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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS, EASEMENTS,
ASSESSMENTS, CHARGES AND LIENS
FOR PIÑON SOLEIL**

DC01004439

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, ASSESSMENTS, CHARGES AND LIENS FOR PIÑON SOLEIL (this "Declaration") is made as of January 11, 2001, by Pine Mesa, LLC, a Colorado limited liability company ("Declarant").

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Recitals

- A. Declarant owns the real property located in the Town of Castle Rock, County of Douglas, State of Colorado, that is more particularly described on Exhibit A attached hereto and made a part hereof.
- B. Declarant desires to create a planned community on such property pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319.
- C. Declarant deems it necessary and desirable to subject such property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

Declaration

NOW THEREFORE, in consideration of the foregoing, Declarant hereby declares as follows:

**ARTICLE I
DECLARATION**

Declarant hereby declares that the Property (as such term is defined below) shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, reservations, easements, assessments, charges and liens, which shall run with the Property and bind all parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

ARTICLE II DEFINITIONS

2.01 Basic Definitions.

(a) "Act" means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

(b) "Additional Property" means the real property located in the Town of Castle Rock, Douglas County, Colorado, that is described on Exhibit B attached hereto and made a part hereof.

(c) "Articles" means the Articles of Incorporation of the Association, as the same may be amended from time to time.

(d) "Assessment" means a General Assessment, a Special Assessment or a Default Assessment levied pursuant to Article VII below.

(e) "Assessment Lien" means the statutory lien of the Association on a Lot described in Section 7.08 below.

(f) "Association" means Piñon Soleil Property Owners' Association, a Colorado nonprofit corporation, and its successors and assigns.

(g) "Association Documents" means this Declaration, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.

(h) "Bylaws" means the Bylaws of the Association, as the same may be amended from time to time.

(i) "Common Elements" means (a) any real estate within Piñon Soleil which may include private streets and roads, gates, medians and other landscaped areas associated with private or publicly dedicated and other rights of way, other than a Lot, that is owned or leased by the Association together with any improvements thereon and (b) any real estate or other improvements that the Association is otherwise required to operate, manage, maintain or repair, which may include without limitation, private streets and roads, signage, median landscaping, street lights, street signs, access and similar gates and retaining walls.

(j) "Common Expenses" means (i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, maintaining, repairing, altering and improving the Common Elements; (B) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (C) levying, collecting and enforcing the Assessments, charges and liens

imposed pursuant hereto; (D) regulating and managing Piñon Soleil; and (E) operating the Association; and (ii) reserves for any such costs, expenses and liabilities.

(k) "Declarant" means Pine Mesa, LLC, a Colorado limited liability company, and its successors and assigns.

(l) "Declarant Control Period" has the meaning assigned to such term in Section 6.02 below.

(m) "Declaration" means this Declaration of Covenants, Conditions, Restrictions, Reservations, Easements, Assessments, Charges and Liens for Piñon Soleil, as the same may be amended from time to time.

(n) "Default Assessment" has the meaning given to such term in Section 7.06 below.

(o) "Design Review Board" means the committee established by the Executive Board to regulate the construction of improvements on Lots.

(p) "Director" means a duly elected or appointed member of the Executive Board.

(q) "Executive Board" means the Board of Directors of the Association.

(r) "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.

(s) "General Assessment" means an Assessment levied against a Lot pursuant to Section 7.04 below.

(t) "Improved Lot" means a Lot that contains a single family residence.

(u) "Initial Property" means the real property located in the Town of Castle Rock, Douglas County, Colorado, that is described on Exhibit A attached hereto and made a part hereof.

(v) "Lot" means (i) any area of real property within Piñon Soleil designated as a Lot on the Plat, and (ii) any area of real property within Piñon Soleil that Declarant later designates as a Lot pursuant to Section 15.02 below. As used in this Declaration, a "Lot" is intended to be a "unit," as that term is used in the Act.

(w) "Membership" means a membership in the Association and the rights granted to Owners pursuant to this Declaration, the Articles and the Bylaws to participate in the Association.

(x) "Mortgage" means any mortgage, deed of trust or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

(y) "Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

(z) "Owner" means the record holder of legal title to the fee simple interest in any Lot or portion thereof. If there is more than one record holder of legal title to a Lot, each record holder shall be an Owner.

(aa) "Person" means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the State of Colorado.

(bb) "Piñon Soleil" means the planned community created on the Property by this Declaration, consisting of the Lots and the Common Elements.

(cc) "Plat" means the plat of Piñon Soleil attached hereto and made a part hereof as Exhibit C, as the same may be amended from time to time.

(dd) "Property" means (i) the Initial Property, and (ii) any real property that is later made subject to this Declaration in accordance with the terms and conditions hereof.

(ee) "Purchaser" means a Person, other than Declarant or a Successor Declarant, who by means of a transfer, acquires legal title to the fee simple interest in any Lot or portion thereof.

(ff) "Rules and Regulations" means any instruments adopted by the Association for the regulation and management of Piñon Soleil, as the same may be amended from time to time.

(gg) "Shares of Common Expenses" means the share of Common Expenses allocated to each Lot in accordance with the terms and conditions of Section 7.02 below.

(hh) "Special Assessment" has the meaning given to such term in Section 7.05 below.

(ii) "Special Declarant Rights" means the rights reserved by Declarant for itself, its successors and assigns in this Declaration.

(jj) "Successor Declarant" means any Person who succeeds to any rights of Declarant hereunder.

(kk) "Unimproved Lot" means a Lot that does not contain a single family residence.

2.02 Gender and Number.

Wherever the context of this Declaration so requires, (a) words used in the masculine gender shall include the feminine and neuter genders; (b) words used in the neuter gender shall include the masculine and feminine genders; (c) words used in the singular shall include the plural; and (d) words used in the plural shall include the singular.

**ARTICLE III
LOTS**

3.01 Lots.

(a) Declarant hereby creates twenty-three (23) within Piñon Soleil, the boundaries and identifying numbers of which are shown on the Plat.

(b) Declarant hereby reserves the right to create a maximum of sixty-two (62) Lots within Piñon Soleil.

3.02 Separate Taxation of Lots.

Pursuant to Section 38-33.3-105 of the Act, each Lot constitutes a separate parcel of real estate and will be separately assessed and taxed.

**ARTICLE IV
THE ASSOCIATION**

4.01 Formation of the Association.

On or before the date on which Declarant conveys the first Lot within Piñon Soleil to a Purchaser, Declarant shall form the Association.

4.02 Purposes and Powers.

(a) The Association's purposes are (i) to manage, operate, construct, improve, alter and maintain the Common Elements; (ii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; (iii) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto; and (iv) to regulate and manage Piñon Soleil.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may (i) take any and all actions that it deems necessary or advisable to fulfill its purposes, and (ii) exercise all powers that may be exercised in Colorado by nonprofit corporations.

4.03 Association Documents.

(a) The obligations, burdens and benefits created by this Declaration touch and concern the Property and are, and shall be, covenants running with each Lot for the benefit of all other Lots and the Common Elements. The Association and each Owner shall comply with and benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. In the event of any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

4.04 Books and Records.

Upon request, the Association shall allow Owners, Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

4.05 Personal Liability and Indemnification.

(a) No Director or officer appointed by Declarant shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such Director or officer, unless a court of competent jurisdiction finds that such Director or officer breached a fiduciary duty that such Director or officer owed to the Association or an Owner.

(b) No Director or officer of the Association, who was not appointed by Declarant, and no employee, agent or committee member of the Association shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such Director or officer, employee, agent or committee member, unless a court of competent jurisdiction finds that the act or omission of such Director or officer, employee, agent or committee member was wanton and willful.

(c) The Association shall indemnify and hold harmless each present or former Director or officer, employee, agent or committee member against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and disbursements, asserted against or incurred by any such present or former Director or officer, employee, agent or committee member to the fullest extent permitted by the Association Documents; provided, however, that in no event shall the Association indemnify or hold harmless any such Director or officer, employee, agent or committee member to the extent that he or she is personally liable for an act or omission under paragraph 4.05(a) or paragraph 4.05(b) above.

ARTICLE V MEMBERSHIP IN THE ASSOCIATION

5.01 Membership.

(a) There shall be one Membership appurtenant to every Lot. A Membership may not be separated from the ownership of the Lot to which it is appurtenant.

(b) Any Membership appurtenant to a Lot having more than one Owner shall be shared by such Owners.

(c) A Membership may be transferred or encumbered only in connection with the conveyance or encumbrance of a fee simple interest in the Lot to which the Membership is appurtenant. Any transfer or encumbrance of a Membership other than as permitted in this paragraph 5.01(c) shall be void and have no force or effect.

5.02 Voting.

(a) Each Membership shall be entitled to one vote, regardless of the number of Owners of the Lot to which the Membership is appurtenant. Fractional voting shall not be allowed. If the Owners of a Lot cannot agree among themselves as to how to cast their vote when they are required to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Membership, unless objection thereto is made to the chairperson of the meeting at the time the vote is cast. If more than one vote is cast for any particular Membership, none of such votes shall be counted and all of such votes shall be deemed null and void.

(b) In any election of Directors to the Executive Board, every Membership shall have the number of votes equal to the number of Directors to be elected to the Executive Board by such election. Cumulative voting shall not be allowed in the election of Directors to the Executive Board or for any other purpose.

(c) Notwithstanding the terms and conditions of paragraph 5.02(a) above, the Association shall have no voting rights for any Membership appurtenant to any Lot owned by the Association.

ARTICLE VI EXECUTIVE BOARD

6.01 Powers of the Executive Board.

(a) Except as provided in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.

(b) The Executive Board may not act on behalf of the Association to (i) amend this Declaration; (ii) terminate Piñon Soleil; (iii) elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of a Director's term; or (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

6.02 Declarant Control Period.

(a) Subject to the terms and conditions of paragraphs 6.02(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and officers during the Declarant Control Period. The term "Declarant Control Period" means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

(i) sixty days after conveyance to Purchasers of 75 percent of the maximum number of Lots that may be created by Declarant hereunder;

(ii) two years after the last conveyance of a Lot by Declarant or a Successor Declarant to a Purchaser in the ordinary course of business; or

(iii) two years after any right to add new Lots was last exercised.

(b) Declarant may voluntarily surrender its right to appoint and remove Directors and officers prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(c) Notwithstanding anything to the contrary contained in paragraph 6.02(a) above:

(i) not later than sixty days after the conveyance to Purchasers of 25 percent of the maximum number of Lots that may be created by Declarant hereunder, at least one Director and not less than 25 percent of the Directors shall be elected by Owners other than Declarant or any Successor Declarant; and

(ii) not later than sixty days after the conveyance to Purchasers of 50 percent of the maximum number of Lots that may be created by Declarant hereunder, at least 33-1/3 percent of the Directors must be elected by Owners other than Declarant or a Successor Declarant.

(d) Not later than the expiration of the Declarant Control Period, the Owners shall elect an Executive Board of at least three Directors, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. Such Directors shall take office upon election.

6.03 Removal of Members of the Executive Board.

Notwithstanding any provision of this Declaration or any other Association Document to the contrary, the Owners, by a vote of at least 67 percent of all Memberships represented (in person or by proxy) and entitled to vote at any meeting at which a quorum is present, may remove any Director, with or without cause, other than a Director appointed by Declarant.

ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Declarant, for each Lot it owns, hereby covenants and agrees, and each Owner, by accepting a deed to a Lot (whether or not it shall be expressly stated in such deed), shall be deemed to have covenanted and agreed, to pay to the Association all (i) General Assessments; (ii) Special Assessments; (iii) Default Assessments; and (iv) other charges that the Association is required or permitted to levy or impose on such Owner or such Owner's Lot pursuant to this Declaration or any other Association Document.

(b) No Owner shall be exempt from liability for any such Assessment or other charge by waiving the use or enjoyment of any Common Element or by abandoning a Lot against which such Assessments or other charges are made.

(c) Except as provided in this paragraph 7.01(c) and paragraph 7.09(a) below, the obligation to pay to the Association any Assessment or other charges levied against any Lot shall be a joint and several obligation of the Owner of such Lot and such Owner's successors, assigns, heirs, devisees and personal representatives. A Person acquiring fee simple title to a Lot shall be jointly and severally liable with the former Owner of the Lot for all Assessments and other charges that had accrued and were payable when such Person acquired fee simple title to the Lot, for so long as such Person holds fee simple title to the Lot.

(d) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other charge, including reasonable attorneys' fees and disbursements, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

7.02 Shares of Common Expenses.

(a) Except as otherwise set forth in this Declaration, all Common Expenses shall be allocated equally among all Lots that have been created prior to the date on which the Common Expenses were incurred. Accordingly, the formula for calculating the percentage of Common Expenses allocated to each Lot shall be:

$$\begin{array}{l} \text{Share of} \\ \text{Common Expenses} \end{array} = \frac{1}{\begin{array}{l} \text{\# of Lots created prior} \\ \text{to the date on which the} \\ \text{Common Expenses were incurred} \end{array}} \times 100$$

(b) The Shares of Common Expenses allocated to the initial twenty-three (23) Lots within Piñon Soleil are set forth on Exhibit D attached hereto and made a part hereof.

(c) If any Lots are added to or withdrawn from Piñon Soleil, the Shares of Common Expenses for all Lots within Piñon Soleil after such addition or withdrawal shall be recalculated in accordance with the formula set forth in paragraph 7.02(a) above.

(d) Until the Association levies an Assessment, Declarant shall pay all Common Expenses.

7.03 Budgets.

(a) Prior to the first levy of a General Assessment, and, thereafter, on or before October 1 of each calendar year the Executive Board shall adopt a proposed annual budget for the Association for the following calendar year, which proposed budget shall, among other things, set forth (i) the Executive Board's estimates of Common Expenses for the next calendar year; (ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through

General Assessments; and (iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments. Within thirty days after adopting a proposed budget, the Executive Board shall deliver a summary of the proposed budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(b) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under paragraph 7.03(a) above, the Executive Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

7.04. General Assessments.

(a) After the Owners ratify an annual budget under paragraph 7.03(a) above, the Association shall levy an assessment for Common Expenses (a "General Assessment") on each Lot. The amount of the General Assessment to be levied against a Lot shall equal the product obtained by multiplying (i) the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, by (ii) that Unit's Share of Common Expenses. The Owners shall pay the General Assessments levied against their respective Lots in such periodic installments as may be required by the Association.

(b) If the Owners ratify an amendment to the General Assessment portion of an annual budget pursuant to paragraph 7.03(b) above, the amount of the General Assessment levied against each Lot shall be adjusted accordingly, as shall the amount of each Owner's periodic installments.

(c) If the Owners fail to ratify an annual budget for any calendar year prior to January 1 of that calendar year, the Owners shall continue to pay periodic installments of the General Assessment to the Association at the rate payable during the prior calendar year until such time as the Owners ratify a new annual budget for the then current calendar year. Once the Owners ratify a new annual budget, the Association shall levy on each Lot the General Assessment for the then current calendar year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such calendar year,

giving the Owners credit for any installments that the Owners have previously paid to the Association during such calendar year. -

(d) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of the Owners' liability for the Share of Common Expenses allocated to such Owner's Lot.

7.05 Special Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.05 are referred to in this Declaration as "Special Assessments."

(b) Notwithstanding anything to the contrary contained in Section 7.04 above, if any Common Expense benefits fewer than all of the Lots, the Association may levy an Assessment for such Common Expense exclusively against the Lots benefitted thereby, equally or in any other equitable proportions as the Association deems appropriate.

(c) Each Special Assessment levied against any Lot shall be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners in accordance with Section 7.03 above, and shall be paid as and when required by the Association.

7.06 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by (i) the negligence or misconduct of an Owner or an Owner's family member, employee, agent, lessee or guest, or (ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's family member, employee, agent, lessee or guest, the Association may levy an Assessment against such Owner's Lot for the amount of such Common Expense. Any such Assessment levied by the Association, and each fine, penalty, fee or other charge imposed upon an Owner for the violation of any covenant or condition of any Association Document by an Owner or an Owner's family member, employee, agent or guest, are each referred to herein as a "Default Assessment."

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners in accordance with Section 7.03 above.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Lot against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Lots against which Default Assessments have been levied shall pay such Default Assessments when required by the Association.

7.07 Assignment of Assessments.

The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

7.08 Assessment Lien.

(a) Pursuant to Section 38-33.3-316 of the Act, the Association shall have a statutory lien on each Lot for any Assessment levied against that Lot and any interest, attorneys' fees and disbursements and costs of collection imposed against its Owner under any Association 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 date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Lot 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; and

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

(c) An Assessment Lien is also prior to a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent to the extent of an amount equal to the General Assessments and the Special Assessments that would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any Person holding a lien senior to any part of the Assessment Lien of an action or a nonjudicial foreclosure either to enforce or extinguish the Assessment Lien.

(d) The recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Lot. No further recordation of any claim of any Assessment Lien is required.

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

(f) This Section 7.08 does not prohibit (i) actions or suits to recover sums secured by an Assessment Lien, or (ii) the Association from taking a deed in lieu of foreclosure.

(g) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner 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 Association during the pending of the action to the extent of the Association's Assessments.

(h) An Assessment Lien may be foreclosed in like manner as a mortgage on real estate.

7.09 Estoppel Certificates; Notices to Mortgagees.

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

(b) The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for more than sixty days after the same shall have become due, if such Mortgagee first shall have delivered to the Association a written request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment with respect to such Lot, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as a lien of the Mortgage held by such Mortgagee.

ARTICLE VIII MAINTENANCE OF COMMON ELEMENTS AND LOTS

8.01 Maintenance of Common Elements.

(a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Elements and the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Elements as it deems necessary and appropriate. In this regard the Association may:

(i) construct, modify, add to, replace or renovate any improvements that are located on, or constitute a part of, any Common Element, which may include private streets and roads, gates, medians and other landscaped areas associated with private or publicly dedicated and other rights of way;

Element;

(ii) plant and replace trees, shrubs and other vegetation on any Common

(iii) place, maintain and replace signs upon any Common Element;

Common Elements;

(iv) adopt and enforce Rules and Regulations regulating the use of

(v) impose and collect fees for the use of any Common Element; and

(vi) take any other actions that the Association deems necessary or advisable to protect and maintain the Common Elements.

(b) The Executive Board shall be the sole judge as to the appropriate maintenance, operation and management of the Common Elements.

8.02 Maintenance of Lots.

(a) Each Owner, at such Owner's sole cost and expense, shall maintain such Owner's Lot and the improvements and landscaping located thereon, or constituting a part thereof, in good order and repair.

(b) If, in the reasonable judgment of the Association, an Owner fails to maintain the Owner's Lot, the landscaping located thereon or the exterior of any improvements located thereon in good order and repair, and such failure remains uncured for more than thirty days after the Association's delivery of written notice thereof to such Owner, the Association may enter upon such Lot and perform such maintenance or repair as the Association deems necessary or advisable and charge all costs and expenses incurred by the Association in connection therewith to such Owner as a Default Assessment.

ARTICLE IX DESIGN REVIEW

9.01 Design Review Board.

(a) Initially Declarant shall establish a Design Review Board which shall consist of such odd number of regular members and alternate members as Declarant may designate. The

members of the Design Review Board shall be appointed by Declarant until the construction of residences have been completed on at least 52 Lots (unless earlier voluntarily relinquished by Declarant). After the termination of Declarant's right to appoint all members of the Design Review Board, the members of such Board shall thereafter be appointed by the Executive Board. The regular term of office for each member shall be one year. Any such member may be removed with or without cause by the Declarant (or the Executive Board after the termination of Declarant's right to appoint the members) at any time by written notice. A successor appointed to fill any vacancy on the Design Review Board shall serve the remainder of the term of the former member.

(b) The Design Review Board shall select its own chairman and vice-chairman from among its members. The chairman or, in the chairman's absence, the vice-chairman shall be the presiding officer of its meetings. In the absence of both the chairman and the vice-chairman from a meeting, the members present shall appoint a member to serve as acting chairman at such meeting. Meetings shall be held upon call of the chairman or vice-chairman at the offices of the Association. A majority of members shall constitute a quorum for the transaction of business. An alternate member may participate at any meeting at which there is not a quorum and shall have all of the authority of a regular member while so participating. 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. Except as set forth above, the Design Review Board shall operate in accordance with its own Rules and Regulations which shall be filed with the Association and maintained in the records of the Association and shall be subject to inspection by all Owners and Mortgagees.

(c) The Design Review Board is hereby authorized to retain, at the expense of the Association, the services of one or more consulting architects, landscape architects, urban designers or other professionals to advise and assist the Design Review Board in performing the design review functions prescribed in this Article IX.

(d) If Declarant voluntarily surrenders its right to appoint and remove members of the Design Review Board prior to the completion of residences on at least 52 Lots, Declarant may require that specific actions of the Design Review Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

9.02 Design Review Board Approval and Control.

(a) No Owner may (i) construct any home, garage, fence, driveway or other building or improvement on any Unimproved Lot, (ii) make any material alteration to exterior surfaces of existing buildings or improvements on an Improved Lot or (iii) construct any additional building or improvement on an Improved Lot, without the prior written consent of the Design Review Board, which consent shall not be unreasonably withheld or delayed. If the Design Review Board fails to respond to a request for its consent within thirty days after its receipt of such request, the Design Review Board shall be deemed to have granted its consent to the actions described in

such request. The Design Review Board shall not act arbitrarily or capriciously. The decisions of the Design Review Board shall be conclusive and binding on all interested parties.

(b) Each Owner shall comply with the Rules and Regulations of the Design Review Board, as the same may be amended from time to time by the Design Review Board.

(c) The Design Review Board or its designated representative may monitor any approved project to the extent required to ensure that 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 Lot at any reasonable time or times to inspect the progress, work status or completion of any project. In addition to the remedies described in Section 9.03 below, 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 promptly after written notification to the Owner specifying such deviations.

(d) Any material to be submitted or notice given to the Design Review Board shall be submitted at the office of the Association.

9.03 Enforcement of Restrictions.

(a) The Design Review Board shall have primary responsibility to enforce the restrictions set forth in this Article IX and the Rules and Regulations adopted by the Design Review Board; provided, however, that such responsibility shall not limit the right of the Association to take action under any other Article of this Declaration. If the Design Review Board does not take action to enforce such restrictions within fifteen days after being requested to do so by the Executive Board, the Association may assume responsibility for enforcing such restrictions in any case in which the Design Review Board declined to act.

(b) If an Owner violates any term or condition set forth in this Article IX or in the Rules and Regulations of the Design Review Board, the Design Review Board and the Association shall have the following rights and remedies:

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

(ii) The Design Review Board and the Association may, but are not obligated to, enter upon the Owner's Lot and cure such violation at the Owner's sole cost and expense. If the Design Review Board or the Association cures any such violation, the Owner shall pay to the Association the amount of all costs incurred by the Design Review Board or the

Association in connection therewith within thirty days after the Owner receives a written invoice therefor from the Design Review Board or the Association.

(iii) The Association may sue the Owner to enjoin such violation.

(iv) The Association may sue the Owner for all damages, losses, costs and expenses, including, without limitation, reasonable attorneys fees and disbursements, incurred by the Design Review Board or the Association as a result of the violation.

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

9.04 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.

ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS

10.01 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided herein, the covenants, conditions and restrictions set forth in this Article XI shall apply to all Lots and the Owners thereof.

10.02 Use of Lots.

A Lot may be used exclusively for only the construction and occupancy of one single-family detached dwelling, and typical residential activities incidental thereto. No gainful occupation, profession, trade or other nonresidential use, other than the keeping of an office, which is not open to the general public, shall be conducted on a Lot, without the prior written consent of the Executive Board.

10.03 Design Control.

Except as expressly provided to the contrary in this Declaration, no improvements, alterations, repairs, excavation, grading, major landscaping or other work which in any way alters the exterior appearance of any property within Piñon Soleil, or the improvements located thereon, from its natural or improved state shall be made or done without the prior written consent of the

Design Review Board, and no changes or deviations in or from the plans and specifications consented to by the Design Review Board shall be made without the prior written consent of the Design Review Board.

10.04 Landscaping.

Each Purchaser of a Lot from Declarant or any Successor Declarant shall ensure that the landscaping of such Purchaser's Lot is completed in accordance with plans approved by the Design Review Board as soon as practicable following such Purchaser's completion of construction of a home on the Lot; provided, however, subject to any requirements of the Town of Castle Rock, a Purchaser that acquires a Lot for the purpose of engaging in the business of constructing a residence thereon shall not be obligated to complete the landscaping of the Lot, and it shall be the obligation of the Purchaser from such Person to complete the landscaping as soon as practicable after such Purchaser's acquisition of the Lot.

10.05 Animals.

(a) No animal of any kind shall be raised, bred or kept on any Lot; provided, however, that domestic dogs, cats and other household pets permitted by the Association may be kept on a Lot so long as they (i) are maintained in accordance with this Declaration and all other Association Documents; (ii) are not a nuisance; and (iii) are not kept, bred or maintained for any commercial purposes.

(b) No Owner shall allow any dog owned or controlled by such Owner to roam within Piñon Soleil unattended. At all times, dogs shall either be (i) confined within the Owner's Lot, or (ii) on a leash and under the direct control and supervision of their Owners.

10.06 Temporary Occupancy and Temporary Buildings.

No trailer, incomplete building, tent, shack, garage, barn or temporary buildings or structures of any kind shall be used at any time for a residence, either temporary or permanent. Notwithstanding the foregoing, tents for overnight camping on a Lot shall be permitted, provided that any such tent shall not remain visible from any other Lot, any Common Element or the streets within Piñon Soleil for a period of more than 48 hours. Temporary buildings or structures used during the construction of a dwelling on any Lot shall be removed immediately after the completion of construction.

10.07 Nuisances; Construction Activities.

(a) No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no offensive odors, lights or noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot or to the occupants of such other Lot. No other

nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or to its occupants.

(b) Normal construction activities and parking in connection with the building of improvements on a Lot or in connection with the Declarant's building of improvements in the Common Elements or Declarant's other customary development activities shall not be considered a nuisance or otherwise prohibited by this Declaration.

10.08 Hazardous Activities.

No activity shall be conducted within Piñon Soleil which is or might be hazardous to any Person or property. Without limiting the generality of the foregoing, (a) no firearms shall be discharged within Piñon Soleil, and (b) no open fires shall be lighted within Piñon Soleil, except in a contained fireplace or barbecue unit which is attended or is designed to prevent the dispersal of burning embers. Normal construction activities shall not be considered hazardous for the purpose of this Section 10.08.

10.09 Utilities.

All electric, gas, water, television, radio, telephone and other utility installations and connections from the boundary of a Lot to improvements located on such Lot shall be placed underground. All cooling and heating apparatus shall be concealed or placed on the ground immediately adjacent to a dwelling. No exterior roof-mounted or side-mounted evaporative cooling or air conditioning units shall be installed on any dwelling.

10.10 Maintenance of Improvements.

No buildings or other improvements on any Lot shall be permitted to fall into disrepair and each such building or other improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. If any building or other improvement is damaged or destroyed, then, subject to the approvals required from the Design Review Board, such building or other improvement shall be immediately repaired or rebuilt or shall be demolished. If any such building or improvement is demolished, the Owner of the Lot on which such building or improvement was located shall promptly landscape the portion of the Lot on which such building or improvement was located in accordance with plans approved by the Design Review Board.

10.11 Mineral Exploration.

No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

10.12 Interior Fire Sprinklers.

All residences shall be required to have interior fire sprinkling systems in accordance with the requirements of the Town of Castle Rock.

10.13 Exterior Mechanical Equipment.

No exterior mechanical equipment shall be erected on any Lot without the specific written approval of the Design Review Board. Notwithstanding the foregoing, the Design Review Board may not approve the erection or installation of any satellite dish with a diameter in excess of twenty-four inches or any other exterior radio or television antenna. All exterior mechanical equipment shall be incorporated as an integral part of the architectural character of any building erected.

10.14 Signs.

No signs whatsoever shall be erected or maintained on any Lot except (a) signs required by legal proceedings; (b) Lot identification signs with areas of 108 or fewer square inches; (c) "For Sale" and "For Lease" signs; and (d) such other signs as may have been approved in advance and in writing by the Design Review Board.

10.15 Trash Containers.

No garbage or trash shall be placed or kept on any Lot, except in covered containers. No such trash containers shall be kept on any Lot in a manner such that they are visible from any other Lot, except on trash collection days.

10.16 Compliance with Laws.

Nothing shall be done or kept on a Lot in violation of any law, ordinance, rule or regulation of any governmental authority.

10.17 Compliance with Insurance Requirements.

Except as may be approved in writing by the Association, nothing shall be done or kept on any Lot which may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Association.

10.18 Overhead Encroachments.

No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any street, trail or other pedestrian way from ground level to a height of eight feet without the prior consent of the Design Review Board.

10.19 Oversized Vehicles.

No (a) motor vehicle classed by manufacturer rating as exceeding three-quarter ton; (b) mobile home; (c) travel trailer; (d) tent trailer; (e) camper shell; (f) detached camper; (g) boat; (h) boat trailer; or (i) other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street within Piñon Soleil so as to be visible from any other Lot, any Common Element or the streets within Piñon Soleil for a period of more than 7 consecutive days or 21 days in any calendar year.

10.20 Restriction on Subdivision, Rezoning and Easements.

No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner, without the prior written consent of the Association, which consent must be evidenced on the plat or other instrument creating the subdivision. No further easements, covenants, conditions or restrictions shall be recorded by any Owner or other Person against any Lot without the Association's prior written consent, and any easements, covenants, conditions or restrictions recorded without such consent evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Association and the proposed use otherwise complies with this Declaration and all other Association Documents.

10.21 Leases.

No leases of all or any part of an Owner's Lot shall be permitted unless such leases are for a period of at least one year and such leases specifically require that the tenant be bound by this Declaration and all Rules and Regulations.

10.22 Declarant's Exemption.

Nothing contained in this Declaration or any other Association Document shall be construed to prevent (a) the exercise by Declarant or any Successor Declarant of any Special Declarant Rights; or (b) the erection or maintenance by Declarant, a Successor Declarant or either of their duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Piñon Soleil.

10.23 Health, Safety and Welfare.

In the event additional uses, activities, and facilities are deemed by the Executive Board to be nuisances or to adversely affect the health, safety or welfare of Owners or the value of property within Piñon Soleil, the Executive Board may adopt Rules and Regulations restricting or regulating the same at Piñon Soleil.

10.24 Compliance With Additional Covenants, Conditions and Restrictions.

Each Owner shall comply with all other terms, provisions, covenants, conditions, restrictions, easements and reservations on the Owner's part to be complied with under this Declaration or any other Association Document.

10.25 Compliance with Rules and Regulations.

Each Owner shall comply with all rules and regulations promulgated by the Association, including those having to do with any private streets, roads and similar improvements owned or controlled by the Association.

**ARTICLE XI
EASEMENTS AND RESERVATIONS**

11.01 Declarant's Easements Over Common Elements.

(a) Declarant hereby reserves for itself, its successors and assigns an easement over, across, through and under the Common Elements to (i) discharge Declarant's obligations under this Declaration; (ii) exercise any of Declarant's rights under this Declaration; and (iii) make improvements within Piñon Soleil or within the Additional Property or any other real estate which may be added to Piñon Soleil by Declarant under this Declaration.

(b) Declarant hereby reserves to itself, its successors and assigns, the right to (i) establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Elements, including, without limitation, easements for septic systems, and for private roads, streets and other access to the Project; (ii) grant such easements for the benefit of adjacent property owners and other third parties for directional, advertising, or other signage as Declarant deems appropriate in its sole discretion on the center medians in Piñon Soleil; and (iii) create other reservations, exceptions and exclusions that Declarant deems appropriate.

11.02 Owners' Easements Over Common Elements.

Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby grants to the Owners an easement over, across and through the Common Elements (a) for ingress and egress to their Lots, and (b) to use and enjoy the Common Elements.

11.03 Utility Easement.

There is hereby created a blanket easement over, across, through and under the Property for ingress to, egress from, and the installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and

cable television. The Association may authorize the release of portions of the blanket easement created by this Section 11.03 upon the request of any Owner showing good cause therefor. Notwithstanding anything to the contrary contained in this Section 11.03, no sewers, electrical lines, water lines, telephone lines or other utility or service lines may be installed or relocated on any portion of the Property, except as approved by the Design Review Board.

11.04 Association's Easements Over Lots.

Declarant hereby grants the Association an easement over, across, through and under each Lot to (a) exercise any right held by the Association under this Declaration or any other Association document, and (b) perform any obligation imposed upon the Association by this Declaration or any other Association Document. Notwithstanding the foregoing, the Association shall not enter upon any Lot without reasonable prior notice to the Owner of the Lot, except in cases of emergency.

11.05 Recorded Easements.

(a) The Property shall be subject to all easements shown on any recorded plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration.

(b) Section 11.05(a) is intended, among other things, to create access easements for common driveways across various Lots as indicated on one or more recorded plats. In each case where the recorded plat creates an easement for a common driveway servicing two Lots, the first Owner (other than Declarant) to obtain a building permit to build on such Owner's lot (the "Constructing Owner") shall be responsible for construction of a common driveway (the "Driveway") reasonably adequate to service both Lots. The Driveway to be constructed by the Constructing Owner shall be a concrete driveway constructed in accordance with customary building practices. The Constructing Owner shall proceed promptly to complete the Driveway. At the later of (i) the time that the non-Constructing Owner obtains a building permit to construct on the non-Constructing Owner's Lot or (ii) the time that the Driveway is completed by the Constructing Owner, the non-Constructing Owner shall reimburse the Constructing Owner for one-half of the Constructing Owner's actual out-of-pocket expenses to construct the Driveway. Provided that the constructing Owner has used reasonable care in selecting a contractor for the construction of the Driveway or in the actual construction of the Driveway by the Constructing Owner, the Constructing Owner shall have no warranty or similar liability to the non-Constructing Owner for any defects in the construction of the Driveway and the costs of repairing any such defects shall be shared equally between each Owner. The obligation to construct and maintain a Driveway set forth in this Section 11.05 shall apply only to that portion of the Driveway which jointly serves two adjacent Lots. The construction and maintenance of any portion of the Driveway which services only one Lot shall be the sole and exclusive responsibility of the Owner whose lot is serviced by such portion of the Driveway. If the Constructing Owner fails to commence and complete construction of the Driveway promptly after the Constructing Owner obtains a building permit, the second of the two Owners to obtain a building permit, may upon fifteen (15) days prior written notice to the Constructing Owner.

commence construction of the Driveway in which event the second Owner to obtain a building permit shall for the purposes of this paragraph 11.05(b) be deemed to be the Constructing Owner and all provisions hereof shall apply to such Owner.

(c) At such time as the construction of the Driveway has been completed, each of the Owners of the Lots benefitted by the Driveway will cooperate to manage and perform maintenance and repair responsibilities with respect to the Driveway and each such Owner shall be responsible for one-half of the costs to repair and maintain the Driveway.

(d) If an Owner fails to pay or perform, upon demand, either its maintenance obligation or its construction reimbursement obligation described above, the Owner who has paid for or performed those obligations shall have the right to pursue all remedies available to such Owner at law or in equity against the non-paying Owner, and such unpaid obligation shall include the paying Owner's reasonable costs of collection, including, without limitation, attorneys' fees.

ARTICLE XII INSURANCE

12.01 Insurance Required to be Obtained by the Association.

The Association shall obtain and maintain all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Executive Board deems necessary.

12.02 Adjustments.

Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds payable for any such loss shall be paid in accordance with the terms and conditions of the Act.

ARTICLE XIII CASUALTY

13.01 Casualty to Common Elements.

The Association shall respond to any damage to, or destruction of, any Common Elements in accordance with the terms and conditions of the Act.

13.02 Casualty to a Lot.

Each Owner shall be responsible for repairing or replacing any damage to, or destruction of, his Lot. If an Owner elects not to repair or replace any such damage or destruction, the Owner shall (a) landscape the Lot in accordance with plans approved by the Design Review Board, and (b) maintain such Lot in a neat and attractive condition.

**ARTICLE XIV
CONDEMNATION**

14.01 Condemnation of all Lots.

If all of Piñon Soleil is taken by condemnation or similar proceeding, Piñon Soleil shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be disbursed among the Owners in accordance with Section 38-33.3-218 of the Act.

14.02 Condemnation of Fewer than all Lots.

If one or more Lots, but fewer than all Lots, are taken by condemnation or similar proceeding, (a) any condemnation award payable in connection therewith shall be paid, and (b) the Shares of Common Expenses allocated to those Lots shall be reallocated, in accordance with the terms and conditions of Section 38-33.3-107 of the Act.

14.03 Condemnation of Common Elements.

Whenever all or any part of the Common Elements shall be taken by condemnation or similar proceeding, or whenever all or any part of the Common Elements is conveyed in lieu of a taking under a threat of condemnation, the award payable in connection therewith shall be paid to the Association and used by the Association (a) first, to repair any damage to Common Elements resulting from the condemnation or other taking, and (b) second, for any other Common Expenses.

**ARTICLE XV
SPECIAL DECLARANT RIGHTS**

15.01 Improvements.

Declarant hereby reserves for itself, its successors and assigns the right to construct any improvements shown on the Plat and the right to construct during the Declarant Control Period any improvement that Declarant deems necessary or advisable on any Common Element or any Lot owned by Declarant, including, without limitation, trails, drainage facilities, utility facilities, monuments and recreational facilities.

15.02 Development Rights.

(a) Declarant hereby reserves for itself, its successors and assigns:

(i) the right to amend this Declaration to add up to the maximum area of additional real estate that is not described in this Declaration to Piñon Soleil as permitted pursuant to Section 38-33.3-222 of the Act;

(ii) the right to amend this Declaration to add all or any portion of the Additional Property to Piñon Soleil;

(iii) the right to amend this Declaration to create up to thirty-nine (39) additional Lots on which amenities may be located, and certain additional Common Elements on all or any portion of the Additional Property or any other real estate that Declarant may add to Piñon Soleil pursuant to subparagraph 15.02(a)(i) above;

(iv) the right to subdivide any Lot owned by Declarant;

(v) the right to convert any Lot owned by Declarant into Common Elements; and

(vi) the right to withdraw from Piñon Soleil any real estate owned by Declarant and located within the Initial Property prior to the conveyance of a Lot located within the Initial Property to a Purchaser and, after the addition of any portion of the Additional Property or other real property to Piñon Soleil, the right to withdraw any real estate owned by Declarant and located within such portion at any time prior to the conveyance of a Lot located in such portion to a Purchaser.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements set forth Section 38-33.3-210 of the Act.

15.03 Sales Offices and Model Homes.

Declarant hereby reserves for itself, its successors and assigns, including any builder under a preferred builder program, the right to construct and maintain sales offices, management offices and model homes on up to 15 Lots owned by Declarant or any such builder at any one time. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising Piñon Soleil on any and all Common Elements. Without limiting the generality of the foregoing, Declarant hereby reserves for itself, its successors and assigns, the right to maintain a sales office in any clubhouse or similar facility that may at any time be constructed and comprise part of the Common Elements or the Property in such manner and for such period of time as Declarant

may determine in its sole and absolute discretion, even if such use constitutes the sole and exclusive use of such clubhouse or other facility. .

15.04 Exercising Special Declarant Rights.

Declarant may exercise its Special Declarant Rights at any time during the twenty-year period commencing on the date hereof. Declarant may exercise its Special Declarant Rights any number of times and in any order and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise the Special Declarant Right with respect to any other portion of the Property.

**ARTICLE XVI
ENFORCEMENT AND REMEDIES**

16.01 Enforcement.

(a) Each provision of this Declaration with respect to the Association or the Common Elements shall be enforceable by Declarant or any Owner by a proceeding for injunctive relief.

(b) Each provision of this Declaration with respect to an Owner or a Lot shall be enforceable by the Association by (i) a proceeding for injunctive relief; (ii) a suit or action to recover damages; and/or (iii) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and such Owner's family members, tenants and guests from the use of any Common Elements and from the participation in any Association affairs. In addition, if an Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(i) The Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty days after the Owner receives a written invoice therefor from the Association.

(ii) The Association may, after notice and an opportunity to be heard, fine the Owner an amount not to exceed \$100 for each violation. The Owner shall pay any such fine to the Association within thirty days after the Owner receives a written invoice therefor from the Association.

(iii) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(c) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

16.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including, but not limited to, reasonable attorneys' fees and disbursements.

16.03 Interest.

If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of 18 percent per annum from the due date of such unpaid amount until the date paid.

**ARTICLE XVII
TERM AND AMENDMENTS**

17.01 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 pursuant to Section 17.02 below.

17.02 Termination.

The Owners may terminate Piñon Soleil, by a vote of at least 80 percent of the votes allocated to all Memberships. If the necessary votes and consents are obtained, the agreement of the Owners to terminate Piñon Soleil 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 Section 38-33.3-218 of the Act. Upon recordation of the termination agreement with the Clerk and Recorder for Douglas County, Colorado, Piñon Soleil shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved.

17.03 Amendments.

(a) Subject to the terms and conditions of Article XVII above, and except for the provisions of this Declaration described in Section 38-33.3-217(1) of the Act, the Owners may amend any provision of this Declaration at any time by a vote of at least 80 percent of all Memberships. If the necessary votes and consents are obtained, the Association shall cause to be recorded with the Clerk and Recorder for Douglas County, Colorado, an amendment to this Declaration, in accordance with the terms and conditions of Section 38-33.3-217 of the Act.

(b) Notwithstanding the terms and conditions of Article XVII above, Declarant may amend this Declaration as expressly provided herein, without the approval of the Owners.

**ARTICLE XVIII
MISCELLANEOUS**

18.01 Interpretation of the Declaration.

Except for judicial construction, the Association, by its Executive 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 Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and the provisions hereof.

18.02 Severability.

Any determination by any court 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.

18.03 Disclaimer of Representations.

Notwithstanding, anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of Piñon Soleil can or will be carried out or that any land now owned or hereafter acquired by Declarant 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, that such use will continue in effect.

18.04 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Lot or any other part of Piñon Soleil 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 or other person claiming through any deed or other instrument and his or her heirs, executors, administrators, successors and assigns.

18.05 Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

18.06 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.

18.07 Notices.

If notice of any action or proposed action by the Executive Board or any committee or if any meeting is required to be given to any Owner by law, this Declaration or any other Association Document, then, unless otherwise specified herein or in any other Association Document, such notice requirement shall be deemed satisfied if such notice of such action or meeting is published once in any newspaper in general circulation within Douglas County, Colorado. This section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other matter.

18.08 Disclosure Regarding Neighboring Property.

(a) The owners of real estate adjacent to Piñon Soleil have expressed their intent to seek rezoning approval of and to develop their property. Declarant does not own this adjacent property, has no control over the owners of such property, and has no control over the actions of those owners or anything they might do to such property.

(b) Any of the trails and trail easements, located within Piñon Soleil may be used for access to and from any of the properties adjacent to Piñon Soleil.

(c) Declarant hereby expressly disclaims any warranty, guaranty or representation, oral or written, past or present, express or implied, (i) concerning any property adjacent to Piñon Soleil, including, without limitation, any representations with respect to future development or use of any adjacent property or with respect to views over or across any adjacent property, and (ii) concerning any roads, trails and trail easements located within Piñon Soleil or concerning the

level of traffic that exists now or may exist at any time in the future on those roads, trails and trail easements.

18.09 Disclosure Regarding Drainage Issues.

Each Owner hereby agrees to comply with all storm drainage discharge and similar requirements applicable to such Owner's lot, including, without limitation, all of the Town of Castle Rock's storm drainage discharge requirements, which may include review by the Town of Castle Rock.

LIST OF EXHIBITS

EXHIBIT A - Legal Description of the Property

EXHIBIT B - Legal Description of the Additional Property

EXHIBIT C - Plat of the Property

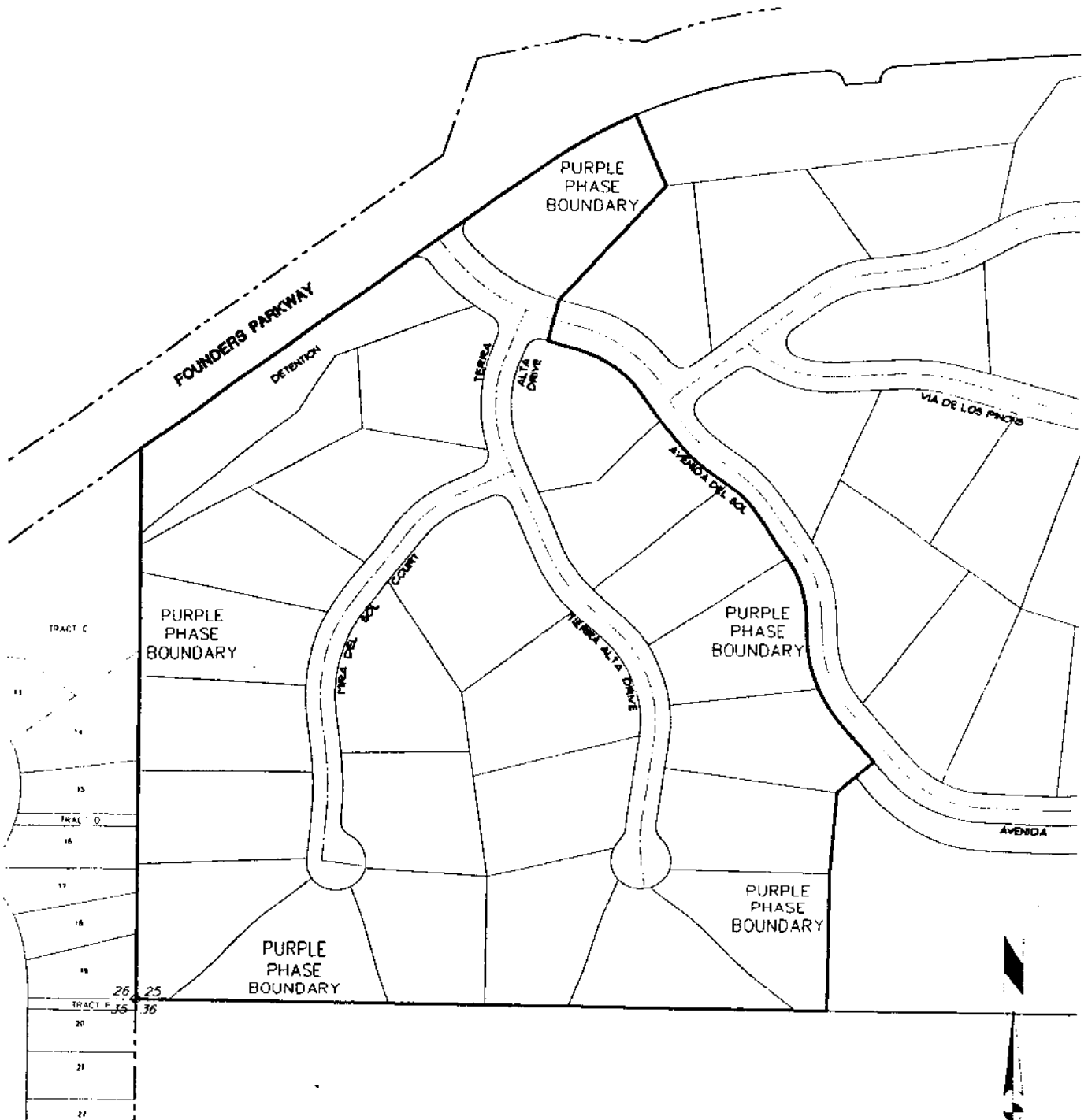
EXHIBIT D - Shares of Common Expenses

EXHIBIT A
LEGAL DESCRIPTION OF PIÑON SOLEIL

#622896 v4

Exhibit A

EXHIBIT A PIÑON SOLEIL PURPLE PHASE BOUNDARY



TST INC. OF DENVER
Consulting Engineers

PIÑON SOLEIL
PURPLE PHASE BOUNDARY

EXHIBIT A
PIÑON SOLEIL PURPLE PHASE BOUNDARY
TOWN OF CASTLE ROCK,
DOUGLAS COUNTY, COLORADO

LEGAL DESCRIPTION - PURPLE PHASE BOUNDARY

A TRACT OF LAND SITUATED IN THE SOUTH HALF OF SECTION 25,
TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN,
TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, BEING DESCRIBED
AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 25 AND
CONSIDERING THE SOUTH LINE OF SAID SECTION 25 TO BEAR SOUTH
89°18'35"EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE
THERETO; THENCE ALONG THE WEST LINE OF SAID SOUTH HALF, NORTH
00°11'48"EAST, 914.48 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF
MILLER BOULEVARD, FILING NO. 2 (RECEPTION NO. 8603133) ALSO
KNOWN AS FOUNDERS PARKWAY; THENCE ALONG SAID SOUTHERLY RIGHT OF
WAY LINE, NORTH 54°45'06"EAST, 817.63 FEET; THENCE ALONG A CURVE
TO THE RIGHT, HAVING A DELTA OF 11°32'36", A RADIUS OF 895.00
FEET AND AN ARC OF 180.31 FEET; THENCE DEPARTING SAID
RIGHT-OF-WAY LINE, SOUTH 23°42'18"EAST, 127.64 FEET; THENCE
SOUTH 42°49'51"WEST, 258.76 FEET; THENCE SOUTH 15°14'16"WEST,
72.00 FEET; THENCE SOUTH 74°45'46"EAST, 50.00 FEET; THENCE ALONG
A CURVE TO THE RIGHT HAVING A DELTA OF 37°43'45", A RADIUS OF
194.00 FEET AND AN ARC OF 127.75 FEET; THENCE SOUTH
37°02'01"EAST, 99.82 FEET; THENCE ALONG A CURVE TO THE LEFT
HAVING A DELTA OF 18°34'31", A RADIUS OF 225.00 FEET AND AN ARC
OF 72.94 FEET; THENCE SOUTH 55°36'32"EAST, 41.13 FEET; THENCE
ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 20°15'01", A RADIUS
OF 175.00 FEET AND AN ARC OF 61.85 FEET; THENCE SOUTH
35°21'31"EAST, 94.73 FEET; THENCE THENCE ALONG A CURVE TO THE
RIGHT HAVING A DELTA OF 33°58'12", A RADIUS OF 175.00 FEET AND
AN ARC OF 103.76 FEET; THENCE SOUTH 01°23'19"EAST, 32.56 FEET;
THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 40°03'11", A
RADIUS OF 225.00 FEET AND AN ARC OF 157.29 FEET; THENCE SOUTH
41°26'30"EAST, 86.57 FEET; THENCE SOUTH 50°38'20"WEST, 79.80
FEET; THENCE SOUTH 04°55'15"WEST, 137.19 FEET; THENCE SOUTH



TST INC. OF DENVER
Consulting Engineers

SHEET 1 OF 2

FILE NAME: FPSHT1

PROJ. NO. 009-006

EXHIBIT A
PIÑON SOLEIL PURPLE PHASE BOUNDARY
TOWN OF CASTLE ROCK,
DOUGLAS COUNTY, COLORADO

00°52'25"WEST, 230.53 FEET TO THE SOUTH LINE OF SAID SECTION 25;
THENCE ALONG SAID SOUTH LINE, NORTH 89°18'35"WEST, 1151.14 FEET
TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 28.93
ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS LEGAL
DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

January 8, 2001

DATE

Michael C. Cregger

MICHAEL C. CREGGER
PROFESSIONAL LAND SURVEYOR
COLORADO REGISTRATION NO. 22564



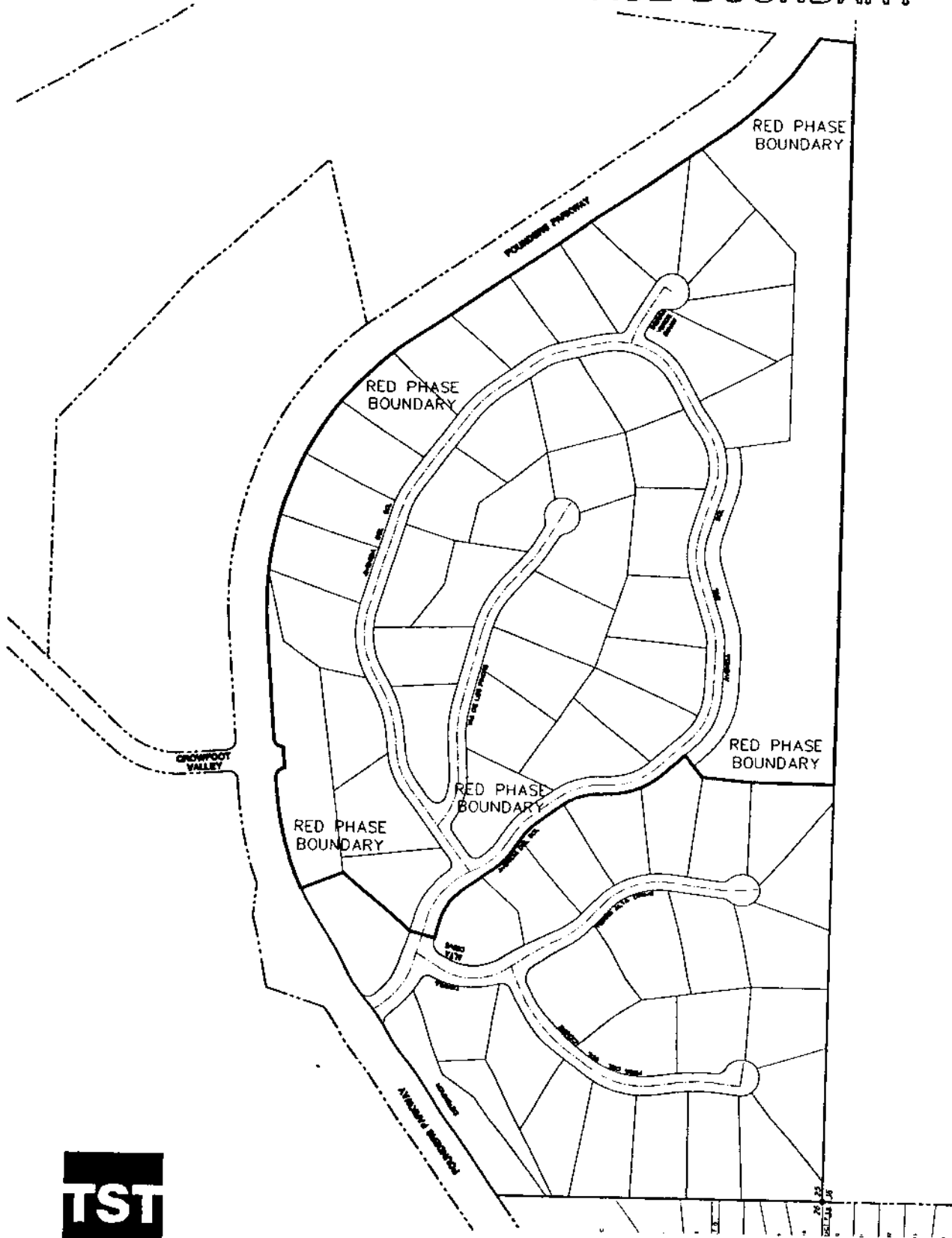
TST INC. OF DENVER
Consulting Engineers

SHEET 2 OF 2

EXHIBIT B

LEGAL DESCRIPTION OF THE ADDITIONAL PROPERTY

EXHIBIT B PIÑON SOLEIL RED PHASE BOUNDARY



TST INC. OF DENVER
Consulting Engineers



1" = 400'

PIÑON SOLEIL
RED PHASE BOUNDARY

EXHIBIT B
PIÑON SOLEIL RED PHASE BOUNDARY
TOWN OF CASTLE ROCK,
DOUGLAS COUNTY, COLORADO

LEGAL DESCRIPTION - RED PHASE BOUNDARY

A TRACT OF LAND SITUATED IN THE SOUTH HALF OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 25 AND CONSIDERING THE SOUTH LINE OF SAID SECTION 25 TO BEAR SOUTH 89°18'35"EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE ALONG SAID SOUTH LINE, SOUTH 89°18'35"EAST, 1151.14 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING ALONG SAID SOUTH LINE, SOUTH 89°18'35"EAST, 2088.14 FEET; THENCE DEPARTING SAID SOUTH LINE, NORTH 06°35'49"EAST, 97.61 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF MILLER BOULEVARD, FILING NO. 2 (RECEPTION NO. 8603133) ALSO KNOWN AS FOUNDERS PARKWAY; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING COURSES: ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A DELTA OF 22°38'16", A RADIUS OF 1005.00 FEET, AN ARC OF 397.08 FEET AND A CHORD WHICH BEARS NORTH 45°34'02"WEST, 394.50 FEET; THENCE NORTH 34°14'56"WEST, 1039.10 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 60°00'00", A RADIUS OF 895.00 FEET AND AN ARC OF 937.24 FEET; THENCE SOUTH 85°45'06"WEST, 322.83 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 90°00'00", A RADIUS OF 25.00 FEET AND AN ARC OF 39.27 FEET; THENCE SOUTH 85°45'06"WEST, 60.00 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A DELTA OF 90°00'00", A RADIUS OF 25.00 FEET AN ARC OF 39.27 FEET AND A CHORD WHICH BEARS NORTH 49°14'54"WEST, 35.36 FEET; THENCE SOUTH 85°45'06"WEST, 25.00 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 19°27'24", A RADIUS OF 895.00 FEET AND AN ARC OF 303.93 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, SOUTH 23°42'18"EAST, 127.64 FEET; THENCE SOUTH 42°49'51"WEST, 258.76 FEET; THENCE SOUTH 15°14'16"WEST, 72.00 FEET; THENCE SOUTH 74°45'46"EAST, 50.00 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 37°43'45", A RADIUS OF 194.00 FEET AND AN ARC OF 127.75 FEET; THENCE SOUTH 37°02'01"EAST, 99.82 FEET; THENCE



TST INC. OF DENVER

Consulting Engineers

SHEET 1 OF 2

FILE NAME: FPSHT1

PROJ. NO. 009-006

EXHIBIT B
PIÑON SOLEIL RED PHASE BOUNDARY
TOWN OF CASTLE ROCK,
DOUGLAS COUNTY, COLORADO

ALONG A CURVE TO THE LEFT HAVING A DELTA OF 18°34'31", A RADIUS OF 225.00 FEET AND AN ARC OF 72.94 FEET; THENCE SOUTH 55°36'32"EAST, 41.13 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 20°15'01", A RADIUS OF 175.00 FEET AND AN ARC OF 61.85 FEET; THENCE SOUTH 35°21'31"EAST, 94.73 FEET; THENCE THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 33°58'12", A RADIUS OF 175.00 FEET AND AN ARC OF 103.76 FEET; THENCE SOUTH 01°23'19"EAST, 32.56 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 40°03'11", A RADIUS OF 225.00 FEET AND AN ARC OF 157.29 FEET; THENCE SOUTH 41°26'30"EAST, 86.57 FEET; THENCE SOUTH 50°38'20"WEST, 79.80 FEET; THENCE SOUTH 04°55'15"WEST, 137.19 FEET; THENCE SOUTH 00°52'25"WEST, 230.53 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 60.69 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

January 8, 2001

DATE

Michael C. Cregger

MICHAEL C. CREGGER
PROFESSIONAL LAND SURVEYOR
COLORADO REGISTRATION NO. 22564



TST INC. OF DENVER
Consulting Engineers

SHEET 2 OF 2

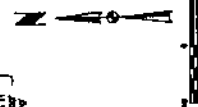
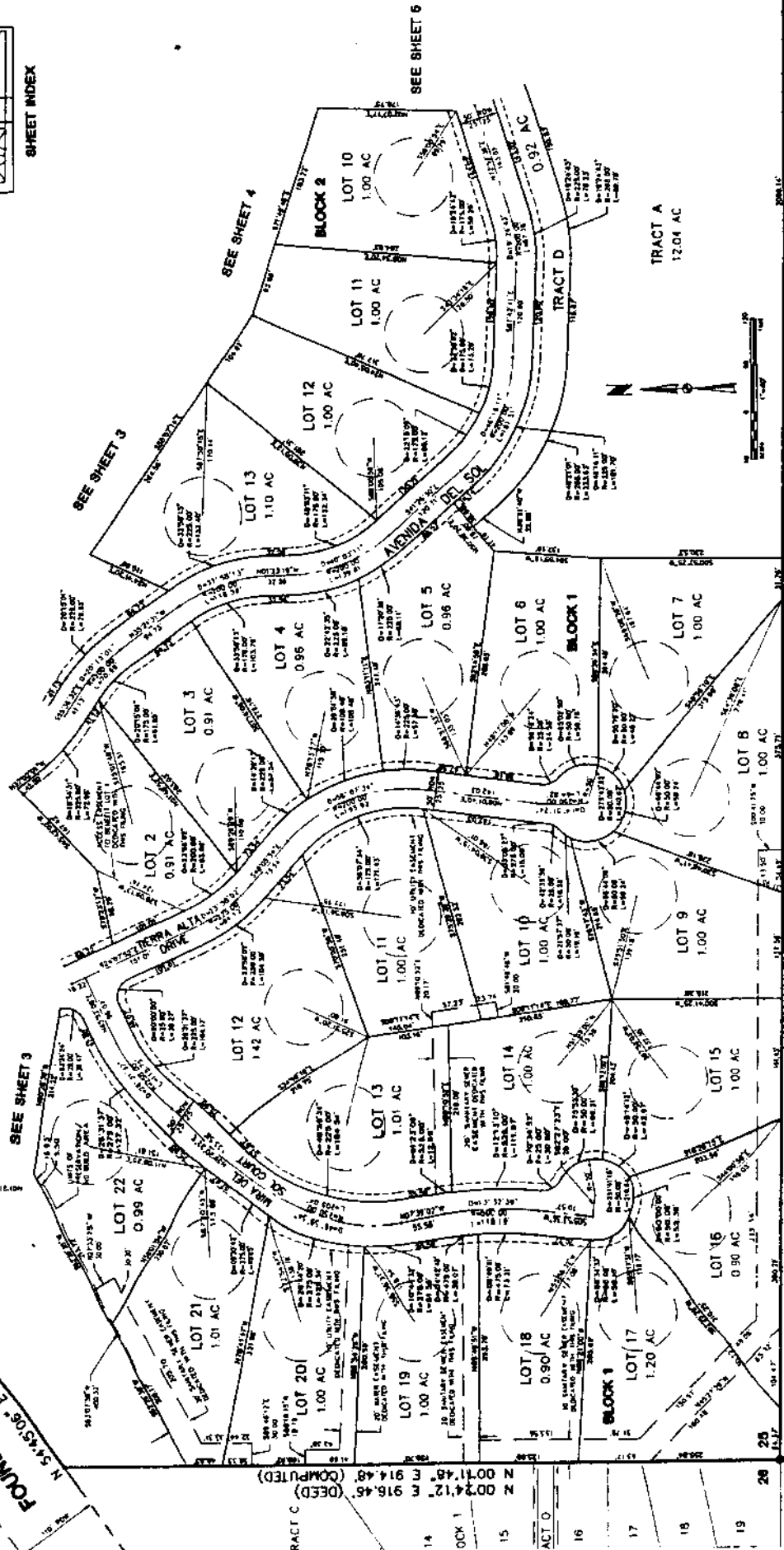
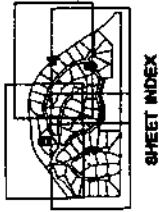
EXHIBIT C
•
PLAT OF PIÑON SOLEIL

EXHIBIT C

FINAL PLAT
METZLER RANCH FILING NO. 5
 LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 87 WEST OF THE 6TH P.M.
 TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO

FOUNDERS PARKWAY
 N 5450.6' E 814.22' (DEED)
 N 5450.6' E 817.63' (COMPUTED)

SHEET 2 OF 6



N 89°16'35" W 3239.28'
 (BASIS OF BEARINGS)



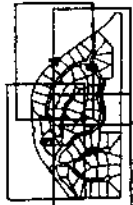
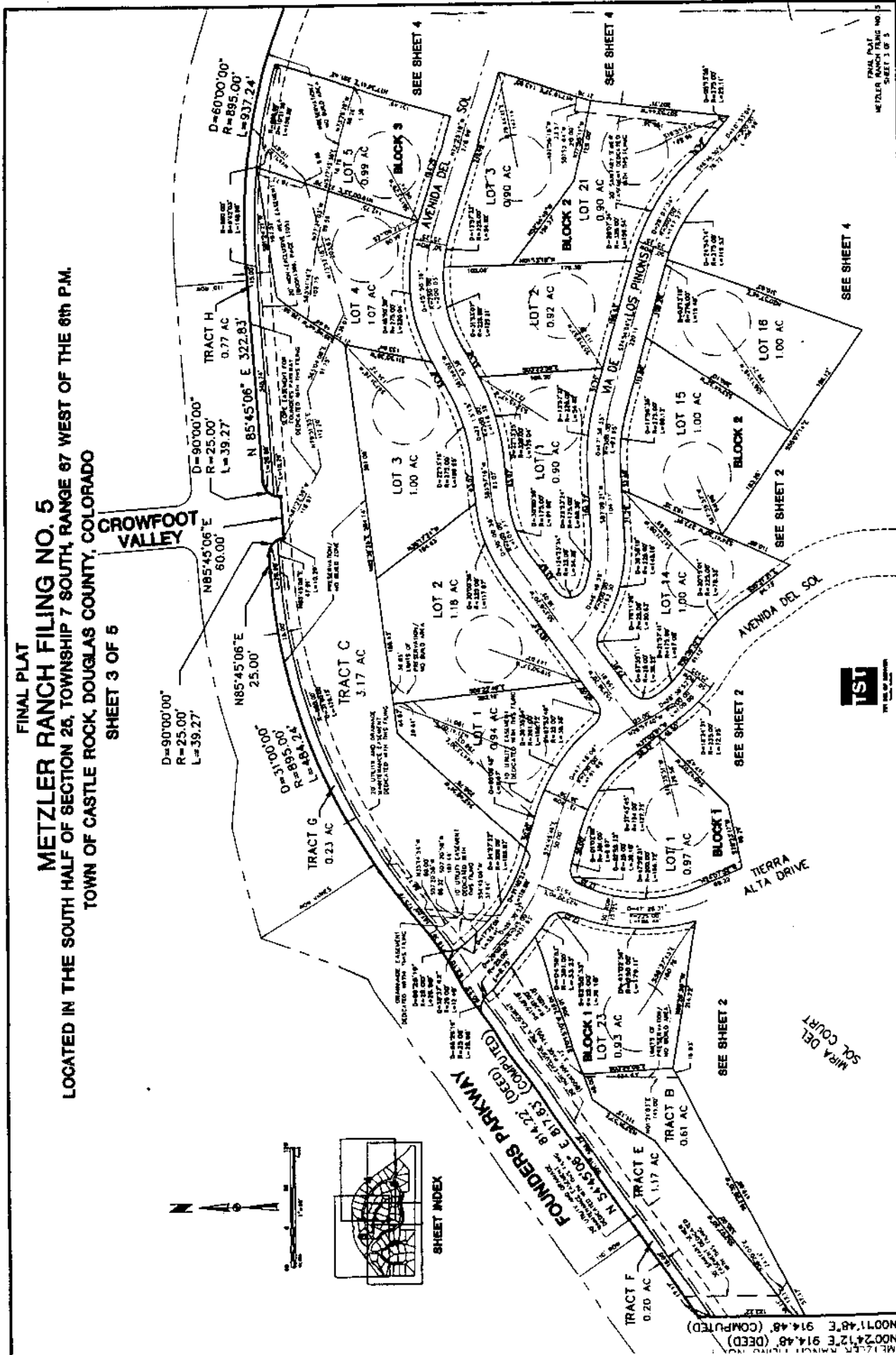
UNPLATTED

POINT OF BEGINNING

FINAL PLAT
 METZLER RANCH FILING NO. 5
 SHEET 2 OF 6

EXHIBIT C

FINAL PLAT
METZLER RANCH FILING NO. 5
LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 87 WEST OF THE 8th P.M.
TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO
SHEET 3 OF 5



SHEET INDEX

0001748'E 914.48' (DEED)
0022412'E 914.48' (DEED)



FINAL PLAT
METZLER RANCH FILING NO. 5
SHEET 3 OF 5

EXHIBIT C

FINAL PLAT
METZLER RANCH FILING NO. 5
LOCATED IN THE SOUTH HALF OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 87 WEST OF THE 6th P.M.
TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO
SHEET 4 OF 5

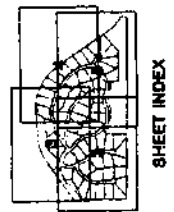
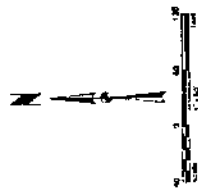
85°45'06" E
322.83'

$D=60'00'00"$
 $R=895.00'$
 $L=937'24"$

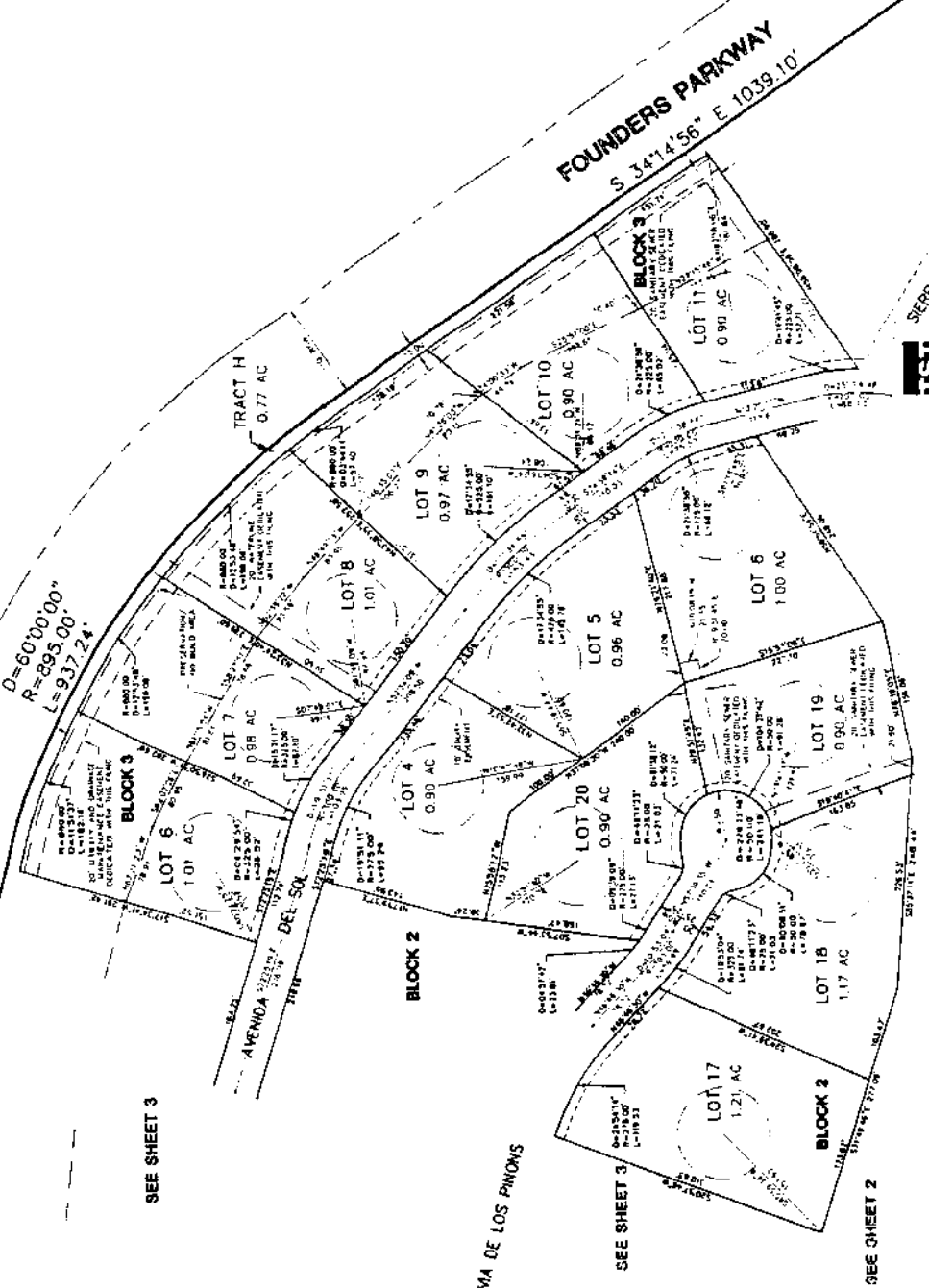
SEE SHEET 3

SEE SHEET 3

SEE SHEET 2



SHEET INDEX



SEE SHEET 5

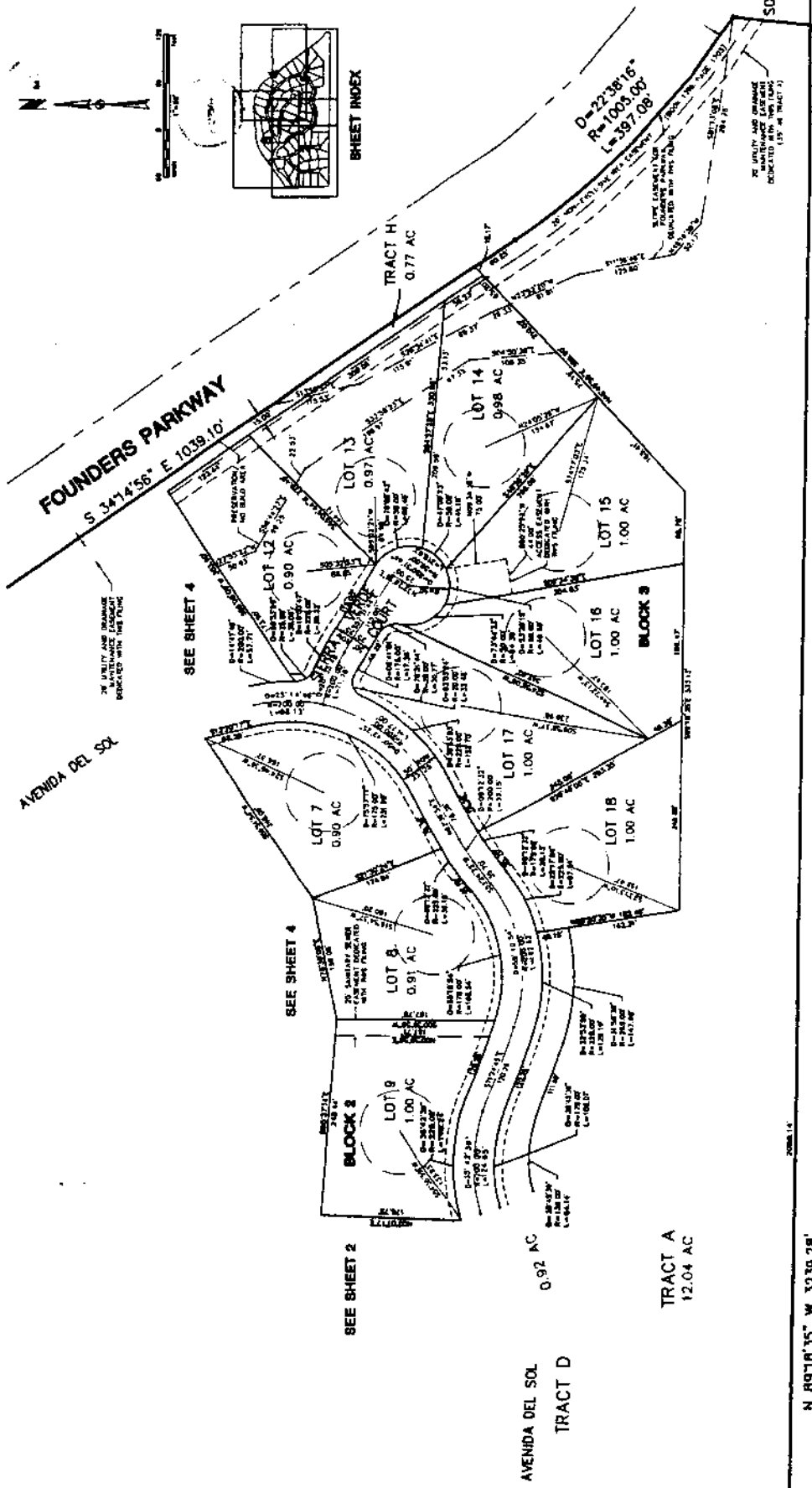


SEE SHEET 5

FINAL PLAT
METZLER RANCH FILING NO. 5
SHEET 4 OF 5

EXHIBIT C

FINAL PLAT
METZLER RANCH FILING NO. 5
 LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 87 WEST OF THE 6TH P.M.
 TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO
 SHEET 5 OF 5



N 89°16'35" W 3239.28'
 (BASIS OF BEARINGS)

EXHIBIT D
SHARES OF COMMON EXPENSES

<u>LOT</u>	<u>BLOCK</u>	<u>SHARE OF COMMON EXPENSES</u>
1	1	4.348%
2	1	4.348%
3	1	4.348%
4	1	4.348%
5	1	4.348%
6	1	4.348%
7	1	4.348%
8	1	4.348%
9	1	4.348%
10	1	4.348%
11	1	4.348%
12	1	4.348%
13	1	4.348%
14	1	4.348%
15	1	4.348%
16	1	4.348%
17	1	4.348%
18	1	4.348%
19	1	4.348%
20	1	4.348%
21	1	4.348%
22	1	4.348%
23	1	4.348%