, nor shall the Board, any Officer or any agent of the Kinston Community Association obligate the Kinston Community Association to pay, any fees or costs related to the proposed Construction Defect Action in excess of the Fee Cap, unless: (A) the Board has approved such payment or obligation and set a new amount to be the Fee Cap, which shall not be greater the fifteen percent (15%) of the then-existing Fee Cap, and (B) such payment or obligation and the higher Fee Cap have been approved by the Owners at an Owner's meeting.

(ii) The Kinston Community Association shall not pay, nor shall the Board, any Officer or any agent of the Kinston Community Association obligate the Kinston Community Association to pay, any fees or costs related to the proposed Construction Defect Action: (A) by any means that is not set forth in the notice delivered pursuant to Section 17.4(a)(i), or (B) in excess the amounts set forth in the notice delivered pursuant to Section 17.4(a)(i).

17.6 Testing for Construction Defects.

(a) The Kinston Community Association will not undertake or authorize any testing, including investigative testing, destructive testing or invasive testing of any kind for defects in construction of any Site, including any Common Element, without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board may rely on the opinions and/or the conclusions of qualified experts (*e.g.*, structural engineers).

(b) In determining whether to authorize such testing, the Board will be governed by the following considerations:

(i) whether the Kinston Community Association's position is strong enough to justify taking any other or further action,

(ii) whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable Person and to justify expending the Kinston Community Association's resources, and

(iii) whether it is in the Kinston Community Association's best interests, based upon risk, hardship, expense, inconvenience, collateral effects on any Owner(s), or other reasonable criteria, to pursue the matter further.

(c) In the event the Board undertakes or authorizes testing for any kind of defects in design or construction, then prior to any testing taking place, Founder and others responsible for the design or construction of the affected improvements shall be entitled to written notice of the alleged defect and access to the area of the alleged defect. Founder and others responsible for the design and construction of the affected improvements will be entitled to be present during any testing and may record (via video, audio, photographs, or any other recording method) all testing conducted and all alleged defects found.

#### 17.7 Arbitration.

(a) Arbitration Procedures. Any Claim properly and timely submitted to arbitration in accordance with Section 17.2 or Section 17.3 shall be conducted by the Arbitration Firm (as such term is defined below) in Denver, Colorado, pursuant to the provisions of the Colorado Arbitration Act, C.R.S. 13-22-201, et seq., and in accordance with the laws of the State of Colorado and the Construction Industry Arbitration Rules of the American Arbitration Association with respect to Construction Defect Actions, or the Commercial Arbitration Rules of the American Arbitration Association with respect to Standard Claims, as appropriate. For purposes hereof, the term "**Arbitration Firm**", shall mean Judicial Arbiter Group, Inc., located in Denver, Colorado ("**JAG**"); *provided however*, within fifteen (15) days after the Claim is submitted to arbitration, JAG has failed to provide a Qualified Individual acceptable to the Parties or if JAG is not in business, then each of the Parties shall select an arbitration firm providing arbitration services in the greater Denver, Colorado metropolitan area, and Arbitration Firm shall be the firm providing arbitration services in the greater Denver, Colorado metropolitan area that is selected by joint agreement of each arbitration firm selected by each Party. There shall be one arbitrator for such arbitration and such arbitrator shall be a Qualified Individual. If the parties cannot agree on an arbitrator to conduct the arbitration within thirty (30) days after the Claim is submitted to arbitration, then the arbitrator shall be selected by Arbitration Firm, which shall appoint a Qualified Individual to serve as an the arbitrator. Such arbitration shall be conducted and the arbitrator shall deliver a written decision with respect thereto (an "**Award**"), within one hundred twenty (120) days after the date such Claim is submitted to arbitration.

(b) Confidential. All statements or admissions by any Person, whether oral or written, made in the course of any arbitration pursuant to the provisions hereof shall be deemed confidential and shall not be disclosed outside of such arbitration proceedings by any Person.

(c) Agreement to Arbitrate. The provisions of this Article XVII shall be deemed an agreement to arbitrate and will be specifically enforceable under the applicable arbitration laws of the State of Colorado. Each Award shall be final and binding with no right to

appeal, and judgment may be entered upon such Award in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) Fees and Costs. Except to the extent set forth in Section 17.8(b)(i), with respect to each Claim submitted to arbitration, the Parties thereto will share equally all filing fees and costs of the Arbitration Firm and the arbitrator for conducting such arbitration (“**Arbitration Costs**”).

#### 17.8 Challenges to the Community Documents.

(a) In addition to all other requirements in the Community Documents or as required by applicable law, the Kinston Community Association shall not initiate or pursue a Claim challenging the interpretation, application or enforceability of any provision of the Community Documents unless: (i) at least sixty-seven percent (67%) of the votes in the Kinston Community Association are cast in favor of initiative and pursuing such Claim at an Owner’s meeting called specifically for such purpose, and (ii) at least thirty (30) days, but not more than sixty (60) days, prior to such Owner’s meeting, the Board mails or delivers to each Owner at such Owner’s last-known address described in the Kinston Community Association’s records written notice: (A) setting forth the date, time and location of such Owner’s meeting, (B) setting forth the Board’s estimate of the legal fees and costs the Kinston Community Association could incur in initiating and pursuing such Claim (the “**Fee Estimate**”), (C) stating “If the Kinston Community Association does not prevail on such Claim, the Kinston Community Association may be required to pay the legal fees and costs of the other parties involved in such Claim as well as the legal fees and costs of the Kinston Community Association, and a Special Assessment may need to be levied against the Owners to pay legal fees and costs related to such Claim.”, (D) stating “Until the resolution of such Claim: (1) Owners may not be able to refinance their homes or Sites, (2) potential purchasers of their homes or Sites may not be able to obtain financing for the purchase of their homes or Sites, and (3) the market value of their homes and Sites will likely be depressed.”

(b) In no case shall the Kinston Community Association pay, or obligate itself to pay, any costs or expenses related to any Claim challenging the interpretation, application or enforceability of any provision of the Community Documents unless: (i) the Kinston Community Association has complied with the provisions of Section 17.8(a), and (ii) at least sixty-seven percent (67%) of the votes in the Kinston Community Association are cast in favor of initiative and pursuing such Claim at a meeting Owner’s meeting called specifically for such purpose. In no case shall the Kinston Community Association pay, or obligate itself to pay, any costs or expenses in excess of the Fee Estimate related to any Claim challenging the interpretation, application or enforceability of any provision of the Community Documents.

#### 17.9 Remedies.

(a) Limitation on Damages. No ADR Party shall be entitled to receive any award of damages in connection with any Claim or any Exempt Claim other than such ADR Party’s actual damages, except as expressly set forth in CDARA, CCPA, Section 123 of CCIOA, or other applicable rule of law, and each ADR Party shall be deemed to have waived such ADR Party’s right to receive any fees, costs and damages in respect of all Claims and all Exempt

Claims other than actual damages, which waiver includes such ADR Party's waiver of its right to receive any attorneys' fees and costs, any special, consequential, indirect, incidental, non-compensatory, punitive and exemplary damages, and damages for emotional distress, whether any of such damages are foreseeable or unforeseeable and regardless of whether any of such damages are based on (but not limited to) claims arising out of breach or failure of express or implied warranty or condition, breach of contract, failure to comply with building codes (local, state, or federal), construction defects (including soils related issues), misrepresentation, negligence or otherwise, except as expressly set forth in the Community Documents, CDARA, CCPA, Section 123 of CCIOA, or other applicable rule of law. BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER SHALL BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED THAT SUCH OWNER AND THE KINSTON COMMUNITY ASSOCIATION HAVE WAIVED SUCH OWNER'S AND THE KINSTON COMMUNITY ASSOCIATION'S RIGHT TO RECEIVE ANY FEES, COSTS AND DAMAGES IN RESPECT OF ANY CLAIM AND IN RESPECT OF ANY EXEMPT CLAIM OTHER THAN ACTUAL DAMAGES, WHICH WAIVER INCLUDES SUCH OWNER'S AND THE KINSTON COMMUNITY ASSOCIATION'S WAIVER OF ITS RIGHT TO RECEIVE ANY ATTORNEYS' FEES AND COSTS, ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, NON-COMPENSATORY, PUNITIVE AND EXEMPLARY DAMAGES, AND DAMAGES FOR EMOTION DISTRESS, WHETHER ANY OF SUCH DAMAGES ARE FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER ANY OF SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, FAILURE TO COMPLY WITH BUILDING CODES (LOCAL, STATE, OR FEDERAL), CONSTRUCTION DEFECTS (INCLUDING SOILS RELATED ISSUES), MISREPRESENTATION, NEGLIGENCE OR OTHERWISE, EXCEPT AS EXPRESSLY SET FORTH IN THE COMMUNITY DOCUMENTS, CDARA, CCPA, SECTION 123 OF CCIOA, OR OTHER APPLICABLE RULE OF LAW.

(b) Remedies. In addition to the rights and remedies otherwise available to the Kinston Community Association, if an Owner or Sub-Association fails to perform or observe any covenant or condition on such Owner's or Sub-Association's part to be performed or observed under this Declaration or any other Community Document, Kinston Community Association shall have the following rights and remedies:

(i) In the discretion of the Board, the Kinston Community Association may, for so long as any Owner or Sub-Association fails to comply with any such provisions, exclude such Owner and its Guests from the use of any Common Elements and from the participation in any Kinston Community Association affairs (including voting).

(ii) The Kinston Community Association may, but is not obligated to, cure such failure to comply at the Owner's or Sub-Association's sole cost and expense. If the Kinston Community Association incurs any costs or expenses in pursuant of curing any such failure to comply, the Owner or Sub-Association shall pay to the Kinston Community Association the amount of all costs incurred by the Kinston Community Association in connection therewith plus fifteen percent (15%) of the total amount of

such costs and expenses, or such other administrative fee amount as may be established by the Kinston Community Association from time to time, within thirty (30) days after the Owner or Sub-Association receives written notice of a Default Assessment therefor from the Kinston Community Association.

(iii) The Kinston Community Association may fine the Owner or Sub-Association, as a Default Assessment, an amount to be determined by the Board for each violation after notice and a hearing. The Owner or Sub-Association shall pay any such fine to the Kinston Community Association within thirty (30) days after the Owner or Sub-Association receives written notice of a Default Assessment therefor from the Kinston Community Association.

(iv) If an Owner or Sub-Association fails to pay to the Kinston Community Association any Assessment or other amount due to the Kinston Community Association as and when the same becomes due, the Owner or Sub-Association shall pay to the Kinston Community Association interest on such unpaid amount from the due date of such unpaid amount until the date paid at an interest rate per annum determined by the Board.

(c) Right to Notice and Hearing. Whenever the Community Documents require that an action be taken after "notice and hearing," the procedures set forth in the Rules therefore shall be observed.

(d) Non-Exclusive and Cumulative. Except as otherwise set forth herein or as limited by applicable rules of law: (i) each ADR Party shall be entitled to pursue and receive all rights and remedies available to such ADR Party under the Community Documents, at law or in equity, including injunctive relief, and (ii) all such rights and remedies shall be cumulative and the exercise of any right or remedy shall not preclude the exercise of any other right or remedy.

(e) Shifting of Fees, Costs and Expenses.

(i) The prevailing party in any Standard Claim or an Exempt Claim shall be entitled to recover from any non-prevailing party all of its fees, costs and expenses incurred in connection therewith, including the prevailing party's Arbitration Costs and other fees, costs and expenses of attorneys, accountants, engineers, appraisers and other experts and professionals engaged by the prevailing Party.

(ii) No party in any Construction Defect Action shall be entitled to recover from any other party in such Construction Defect Act any fees, costs or expenses incurred in connection therewith, including Arbitration Costs or other fees, costs or expenses of attorneys, accountants, engineers, appraisers and other experts and professionals incurred in connection with such Construction Defect Action, unless expressly required by CDARA, CCPA, Section 123 of CCIOA, or other rule of law.

(iii) If an Initiating Party submits any Claim that is not an Exempt Claim to a court of law or equity, and the Responding Party successfully removes such Claim from such court of law or equity to arbitration, then the Responding Party shall be entitled to recover from the Initiating Party all of its fees, costs and expenses incurred in

connection therewith, including the Responding Party's Arbitration Costs and other fees, costs and expenses of attorneys, accountants, engineers, appraisers and other experts and professionals engaged by the Responding Party.

17.10 Multiple Claims. Claims that are not consolidated or administered pursuant to the following sentence shall remain subject to this Article XVII and shall be resolved separately. Only with the written request of all Parties involved, which is hereby given with respect to all ADR Parties, the arbitrator may: (a) consolidate proceedings of any ADR Parties with Claims that are substantially identical into a single arbitration, and (b) arbitrate multiple Claims as a class action in accordance with the rules and procedures adopted by Arbitration Firm.

17.11 Waiver of Jury and Trial. BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY, AND EXCEPT AS EXPRESSLY SET FORTH OTHERWISE HEREIN, TO A TRIAL IN A COURT OF LAW OR EQUITY, WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY CLAIM OR EXEMPT CLAIM AND ALL COUNTER CLAIMS, CROSS-CLAIMS AND THIRD-PARTY CLAIMS RELATED THERETO.

17.12 Conflicts with Applicable Law. In the event that any provision in this Article XVII conflicts with any applicable law that provide non-waivable legal rights, including CDARA or CCPA, then the non-waivable terms of applicable law.

17.13 Responsible Governance Policy Regarding Disputes. The provisions of this Article XVII contain the Kinston Community Association's responsible governance policy regarding the procedures for addressing disputes arising between the Kinston Community Association and Owners as required under Section 209.5(1)(b)(VIII) of CCIOA.

## ARTICLE XVIII MISCELLANEOUS

18.1 Interpretation of the Declaration. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

18.2 Severability. Any determination by any court or arbitration of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provisions hereof.

18.3 Disclaimer of Representations. Notwithstanding any other provision herein, Founder makes no warranties or representations whatsoever that any plan envisioned for the complete development of Kinston can or will be carried out or that any land now owned or hereafter acquired by Founder of its Affiliates is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that, if such land is once used for a particular use, such use will continue in effect.

18.4 Reference to Declaration in Deeds. Deeds to, and instruments affecting, any Site or any other part of Kinston may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee Owner and any other Person claiming through any deed or other instrument and such Owner's and Person's heirs, executors, administrators, successors and assigns.

18.5 Successors and Assigns of Founder. Any reference in this Declaration to Founder shall include any successors or assignees of Founder's rights and powers hereunder, on the condition that Founder's rights and powers may only be assigned by a written Recorded instrument expressly assigning such rights and powers. Owner's rights and powers hereunder may be assigned in whole or in part with respect to some portion of the Property and Annexable Property and not others, or subject to whatever conditions Founder may impose.

18.6 Surrender of Founder Rights. Founder shall have the right to surrender any right or power granted to or reserved by Founder in the Community Documents, without the consent of any Owner of other Person, by Recording an instrument referencing this Declaration and setting forth the rights or powers being surrendered by Founder.

18.7 Captions and Titles. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

18.8 Notices.

(a) All Owners of each Site shall have one and the same registered mailing address to be used by the Kinston Community Association, the Directors, Officers, and Owners for notices, demands, and all other communications regarding Kinston Community Association matters. The Owner or the representative of the Owners of a Site shall furnish such registered address to the secretary of the Kinston Community Association within ten (10) days after transfer of title to the Site to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Site or by such persons as are authorized to represent the interests of all Owners of the Site. If no address is registered or if all of the Owners cannot agree, then the address of the Site shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Site. All notices and demands intended to be served upon the Kinston Community Association shall be sent to the following address or such other address as the Kinston Community Association may designate by notice to the Owner(s).

Kinston Community Association, Inc.  
2725 Rocky Mountain Ave., Suite 200  
Loveland, Colorado 80538  
Attention: President



(b) All written notices required to be sent to or served upon the Kinston Community Association under this Declaration shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid or by a national overnight delivery service which maintains delivery records. All such notices shall be effective upon delivery (or refusal to accept delivery).

18.9 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever.

18.10 Encumbrances Upon the Initial Property and the Annexable Property. The Recording data for Recorded easements and licenses appurtenant to, or included in, the Initial Property and the Annexable Property, or to which any portion of the Initial Property or the Annexable Property is or may be subject by virtue of a reservation in this Declaration, is set forth on Exhibit E attached hereto.

18.11 No Merger. Notwithstanding that Founder currently holds title to all the Property, and notwithstanding that a subsequent Owner may own or hold title to more than one Site, any such commonality of interests shall not result in or cause any merger and extinguishment, in whole or in part, of any provisions of this Declaration, it being intended by Founder, for its benefit and the benefit of its successors in interest, that the terms of this Declaration not be merged by virtue of those common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and recording of this Declaration in the Official Records.

18.12 Founder Liability. Except as otherwise provided in CCIOA, no Person holding the status of, or exercising any rights or performing any obligations of, Founder under this Declaration shall be liable to any Owner or Mortgagee for any acts or omissions of another Person holding such status, or exercising any rights or performing any obligations associated with the status of Founder.

18.13 Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

18.14 Certification. This Declaration including the exhibits attached hereto and that certain Kinston Planned Community Land Survey Plat deposited with the Clerk and Recorder of Larimer County, Colorado, of even date herewith, which is incorporated into this Declaration by reference, together with any future subdivision plat for any portion of the Property recorded in accordance with the terms of this Declaration, contain all information required by Section 209 of CCIOA.

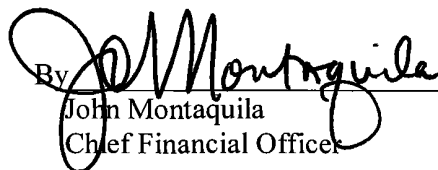
[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

SIGNATURE PAGE TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KINSTON

This Declaration of Covenants, Conditions and Restrictions for Kinston is hereby executed on behalf of CENTERRA EAST DEVELOPMENT, INC., a Delaware corporation

CENTERRA EAST DEVELOPMENT, INC.,  
a Delaware corporation

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Abby  
Kirkbride  
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By   
John Montaquila  
Chief Financial Officer

[NOTARY ACKNOWLEDGMENT APPEARS ON THE FOLLOWING PAGE]

*[Signature page to Declaration of Covenants, Conditions and Restrictions for Kinston]*

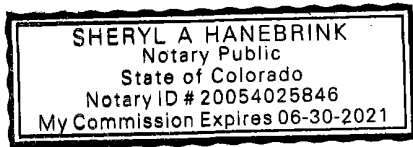
STATE OF COLORADO                    )  
  ) ss.  
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of June, 2020 by John Montaquila, Chief Financial Officer of CENTERRA EAST DEVELOPMENT, INC., a Delaware corporation.

Witness my hand and official seal.

My Commission Expires: 6/30/2021

SHERYL A HANEBRINK  
Notary Public



**EXHIBIT A**

**Initial Property**

**EXHIBIT A**  
**FOUNDER'S INITIAL PROPERTY**  
**(PARCEL 1)**

A parcel of land in the Northeast One-Quarter of Section 10, Township 5 North, Range 68 West, of the Sixth Principal Meridian, City of Loveland, County of Larimer, State of Colorado, said parcel being more particularly described as follows:

**Basis of Bearings:** Bearing are based upon the North Line of the Southwest One-Quarter of Section 2, Township 5 North, Range 68 West, of the Sixth Principal Meridian, said to bear North 89°03'30" East, a distance of 2643.79 Feet from between the monument listed below:

West One-Quarter Corner of said Section 2 monumented by a 3.25" Aluminum Cap, 0.4' down in a range box with a lid marked "SURVEY", stamped "NORTHERN ENGINEERING, T5N R68W, 1/4 S3 \* S2, 2007, LS 14823"

Center Quarter Corner of said Section 2 monumented by a 3.25" Brass Cap, flush with ground surface, stamped "1/4 2 T-5-N R-66-W, 1/29/89, LS 1641\_"

**COMMENCING (P.O.C.)** at said West One-Quarter Corner of Section 2; Thence South 04°22'26" West, a distance of 2670.93 Feet to the **POINT OF BEGINNING (P.O.B.)**;

Thence South 89°39'11" East, a distance of 128.65 Feet to a point whence said Center Quarter Corner of Section 2 bears North 45°07'02" East, a distance of 3836.67 Feet;

Thence South 00°20'49" West, a distance of 91.00 Feet;

Thence North 89°39'11" West, a distance of 128.65 Feet;

Thence North 00°20'49" East, a distance of 91.00 Feet to the **POINT OF BEGINNING (P.O.B.)**;

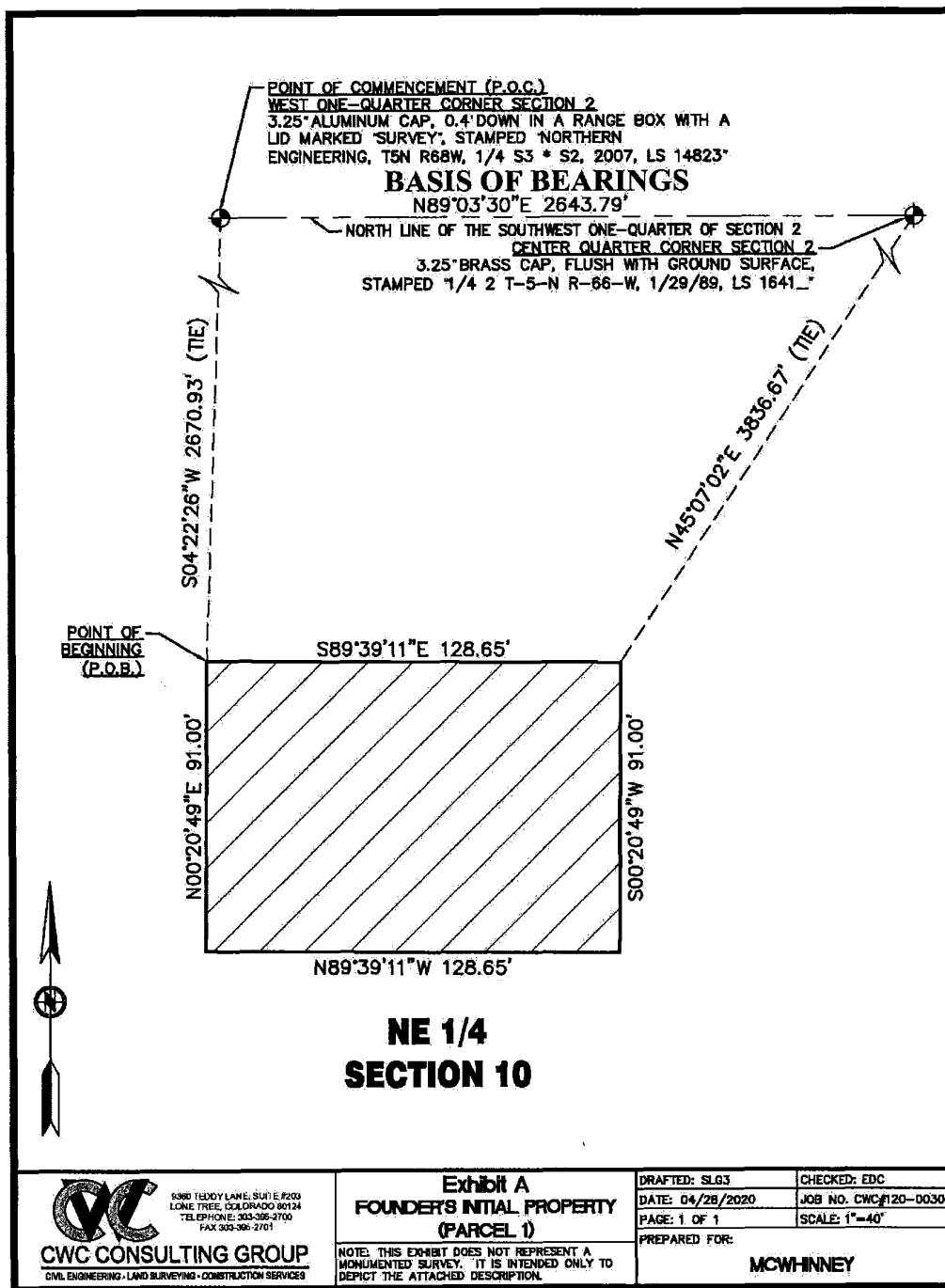
The above described parcel description contains 11,707 Square Feet (0.269 Acres), more or less.

I hereby certify that the above parcel description was prepared under my direct supervision.



Eric D. Carson, PLS

Prepared For and on Behalf of  
CWC Consulting Group Inc.  
9360 Teddy Lane, Suite #203  
Lone Tree, Colorado 80124  
Phone: (303) 395-2700



**EXHIBIT A**  
**FOUNDER'S INITIAL PROPERTY**  
**(PARCEL 2)**

A parcel of land in the Northwest One-Quarter of Section 11, Township 5 North, Range 68 West, of the Sixth Principal Meridian, City of Loveland, County of Larimer, State of Colorado, said parcel being more particularly described as follows:

**Basis of Bearings:** Bearing are based upon the North Line of the Southwest One-Quarter of Section 2, Township 5 North, Range 68 West, of the Sixth Principal Meridian, said to bear North 89°03'30" East, a distance of 2643.79 Feet from between the monument listed below:

West One-Quarter Corner of said Section 2 monumented by a 3.25" Aluminum Cap, 0.4" down in a range box with a lid marked "SURVEY", stamped "NORTHERN ENGINEERING, T5N R68W, 1/4 S3 \* S2, 2007, LS 14823"

Center Quarter Corner of said Section 2 monumented by a 3.25" Brass Cap, flush with ground surface, stamped "1/4 2 T-5-N R-66-W, 1/29/89, LS 1641\_"

**COMMENCING (P.O.C.)** at said West One-Quarter Corner of Section 2; Thence South 03°44'36" East, a distance of 3962.30 Feet to the **POINT OF BEGINNING (P.O.B.)**;

Thence South 79°21'07" East, a distance of 128.65 Feet to a point whence said Center Quarter Corner of Section 2 bears North 29°19'10" East, a distance of 4611.83 Feet;

Thence South 10°38'53" West, a distance of 91.00 Feet;

Thence North 79°21'07" West, a distance of 128.65 Feet;

Thence North 10°38'53" East, a distance of 91.00 Feet to the **POINT OF BEGINNING (P.O.B.)**;

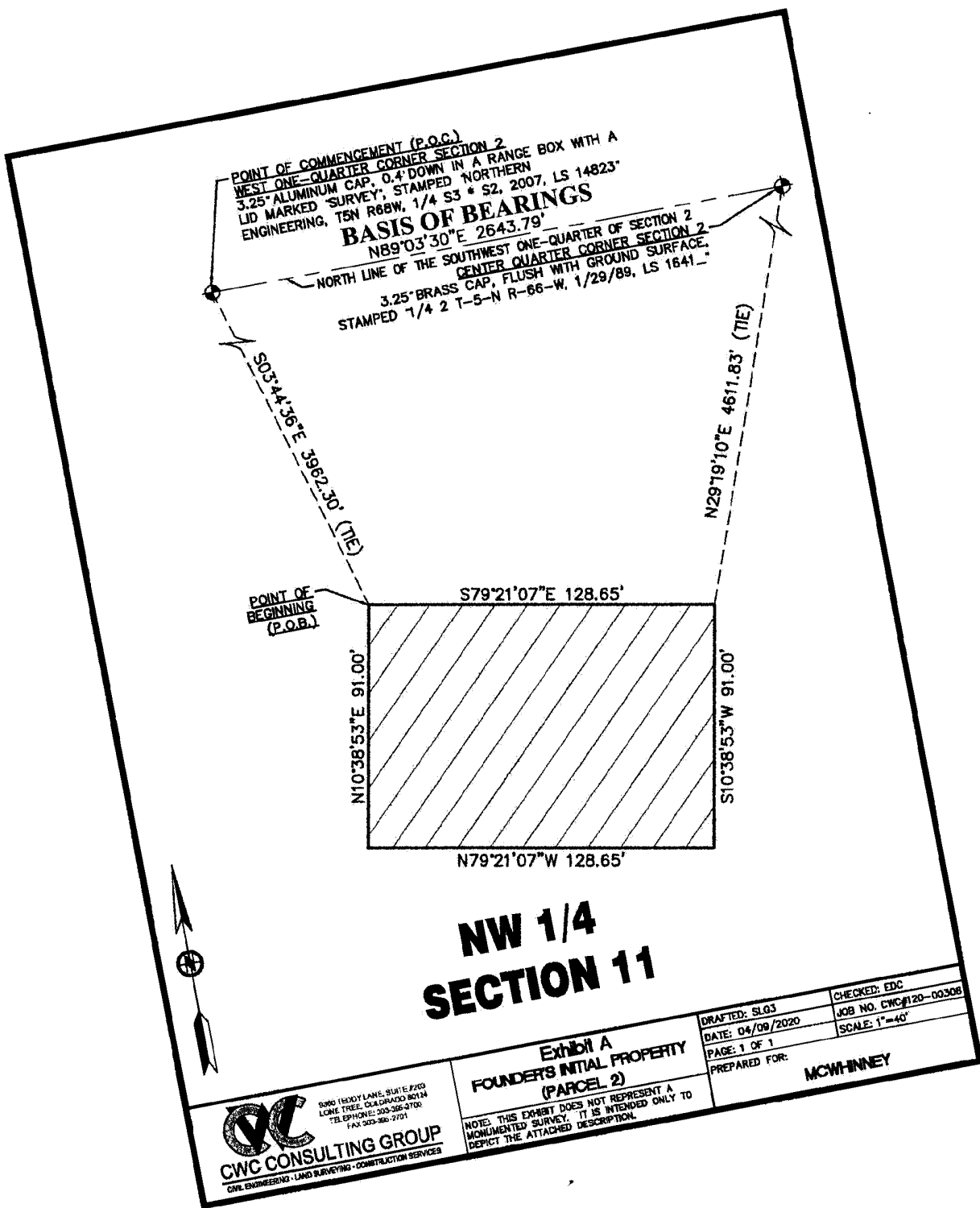
The above described parcel description contains 11,707 Square Feet (0.269 Acres), more or less.

I hereby certify that the above parcel description was prepared under my direct supervision.



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**EXHIBIT B**

**Annexable Property**

**EXHIBIT B**  
**ANNEXABLE PROPERTY**  
**(PARCEL 3)**

A parcel of land in the Southwest One-Quarter of Section 2, Southeast One-Quarter of Section 3, Northeast One-Quarter of Section 10 and Section 11, Township 5 North, Range 68 West, of the Sixth Principal Meridian, City of Loveland, County of Larimer, State of Colorado, said parcel being more particularly described as follows:

**Basis of Bearings:** Bearing are based upon the North Line of the Southwest One-Quarter of Section 2, Township 5 North, Range 68 West, of the Sixth Principal Meridian, said to bear North 89°03'30" East, a distance of 2643.79 Feet from between the monument listed below:

West One-Quarter Corner of said Section 2 monumented by a 3.25" Aluminum Cap, 0.4" down in a range box with a lid marked "SURVEY", stamped "NORTHERN ENGINEERING, T5N R68W, 1/4 S3 \* S2, 2007, LS 14823"

Center Quarter Corner of said Section 2 monumented by a 3.25" Brass Cap, flush with ground surface, stamped "1/4 2 T-5-N R-66-W, 1/29/89, LS 1641"

**BEGINNING (P.O.B.)** at said Center Quarter Corner of Section 2;  
Thence South 01°13'26" West along the East Line of said Southwest One-Quarter of Section 2, a distance of 2625.29 Feet to the South One-Quarter Corner of said Section 2;

Thence North 89°08'28" East along the North Line of the Northeast One-Quarter of said Section 11, a distance of 2598.90 Feet to a line parallel with and 50.00 Feet Westerly of the East Line of said Northeast One-Quarter of Section 11;

Thence South 00°27'21" West along said parallel line, a distance of 1323.39 Feet;

Thence continuing along said parallel line South 00°29'10" West, a distance of 1317.89 Feet to the South Line of said Northeast One-Quarter of Section 11;

Thence North 89°10'12" East along said South Line of the Northeast One-Quarter of Section 11, a distance of 20.01 Feet to a line parallel with and 30.00 Feet Westerly of the East Line of the Southeast One-Quarter of said Section 11;

Thence South 00°28'24" West along said parallel line, a distance of 1320.79 Feet to the South Line of the North One-Half of said Southeast One-Quarter of Section 11;

Thence South 89°10'59" West along said South Line of the North One-Half of the Southeast One-Quarter of Section 11, a distance of 2610.23 Feet to the East Line of the Southwest One-Quarter of said Section 11;

Thence South 00°20'28" West along said East Line of the Southwest One-Quarter of Section 11, a distance of 444.48 Feet to the Northerly Right-of-Way Line of the Union Pacific Railroad (100-Foot width) as shown in the Correction Special Warranty Deed described in the document recorded under Reception No. 2004-0096015;

Thence along said Northerly Right-of-Way Line the following five (5) courses:

- 1) North 68°06'17" West, a distance of 477.61 Feet to a point of curve;

- 2) Northwesterly 1890.56 Feet along the arc of a curve to the right, having a radius of 3769.83 Feet and a central angle of 28°44'01", subtended by a chord which bears North 53°46'28" West, a distance of 1870.81 Feet;
- 3) North 39°26'02" West, a distance of 614.93 Feet;
- 4) North 39°23'16" West, a distance of 385.34 Feet;
- 5) North 39°25'00" West, a distance of 630.25 to the Easterly Right-of-Way Line of Centerra Parkway as shown in the Grant of Easement described in the document recorded under Reception No. 2006-0051673;

Thence along said East Right-of-Way Line of Centerra Parkway the following thirty (30) courses:

- 1) North 40°35'09" East, a distance of 140.08 Feet to a point of curve;
- 2) Northerly 836.89 Feet along the arc of a curve to the left, having a radius of 1111.50 Feet and a central angle of 43°08'24", subtended by a chord which bears North 19°00'57" East, a distance of 817.26 Feet;
- 3) North 02°51'25" East, a distance of 10.12 Feet to a point of non-tangent curve;
- 4) Northerly 50.17 Feet along the arc of a curve to the left, having a radius of 7981.50 Feet and a central angle of 0°21'37", subtended by a chord which bears North 02°56'41" West, a distance of 50.17 Feet, to a point of compound curve;
- 5) Northerly 188.49 Feet along the arc of a curve to the left, having a radius of 1117.07 Feet and a central angle of 9°40'04", subtended by a chord which bears North 07°35'55" West, a distance of 188.26 Feet, to a point of compound curve;
- 6) Northwesterly 50.77 Feet along the arc of a curve to the left, having a radius of 533.50 Feet and a central angle of 5°27'10", subtended by a chord which bears North 15°09'32" West, a distance of 50.75 Feet, to a point of compound curve;
- 7) Northwesterly 3.95 Feet along the arc of a curve to the left, having a radius of 1124.50 Feet and a central angle of 0°12'05", subtended by a chord which bears North 17°59'09" West, a distance of 3.95 Feet;
- 8) North 18°05'12" West, a distance of 140.61 Feet to a point of curve;
- 9) Northerly 106.59 Feet along the arc of a curve to the right, having a radius of 283.50 Feet and a central angle of 21°32'34", subtended by a chord which bears North 07°18'55" West, a distance of 105.97 Feet, to a point of compound curve;
- 10) Northeasterly 10.16 Feet along the arc of a curve to the right, having a radius of 8.50 Feet and a central angle of 68°27'26", subtended by a chord which bears North 37°41'05" East, a distance of 9.56 Feet;
- 11) North 71°54'48" East, a distance of 68.77 Feet;
- 12) North 18°05'12" West, a distance of 101.00 Feet to a point of non-tangent curve;
- 13) Westerly 107.29 Feet along the arc of a curve to the right, having a radius of 283.50 Feet and a central angle of 21°41'02", subtended by a chord which bears South 82°45'19" West, a distance of 106.65 Feet, to a point of compound curve;
- 14) Northwesterly 8.94 Feet along the arc of a curve to the right, having a radius of 7.50 Feet and a central angle of 68°18'58", subtended by a chord which bears North 52°14'41" West, a distance of 8.42 Feet;
- 15) North 18°05'12" West, a distance of 116.62 Feet to a point of curve;
- 16) Northerly 1127.83 Feet along the arc of a curve to the right, having a radius of 1944.50 Feet and a central angle of 33°13'56", subtended by a chord which bears North 01°28'13" West, a distance of 1112.09 Feet;
- 17) North 21°03'15" East, a distance of 9.96 Feet to a point of non-tangent curve;
- 18) Northeasterly 46.87 Feet along the arc of a curve to the right, having a radius of 436.50 Feet and a central angle of 6°09'07", subtended by a chord which bears North 18°32'04" East, a distance of 46.85 Feet, to a point of compound curve;

- 19) Northeasterly 102.50 Feet along the arc of a curve to the right, having a radius of 3128.55 Feet and a central angle of  $1^{\circ}52'38''$ , subtended by a chord which bears North  $22^{\circ}32'57''$  East, a distance of 102.50 Feet, to a point of reverse curve;
- 20) Northeasterly 50.13 Feet along the arc of a curve to the left, having a radius of 598.50 Feet and a central angle of  $4^{\circ}47'57''$ , subtended by a chord which bears North  $21^{\circ}05'17''$  East, a distance of 50.12 Feet;
- 21) North  $18^{\circ}41'19''$  East, a distance of 134.64 Feet to a point of curve;
- 22) Northeasterly 106.59 Feet along the arc of a curve to the right, having a radius of 283.50 Feet and a central angle of  $21^{\circ}32'34''$ , subtended by a chord which bears North  $29^{\circ}27'36''$  East, a distance of 105.97 Feet, to a point of compound curve;
- 23) Easterly 10.16 Feet along the arc of a curve to the right, having a radius of 8.50 Feet and a central angle of  $68^{\circ}27'26''$ , subtended by a chord which bears North  $74^{\circ}27'36''$  East, a distance of 9.56 Feet;
- 24) South  $71^{\circ}18'41''$  East, a distance of 68.77 Feet;
- 25) North  $18^{\circ}41'19''$  East, a distance of 101.00 Feet to a point of non-tangent curve;
- 26) Northwesterly 106.59 Feet along the arc of a curve to the right, having a radius of 283.50 Feet and a central angle of  $21^{\circ}32'34''$ , subtended by a chord which bears North  $60^{\circ}32'24''$  West, a distance of 105.97 Feet, to a point of compound curve;
- 27) Northerly 10.16 Feet along the arc of a curve to the right, having a radius of 8.50 Feet and a central angle of  $68^{\circ}27'26''$ , subtended by a chord which bears North  $15^{\circ}32'24''$  West, a distance of 9.56 Feet;
- 28) North  $18^{\circ}41'19''$  East, a distance of 151.85 Feet to a point of curve;
- 29) Northerly 761.52 Feet along the arc of a curve to the left, having a radius of 2484.50 Feet and a central angle of  $17^{\circ}33'42''$ , subtended by a chord which bears North  $09^{\circ}54'28''$  East, a distance of 758.54 Feet;
- 30) North  $01^{\circ}07'37''$  East, a distance of 243.18 Feet to said North Line of the Southwest One-Quarter of Section 2;

Thence North  $89^{\circ}03'30''$  East along said North Line of the Southwest One-Quarter of Section 2, a distance of 2582.30 Feet to the **POINT OF BEGINNING (P.O.B.)**;

**EXCEPT:**

**COMMENCING (P.O.C.)** at said West One-Quarter Corner of Section 2; Thence South  $04^{\circ}22'26''$  West, a distance of 2670.93 Feet to the **POINT OF BEGINNING (P.O.B.)**;

Thence South  $89^{\circ}39'11''$  East, a distance of 128.65 Feet to a point whence said Center Quarter Corner of Section 2 bears North  $45^{\circ}07'02''$  East, a distance of 3836.67 Feet;  
Thence South  $00^{\circ}20'49''$  West, a distance of 91.00 Feet;  
Thence North  $89^{\circ}39'11''$  West, a distance of 128.65 Feet;  
Thence North  $00^{\circ}20'49''$  East, a distance of 91.00 Feet to the **POINT OF BEGINNING (P.O.B.)**;

**AND ALSO EXCEPT:**

**COMMENCING (P.O.C.)** at said West One-Quarter Corner of Section 2; Thence South  $03^{\circ}44'36''$  East, a distance of 3962.30 Feet to the **POINT OF BEGINNING (P.O.B.)**;

Thence South  $79^{\circ}21'07''$  East, a distance of 128.65 Feet to a point whence said Center Quarter Corner of Section 2 bears North  $29^{\circ}19'10''$  East, a distance of 4611.83 Feet;  
Thence South  $10^{\circ}38'53''$  West, a distance of 91.00 Feet;  
Thence North  $79^{\circ}21'07''$  West, a distance of 128.65 Feet;

Thence North  $10^{\circ}38'53''$  East, a distance of 91.00 Feet to the **POINT OF BEGINNING (P.O.B.)**;

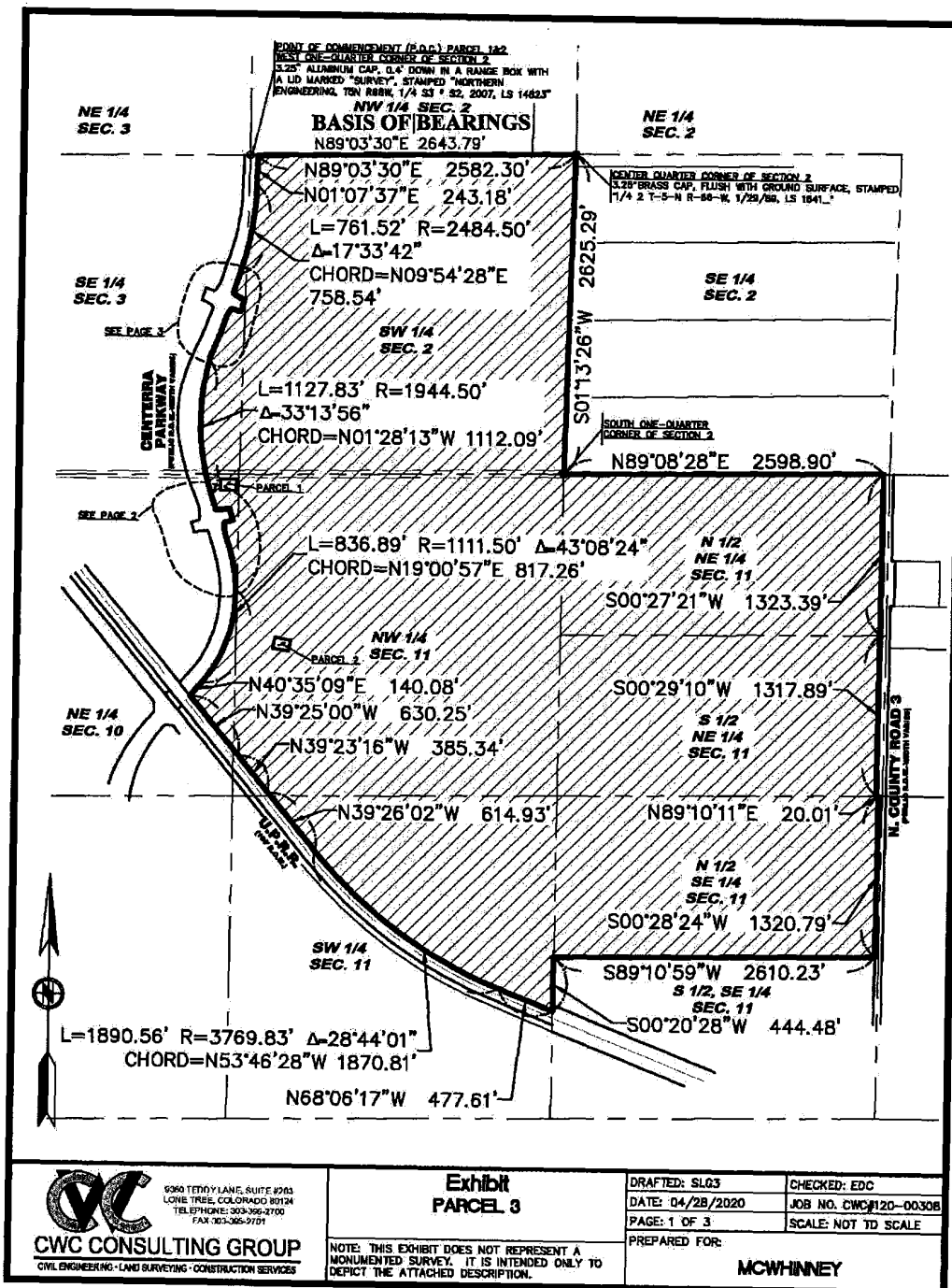
The above described parcel description contains 27,266,626 Square Feet (625.956 Acres), more or less.

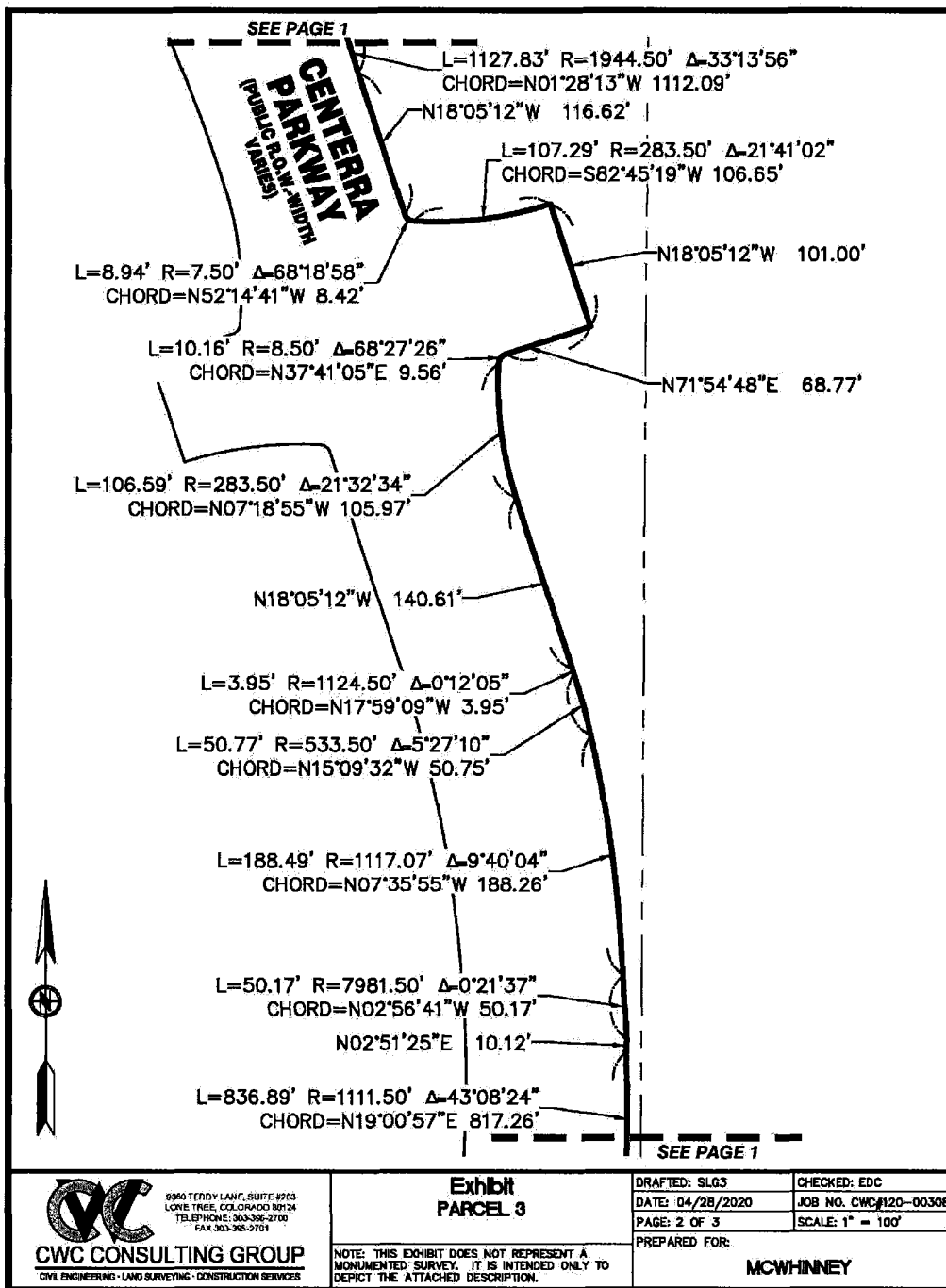
I hereby certify that the above parcel description was prepared under my direct supervision.

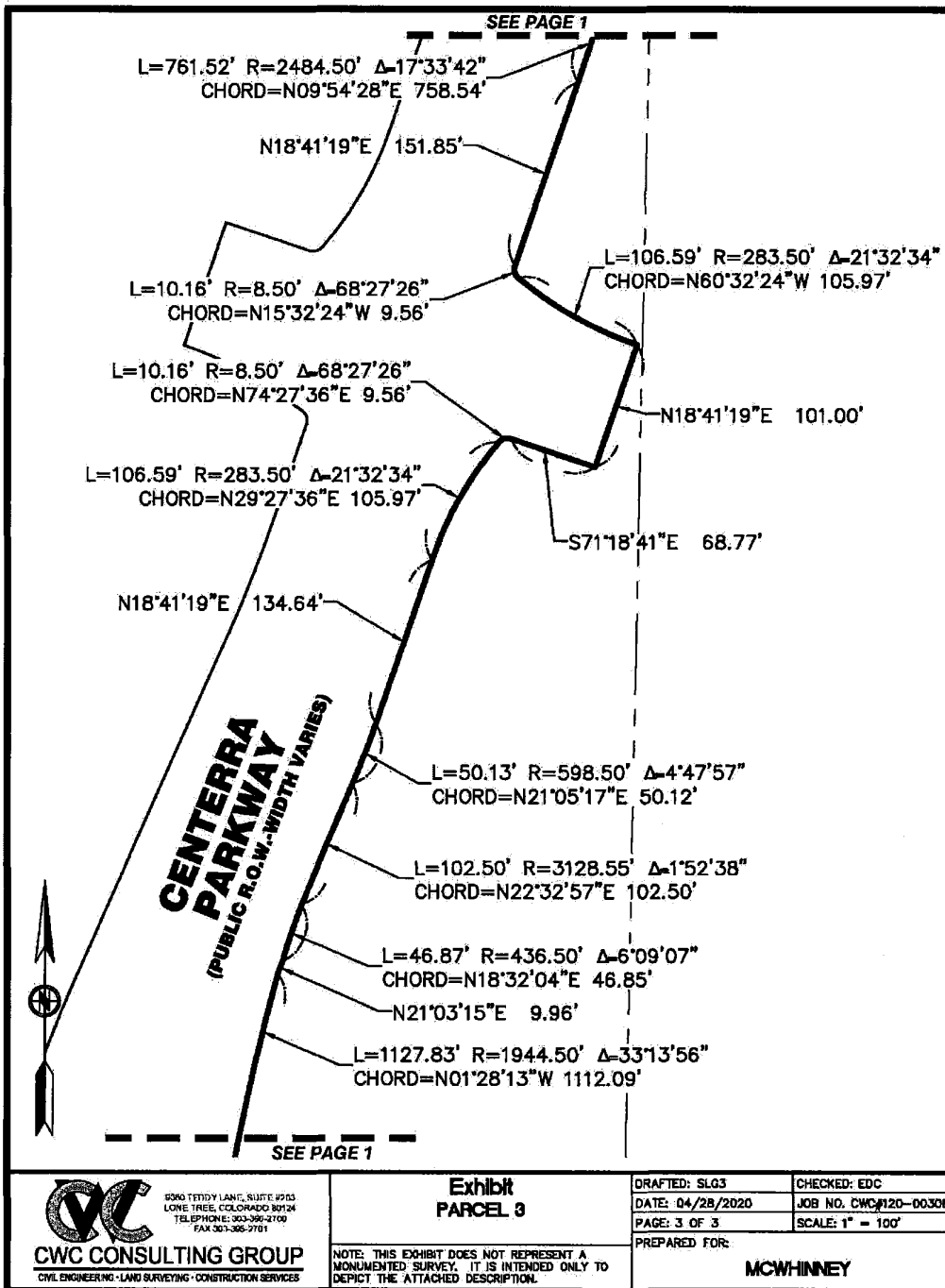


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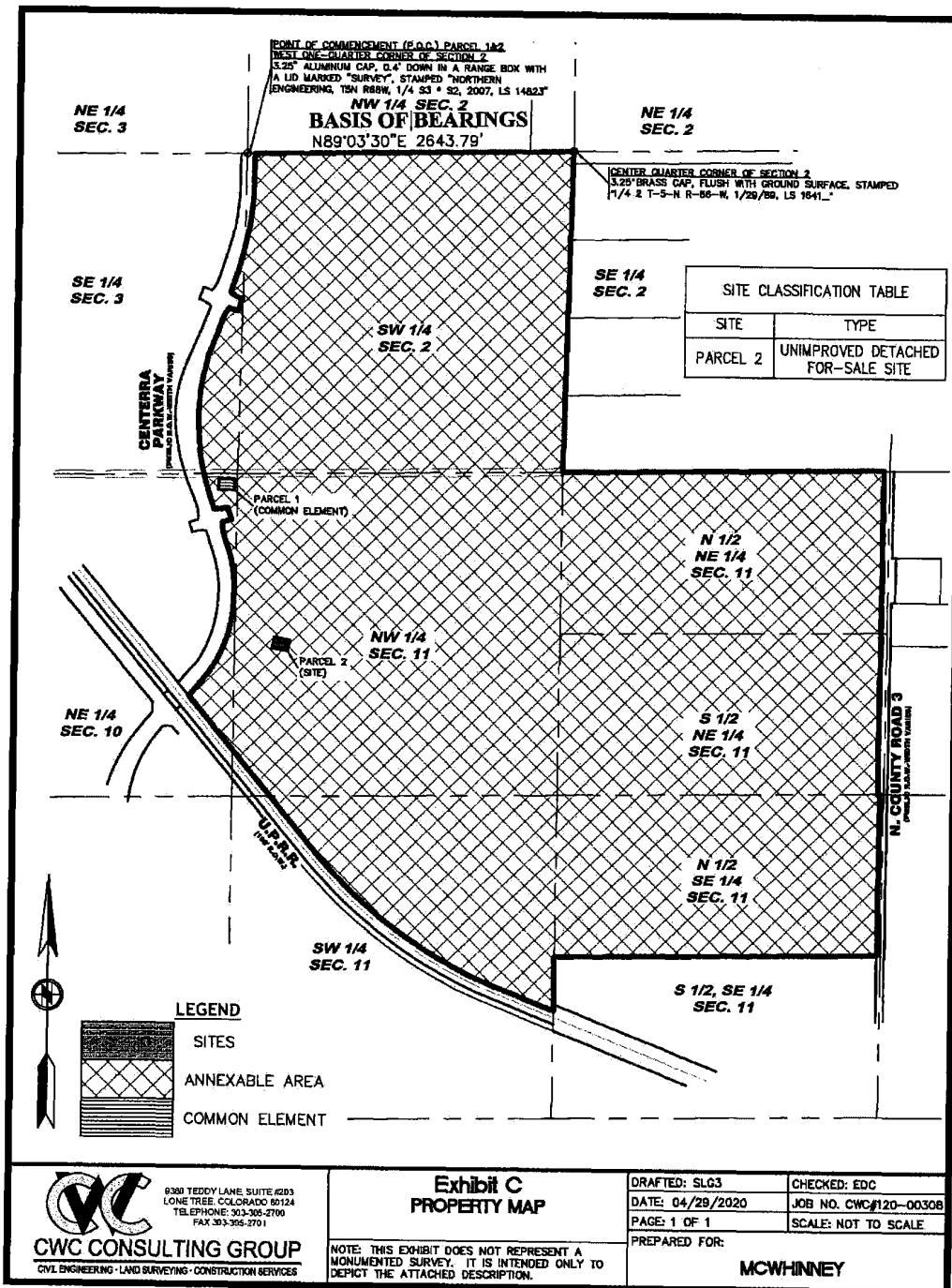






**EXHIBIT C**

**Property Map**



**EXHIBIT D**  
**Services Marks and Trademarks**

**KINSTON**  
CENTERRA



**EXHIBIT E**

**List of Easements, Encumbrances and Other Interests**

1. Reservations by the Union Pacific Railroad Company of (1) all coal and other minerals underlying the Land, (2) the exclusive right to prospect for, mine and remove all coal and other minerals, and (3) the right of ingress and egress and regress to prospect for, mine and remove all, coal and other minerals, all as contained in Deed as set forth below, and any and all assignments thereof or interests therein:  
Recording Date: May 14, 1906  
Recording No.: Book 150 at Page 56
  - a. Quitclaim Deed recorded April 14, 1971 in Book 1458 at Page 456.
  - b. Request for Notification of Surface Development recorded May 20, 2002 at Reception No. 2002055076.
  - c. Mineral Deed to McWhinney Holding Company, LLLP recorded January 6, 2009 at Reception No. 20090000553.
  - d. Quit Claim Mineral Deed to MHC Oil and Gas Investments, LLC recorded July 17, 2012 at Reception No. 20120047409.
  
2. Right of way for ingress and egress over, through and across the property described below:
  - a. The South 5 feet of the Southwest Quarter (SW 1/4) of Section 2 and the Southeast Quarter (SE 1/4) of Section 3 and the North 5 feet of the Northeast quarter (NE 1/4) of Section 10 as described in Deed recorded June 1, 1931 in Book 572 at Page 331.
  
3. Reservations contained in the Patent  
From: The United States of America  
Recording Date: November 30, 1946  
Recording No: Book 826 at Page 44  

Which among other things recites as follows:  
Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of the courts; and the reservation from the lands hereby granted of a right of way thereon for ditches or canals constructed by the authority of the United States.
  
4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: Wyco Pipe Line Company  
Purpose: pipeline  
Recording Date: March 10, 1947  
Recording No: Book 830 at Page 276 and recorded October 22, 1947 in Book 842 at Page 335

- a. Assignment and Conveyance recorded February 27, 1995 at Reception No. 95011103.
  - b. Agreement and Partial Release recorded April 16, 2004 at Reception No. 20040035633.
  - c. Assignment of Easements and Licenses recorded October 12, 2005 at Reception No. 20050087187.
  - d. Assignment and Conveyance Agreement recorded December 3, 2013 at Reception No. 20130088097.
5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: United States of America  
Purpose: electric transmission line  
Recording Date: August 15, 1950  
Recording No: Book 897 at Page 240
6. Right of way easement 16.5 feet in width, as granted to United States of America by Helen R. Hicks in instrument dated July 22, 1961 and recorded August 14, 1961 in Book 1147 at Page 487.
- NOTE: Quit claim Deed and Bill of Sale recorded April 4, 1984 in Book 2266 at Page 753 in connection with the above easement.
7. Right of way easement for cable line and incidental purposes, as granted to United States of America by the instrument recorded September 18, 1961 in Book 1151 at Page 419.
- NOTE: Quit claim Deed and Bill of Sale recorded April 4, 1984 in Book 2266 at Page 753 in connection with the above easements.
8. Notice Pursuant C.R.S. 9-1.5-103 Concerning Underground Facilities of Poudre Valley Rural Electric Association, Inc. as set forth below:  
Recording Date: November 16, 1984  
Recording No.: Book 2298 at Page 1414
9. Option to Purchase by and between McWhinney Investments I, LLC and McStain Enterprises, Inc. and McWhinney Holding Company, L.L.C. and the Thompson School District R2-J as set forth below:  
Recording Date: August 25, 2000  
Recording No.: Reception No. 2000058548
- a. Assignment of Interest in Option Agreement recorded May 3, 2006 at Reception No. 20060033006 and recorded November 20, 2006 at Reception No. 20060087790 and recorded November 26, 2007 at Reception No. 20070087376.
10. Plat(s) of Millennium Addition set forth below:  
Recording Date: October 12, 2000  
Recording No: Reception No. 2000070611

- a. Ratification of Plat recorded June 5, 2001 at Reception No. 2001043277 and Surveyors Affidavit recorded May 16, 2006 at Reception No. 20060036646.
  - b. Ordinance vacating a portion of public street right-of-way recorded April 18, 2008 at Reception No. 20080024160.
11. Map for General Development Plan Millennium GDP as set forth below:  
Recording Date: May 29, 2001  
Recording No.: Reception No. 2001040096
12. Ordinances Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations as set forth below:
  - a. Ordinance recorded September 18, 2001 at Reception No. 2001083625.
  - b. Ordinance recorded July 11, 2006 at Reception No. 20060051707.
  - c. Ordinance recorded July 11, 2006 at Reception No. 20060051708.
  - d. Ordinance recorded June 20, 2007 at Reception No. 20070047016.
  - e. Ordinance recorded September 23, 2008 at Reception No. 20080060420.
  - f. Ordinance recorded July 15, 2009 at Reception No. 20090048321.
  - g. Ordinance recorded March 29, 2017 at Reception No. 20170020182.
  - h. Ordinance recorded April 5, 2018 at Reception No. 20180019745.
13. Order and Decree Organizing Centerra Metropolitan District No. 2 as set forth below:  
Recording Date: June 14, 2004  
Recording No.: 20040057137
  - a. Order recorded June 29, 2004 at 20040063005.
  - b. Notice of Special District Authorization recorded May 14, 2004 at 20040046559.
  - c. Resolution of Financial Impact recorded May 16, 2006 at 20060036649.
14. Order and Decree Organizing Centerra Metropolitan District No. 3 as set forth below:  
Recording Date: June 14, 2004  
Recording No.: Reception No. 20040057138
  - a. Notice of Special District Authorization recorded May 14, 2004 at Reception No. 20040046560 and recorded November 24, 2004 at Reception No. 20040112990.
  - b. Resolution of Financial Impact recorded May 16, 2006 at Reception No. 20060036649.
  - c. Order for Inclusion recorded April 27, 2018 at Reception No. 20180024673.
  - d. Amended and Restated Agreement Regarding District Disclosures recorded April 1, 2019 at Reception No. 20190016059 and Reception No. 20190016064.
15. Order and Decree Organizing Centerra Metropolitan District No. 4 as set forth below:  
Recording Date: June 14, 2004  
Recording No.: 20040057139
  - a. Notice of Special District Authorization recorded May 14, 2004 at 20040046561.
  - b. Resolution of Financial Impact recorded May 16, 2006 at 20060036649.

16. Resolution of the Loveland City Council Approving the US 34/Crossroads Corridor Renewal Plan recorded June 28, 2004 at 20040062362.
17. Resolution of the Loveland City Council Approving the US 34/Crossroads Corridor Renewal Plan recorded June 28, 2004 at 20040062362.
18. Avigation Easement as set forth below:  
Recording Date: July 9, 2004  
Recording No.: Reception No. 20040066598
19. Declaration of Covenants Imposing and Implementing the Centerra Public Improvement Fee recorded July 9, 2004 at 20040067081.
  - a. Assignment of PIF Revenues By Declarants Dated August 3, 2004, recorded October 19, 2004 at 20040101587.
  - b. Affidavit recorded May 16, 2006 at Reception No. 20060036647.
  - c. Supplement to the Declaration recorded September 23, 2008 at Reception No. 20080060629.
  - d. Memorandum Concerning Supplement to the Declaration recorded February 12, 2009 at Reception No. 20090008198.
  - e. First Amendment to the Declaration recorded February 12, 2009 at Reception No. 20090008199.
  - f. Supplement recorded February 12, 2009 at 20090008200.
  - g. Minor Modification recorded February 12, 2009 at 20090008201.
  - h. Memorandum recorded June 2, 2011 at 20110032448.
  - i. Assignment of PIF Revenues by Declarants recorded June 2, 2011 at 20110032449.
  - j. Memorandum recorded June 8, 2011 at 20110033350 and at Reception No. 20110033351.
20. Declaration of Covenants Imposing and Implementing the Centerra Retail Sales Fee recorded July 9, 2004 at Reception No. 20040067082.
  - a. First Amendment recorded December 23, 2005 at Reception No. 20050109627.
  - b. Assignment recorded October 19, 2004 at Reception No. 20040101588.
  - c. Affidavit recorded May 16, 2006 at Reception No. 20060036648.
  - d. Second Amendment recorded March 6, 2008 at Reception No. 20080014232.
  - e. Supplement recorded February 12, 2009 at Reception No. 20090008204.
21. Reimbursement Agreement as set forth below:  
Recording Date: December 21, 2004  
Recording No.: Reception No. 20040121964
22. All oil, gas and other mineral rights reserved in the instrument set forth below, and any and all assignments thereof or interests therein:  
Reserved by: McWhinney Holding Company, LLLP  
Recording Date: February 25, 2005  
Recording No.: Reception No. 20050015317

- a. Quit Claim Mineral Deeds recorded July 17, 2012 at Reception No. 20120047408 and at Reception No. 20120047409.
  
23. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: City of Loveland  
Purpose: utility systems  
Recording Date: July 10, 2006  
Recording No: Reception No. 20060051673
  
24. Amended and Restated Annexation and Development Agreement For The Millennium General Development Plan recorded July 11, 2006 at 20060051709.
  - a. Memorandum of Changes thereto recorded October 4, 2006 at 20060075780.
  - b. First Amendment thereto recorded September 23, 2008 at 20080060421.
  - c. Second Amendment recorded June 3, 2009 at 20090035948.
  - d. Third Amendment recorded April 16, 2018 at Reception No. 20180022018.
  
25. Agreement Regarding Environmental Fees recorded July 11, 2006 at 20060051710.
  - a. First Amendment thereto recorded September 23, 2008 at 20080060422.
  - b. Second Amendment thereto recorded June 8, 2009 at 20090037286.
  - c. Third Amendment recorded February 13, 2013 at Reception No. 20130011724.
  - d. Fourth Amendment recorded March 22, 2018 at Reception No. 20180016485.
  - e. Fifth Amendment recorded September 12, 2019 at Reception No. 20190054914.
  
26. Northern Colorado Water Conservancy District pursuant to instrument as set forth below:  
Recording Date: August 21, 2007  
Recording No.: Reception No. 20070064166
  
27. Intergovernmental Agreement Regarding the US 34/Crossroads Corridor Renewal Plan as set forth below:  
Recording Date: October 21 2008  
Recording No.: Reception No. 20080066394
  - a. Minor Modification to the Intergovernmental Agreement recorded February 12, 2009 at 20090008202.
  
28. Surface Owner's Agreement as set forth below:  
Recording Date: January 16, 2009  
Recording No.: Reception No. 20090002951
  - a. Supplement to Surface Owner's Agreement recorded June 12, 2012 at Reception No. 20120038337.



29. Intergovernmental Agreement Regarding the Rebate of Tax Increment Revenues as set forth below:  
Recording Date: February 12, 2009  
Recording No.: Reception No. 20090008203
  
30. Findings and Decree of the Northern Colorado Water Conservancy District as set forth below:  
Recording Date: September 30, 2010  
Recording No.: Reception No. 20100058874
  
31. Memorandum of oil and gas lease for the term therein provided with certain covenants, conditions and provisions, together with easements, if any, as set forth therein, and any and all assignments thereof or interests therein.  
Recording Date: July 30, 2012  
Recording No: 20120050715
  - a. Oil and Gas Lease recorded February 4, 2015 at 20150006752.
  
32. Memorandum of Surface Use Agreement as set forth below:  
Recording Date: July 30, 2012  
Recording No.: 20120050716
  
33. Resolution of the Loveland City Council Approving the Consolidated Service Plan for Kinston Metropolitan District Nos. 1-10 as set forth below:  
Recording Date: September 5, 2019  
Recording No.: Reception No. 20190053321
  
34. ALTA/NSPS Land Title Survey as follows:  
Recording Date: February 6, 2020  
Recording No.: Reception No. 20200008418