

**DECLARATION OF COVENANTS  
AND  
RESTRICTIONS  
  
OF THE  
INDIAN CREEK ASSOCIATION**

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This DECLARATION made on the date hereinafter set forth by M. J. BROCK & Sons, INC., hereinafter referred to as "Declarant".

WITNESSETH

Whereas, Declarant is the owner of certain property in the City and County of Denver, State of Colorado, which is more particularly described as:

Lots 1 through 24 Block 1, Lots 1 through 12 Block 2,  
Tracts A, B, C and D of INDIAN CREEK FILING NO. 4,  
Being a part of the Southwest quarter of Section 21 Township 4  
South, Range 67 West, of the 6<sup>th</sup> P.M. according to the plat  
Thereof recorded July 30, 1982, in the office of the Clerk and Recorder  
Of the City and County of Denver in Plat Book 29 at Pages 34 and 35.

and,

WHEREAS, Declarant will convey the said property, subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth, and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Colorado, INDIAN CREEK ASSOCIATION, a non-profit corporation, for the purpose of exercising the functions herein described.

NOW, THEREFORE, Declarant hereby declares that all of properties describes above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to INDIAN CREEK ASSOCIATION, a Colorado non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entitles, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tract "A", "B", "C" and "D", INDIAN CREEK FILING NO. 4,  
City and Count of Denver, State of Colorado

Section 5. "Lot" shall mean and refer to a building site, together with the Residence located thereon, title to which is or will be conveyed in fee simple by reference to the numbered plots of land shown upon the recorded subdivision map of the Properties.

Section 6. "Residence" shall mean and refer to the individual residential dwelling unit constructed upon the Property as hereinafter defined.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Lot as security for the payment of a debt or obligation including any executory land sales contract wherein the Administrator of Veterans Affairs (Veteran Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not.

Section 9. "Mortgagee" shall mean any person, corporation, partnership, trust, company or other legal entity which takes, holds, owns, or is secured by a Mortgage.

Section 10. "Declarant" shall mean and refer to M. J. Brock & Sons, Inc., its successors and assigns if such successors or assigns should acquire more than one Undeveloped Lot within the Properties from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area, and to limit the number of guests of Owners on recreational facilities;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any Infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of Members has been recorded.

- (d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage or grant other security interests in the Common Area; provided, however, that the rights of any
- (e) Mortgagee shall be subject to the rights of the Members while any Mortgage or note is current and not in default, and further provided that no funds may be borrowed unless three-fourths (3/4) of each class of Members agree to such action, and an instrument reflecting such agreement is recorded with the Clerk and Recorder of the City and County of Denver, State of Colorado. No portion of the Common Area may be mortgaged or encumbered to secure such borrowing without the consent of three-fourths (3/4) of each class of Members, and all of the first Mortgagees of Lots within the Property (based upon one (1) vote for each Lot encumbered) which consent shall be evidenced by an instrument reflecting the same recorded with the Clerk and Recorder of the City and County of Denver, State of Colorado.
- (f) Declarant shall have the right at any time to use so much of the Common Area as it may deem necessary or advisable for the purpose of aiding in the construction, development and sales of Undeveloped Lots.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area and facilities to the Members of his family, his tenants, or contract purchasers who reside in the Residence.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Ownership of a Lot shall be the sole qualification for membership. Transfer of a Lot shall automatically transfer membership in the Association and all rights of the transferor with respect to the Common Area.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect of any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1986.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest and cost of collection including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; cause the exteriors of the Residences situated upon the Lots to be painted and maintain, repair and replace sanitary sewer lines pursuant to Article V hereof; maintain landscaped parking islands, and any such other maintenance or improvement obligations deemed desirable or which may be incurred by virtue of agreement with the City and County of Denver or other governmental authorities; and, maintain sewer service lines from the entry of each such line into the foundation of each Residence to the public sewer main. The assessments shall further be used to provide adequate insurance of any and all types and amounts deemed necessary by the Board of Directors and as provided in Article XII hereof, and to provide such reserves as may be deemed necessary in order to accomplish the objects and purposes of the Association.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Sixty Dollars (\$360.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 15% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 15% by a vote of three-fourths (3/4) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto or damage to individual residences when the Owners of any such Residences fall or

refuse to properly repair or restore such damaged Residences. Any such assessment shall have the assent

of three-fourths (3/4) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Costs and Charges for Water and Sewer. All costs and charges for domestic water and sanitary sewer services supplied to each Residence shall be billed directly to each Owner and paid by each Owner directly to the agency furnishing such water and sewer services.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Except as hereinafter provided, both the annual and special assessments shall be fixed at a uniform rate for all Lots; provided, however, that the amount of such assessments on Lots owned by Declarant shall equal one-quarter (1/4) of the assessment paid by Owners other than Declarant, and further provided the one-quarter (1/4) assessment to be paid by Declarant shall cease at the time a certificate of occupancy has been issued in regard to the improvements constructed on a Lot owned by Declarant, and thereafter Declarant shall pay the full assessment with respect to said Lot.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments – Remedies of the Association. The Association may provide for the payment of the assessment in monthly installments. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the delinquent installments. In addition to such action or as an alternative thereto, the Association may file with the Clerk and Recorder of the City and County of Denver, a Statement of Lien with respect to the property, setting forth the name of the Owner, the legal description of the property, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed and acknowledge by the President or a Vice President of the Association, which shall be served upon the Owner of the Property by mail to the address of the property or at such other address as the Association may have in its records for the Owner of the Property. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under

the statutes of the State of Colorado. In either a personal or foreclosure action, the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages.

- (a) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust, and sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot as a result of court foreclosure of a mortgage, foreclosure through the Public Trustee, or any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer, but shall not relieve any former Owner of personal liability therefore. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.
- (b) The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of such exemptions as against said assessment lien.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein;

- (a) All Properties dedicated to and accepted by a local public authority;
- (b) The Common Area.

Section 12. Notice to Mortgagee. Upon written request of a first Mortgagee of any Lot, the Association shall report to such first Mortgagee any unpaid assessments or other defaults under the terms of this Declaration which are not cured by said mortgagee's mortgagor within sixty (60) days. In addition each first Mortgagee of a Lot which so requests in writing shall have the right to:

- (a) Inspect the books and records of the Association during normal business hours;
- (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and
- (c) written notice of all meetings of the Association and to designate a representative to attend all such meetings.

Section 13. Mortgagee Rights. First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area or the improvements located thereon, and may pay overdue premiums on hazard insurance policy, for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

## ARTICLE V

### ADDITIONAL MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: (a) Painting of exterior wall surfaces; (b) maintain, repair and replace when necessary and appropriate sanitary sewer lines from the point of entry of such lines into the foundation of each Residence to the public sewer main.

In the event that the need for maintenance or repair of the improvements or the sanitary sewer line on a Lot is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Lot is subject.

## ARTICLE VI

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. The Architectural Control Committee shall consist of five (5) persons appointed by the Board of Directors of the Association, provided, however, that until the entire project is completed and all Lots have been sold, Declarant shall appoint the Architectural Control Committee.

Section 2. Nothing shall be attached to a Residence constructed upon any Lot, no alteration in design or color or addition to the exterior of a Residence shall be made and no landscaping which results in a change in the grade of any of the Properties in relationship to adjoining parts of the Properties shall be performed, unless complete plans and specifications therefore (said plans and specifications to show exterior design, height, materials, color, location of the addition to the structure, plotted horizontally and vertically, general plan of landscaping, fencing, walls, windbreaks and the grading plan) shall have been submitted to and approved in writing by the Architectural Control Committee. A copy of such plans and specifications as finally approved shall become the property of the Architectural Control Committee.

Section 3. Conformance with Plan. The Architectural Control Committee shall exercise its best judgment to the end that all attachments, improvements, construction, landscaping and alterations to Lots or Residences on lands within the Properties conform to and harmonize with existing surroundings and structures. For purposes herein it is noted that a surface drainage plan for the Properties provides for a ten (10) foot wide surface drainage between Residences which do not share a party wall. Except in emergency no change in landscaping or grade shall be permitted which will impede the designed surface drainage.

Section 4. Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after submission. In the event that the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully compiled with.

Section 5. Vote. A majority vote of the Architectural Control Committee is required to approve a proposed improvement.

Section 6. Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions taken by it thereon, and such records shall be available to members for inspection at reasonable hours of the business day.

Section 7. Liability. The Architectural Control Committee shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to any matter within its jurisdiction hereunder.

Section 8. Variances. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Articles V and VII hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the Application of the restrictions contained in this Article or Articles V and VII hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purposes hereof.

## ARTICLE VII

### RESTRICTIONS

Section 1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Properties which shall be binding on and inure to the benefit of the Owners and future Owners of the Properties, all thereof in order to enhance value, desirability and attractiveness of said property and to subserve and promote the sale thereof.

Section 2. Restrictions Imposed. The Declarant hereby declares that all of the Properties shall be held and shall henceforth be sold, conveyed, used, improved, occupied, resided upon, hypothecated and held upon and subject to the following provisions, conditions, restrictions, agreements and covenants.

Section 3. Use of Common Area.

- (a) No use shall be made of the Common Area which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.
- (b) No Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members.
- (c) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.
- (d) No use shall ever be made of the Common Area which will deny ingress and egress to those Owners having access to Lots by vehicle and otherwise is hereby expressly granted.
- (e) Damage to any portion of the Common Area and improvements located thereon caused by an Owner or his family or guests shall be paid for by said Owner. The term "damage" shall not include ordinary wear and tear.

Section 4. Single Family Use. Except for Common Areas, all Lots shall be used for private family residence purpose only. No business or profession of any nature shall be conducted on any Lot or in any structure constructed thereon except as provided below.

- (a) No building shall be erected, altered, placed or permitted to remain on any Lot other than the Residence and private garage originally constructed thereon, except that Declarant may use Undeveloped Lots, Lots and the Residences erected thereon for show homes and sales offices, field construction offices, storage facilities and general business offices.

Section 5. The Declarant will install over 50% of the surface area of the front yard of each Lot in grass sod with rock bordering the foundation of the dwelling, and each Owner will be responsible thereafter to reasonably maintain the grass lawn. In the maintenance of such grass lawn the Owner shall not alter the surface grade of the Lot. Other front yard landscaping consisting of trees and/or shrubs may be installed provided the plans for the same are approved by the Architectural Control Committee.

Senate Bill 100, signed into law by Governor Owens, June 6, 2005 supersedes Section 5, effective January 1, 2006. Section 1 37-60-126 (11) Colorado Revised Statutes is amended. Water Conservation and Drought Mitigation

“Any section of a restrictive covenant that prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass s hereby declared contrary to public policy and, on that basis, that section of the covenant shall be unenforceable.”

“Nothing in this subsection (of Senate Bill 100) shall preclude the Executive board of a Common Interest Community from taking enforcement action against a unit owner, who allows his or her existing landscaping to die: except such enforcement action shall be suspended during a period of water use restrictions declared by the jurisdiction in which the Common Interest Community is located.....”

- This bill still allows an HOA to set guidelines for xeriscaping.
- Any homeowner’s plan for xeriscaping still requires ACC approval.
- The application for project approval is available at the Indian Creek web site or from the Management and Maintenance office.

See Page 2 of Senate Bill 100, full text on the Indian Creek web site at:  
[www.managementandmaintenance1.com/indiancreek](http://www.managementandmaintenance1.com/indiancreek) .

Section 6. Rentals. No room or rooms in any Residence or parts thereof may be rented or leased and no paying guests shall be quartered in any Residence. Nothing herein contained, however, shall be construed as preventing the renting or leasing of an entire residence as a single unit to a single family.

Section 7. Animals. No horses, cattle, sheep, goats, pigs, rabbits, poultry, or other animals of any description shall be kept or maintained on any properly subject hereto except that residents may keep dogs, cats or other animals which are bona fide household pets so long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent properly.

Section 8. Temporary Structures. No temporary house, trailer, garage or outbuilding shall be placed or erected upon any part of the Properties, and no Residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any Residence when competed be in any manner occupied until made to comply with all requirements, conditions and restrictions herein set forth; provided, however, that during the actual construction of a building on any Lot, necessary temporary buildings for storage of materials may be erected and maintained by the builder.

Section 9. Fences – Walls. No fences except the fences originally constructed on or between Lots may be erected or maintained on any Lot.

**Section 10.** The back yard of each Lot is to be enclosed by a fence to be constructed by Declarant. The Owner of each Lot shall be responsible to maintain the part of any such fence which is on his property. To the extent that any part of a fence is on the line between two Lots, the provisions of Article IX pertaining to Party Walls shall apply. In the event an Owner fails to properly maintain any part of his fence the Association shall advise such Owner, by letter mailed to the address of the Lot, that the fence is not in proper repair. In the Owner falls, within thirty (30) days of the mailing of such notice, to put the fence in acceptable condition, the Association shall do so, and the cost thereof shall be added to and become a part of the assessment to which the Lot is subject.

**Section 11. Burning.** No coal or other type of fuel which gives off smoke except wood shall be used for heating, cooking or any other purposes and no trash or garbage shall be burned on the premises.

**Section 12. Miscellaneous Structures.** No advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot other than a name plate of the occupant and street number and except for a "for sale" or "for rent" sign not exceeding thirty by twenty-four inches (30" x 24"). All types of refrigerating, cooking or heating apparatus must be concealed. No garbage or trash cans or receptacles shall be maintained in an exposed and unsightly manner. All antennas shall be installed inside the improvement on any Lot, and no aerial masts, radio or television antennas shall be mounted on the exterior of a structure except with the written consent of the Architectural Control Committee.

**FCC Rules regarding antennas**

- a) In 1996, the Federal Communications Commission (FCC) adopted rules for Over-the-Air-Reception Devices (OTARD rules). The OTARD rules prohibit restrictions on a property owner or tenant's right to install, maintain, or use an antenna to receive video programming from direct broadcast satellites (DBS), broadband radio services (formerly referred to as multichannel multipoint distribution services or (MMDS), and television broadcast stations (TVBS). For more information, visit the FCC's web site at: [www.fcc.gov/mb/facts/otard.html](http://www.fcc.gov/mb/facts/otard.html)

Senate Bill 100, signed into law by Governor Owens, June 6, 2005 adds to Section 5, effective January 1, 2006. Section 2 Part 1 of Article 33.3 of Title 38, Colorado Revised Statutes is amended BY THE ADDITION OF A NEW SECTION: 38-33.3-106.5

"Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

- a) The display of the American flag by a unit owner/occupant on that unit owner's/occupant's property, in a window or on a balcony of the unit owner's/occupant's property if the flag is displayed in a manner consistent with the federal flag code.
- b) The display by a unit owner/occupant of a service flag bearing a star ... during a time of war or armed conflict, on the inside of a window or door of the unit owner's/occupant's residence.
- c) The display of a political sign by a unit owner/occupant on that unit owner's/occupant's property in a window of the unit owner's/occupant's residence; ..... not earlier than 45 days before the day of an election and later than 7 days after an election."

The bill allows an HOA to adopt reasonable rules regarding the placement and size of flags and political signs.

See Architectural Control Procedures/Guidelines for this issue and Pages 3-4 of Senate Bill 100 full text on the Indian Creek web site at: [www.managementandmaintenance1.com/indiancreek](http://www.managementandmaintenance1.com/indiancreek)

**Section 13. Property to be Maintained.** Each Lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that they are visible from any neighboring Lot or street. In the event any structure is destroyed either wholly or partially by fire or any other casualty, said structure shall be promptly rebuilt or remodeled to conform

to this Declaration or all remaining portions of the structure, including the foundations, and all debris shall be promptly removed from the property. Each Lot shall at all times be kept clear of weeds and other unsightly growth.

Section 14. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon the Properties nor shall anything be done or placed on the Properties which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 15. No Hazardous Activities. No activities shall be conducted on the Properties and no improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property; and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purpose or within a safe and well-designed interior fireplace or except such campfires or picnic fires on property designated for such by the Association and except such controlled and attended fires required for clearing or maintenance of land.

Section 16. No Annoying Light, Sounds or Odors. No light shall be emitted from any property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any property which is unreasonably loud or annoying; and no odor shall be emitted on any property which is noxious or offensive to others.

Section 17. Restrictions on Parking and Storage. Except as expressly heretofore provided, no Lot shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, motor driven cycle, non-functioning automobile, truck or any type of van except as a temporary expedience for loading, delivery, emergency, etc. The same shall be stored, parked or maintained wholly within the garage area of the improved site with the garage door in a closed position or in the back yard concealed from the street by the fence.

Section 18. Clothes Line and Storage. No garbage, refuse, rubbish or cuttings shall be deposited on any street, and not on any Lot unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All equipment for the storage or disposal of such material shall be kept in clean and sanitary condition.

Section 20. Garage Doors. All garage doors shall be kept in a closed position so that the contents therein are concealed from view from any other sites, from any Common Area and from the streets.

Section 21. Maintenance of Slopes. Each Owner shall maintain the slopes upon his Lot at the slope and pitch fixed by the finish grading thereof, including watering and planting of the slopes.

Section 22. Maintenance of Drainage Pattern. Each Owner of a Lot in said tract agrees for himself and his assigns that he will not in any way interfere with established drainage patters over his Lot from adjoining or other Lots in said tract. For the purpose hereof, "established" drainage is defined as the drainage which occurred at the time the overall grading of said tract was completed by the undersigned Declarant.

## ARTICLE VIII

### EASEMENTS

The easements over and across the Common Area shall be those shown or provided for upon the recorded plat of INDIAN CREEK FILING NO. 4 and such other easements as may be established pursuant to the provisions of this Declaration of Covenants, Conditions and Restrictions.

## ARTICLE IX

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall and fence which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between two Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE X

### DAMAGE OR DESTRUCTION

Section 1. Damage to Common Area. In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the insurance proceeds if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to the Common Area damage or destruction are insufficient to repair and reconstruct the damage or destroyed improvements located on the Common Area, the Association shall present to the Members a notice of a special assessment for approval by the membership in accordance with Article IV, Section 4. If such assessment is approved, the Association shall make such assessment

and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of seventy-five percent (75%) of the Owners other than Declarant, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the first Mortgagees of their respective Lots, if any. The assessment as to each Owner and Lot shall be equal to the assessment against every other Owner and Lot. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than fifteen (15) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon and may be enforced and collected by foreclosure proceedings in the courts.

Section 2. In the event of damage or destruction to any Residence and the Owner thereof shall fail or refuse to rebuild the same in accordance with Article IX, the Association shall rebuild and repair the Residence utilizing the proceeds of any insurance received by the Association on account of such damage or destruction along with any funds collected by the Association from an Owner under Article IX. In the event such damage or destruction to a Residence is not covered by insurance and the Owner of such Residence does not pay the Association an amount sufficient to restore such Residence, then upon approval by the membership in accordance with Article IV, Section 4, the Association may levy a Special Assessment against all Owners to complete such restoration, if the Owner of the damaged or destroyed Residence refuses to reimburse the Association for all such sums expended for such restoration, the Association shall have a lien against the restored Residence which may be foreclosed in accordance with Article IV, Section 9.

## ARTICLE XI

### CONDEMNATION

Section 1. Condemnation. If at any time or times during the continuance of ownership pursuant to this Declaration all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

- (a) Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.
- (b) Complete Taking.
  - (1) In the event that all of the Common Area is taken or condemned, or sold or otherwise disposed of, in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners equally and payment of said apportioned amounts shall be made payable to the Owner and the first Mortgagee of his Lot jointly.
  - (2) On the basis of the principal set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled.
- (c) Partial Taking. In the event that less than the entire Common Area is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding and replacement of those improvements on the Common Area damaged or taken by the condemning public authority, unless seventy-five (75%) of the Owners and the first Mortgagees of all Lots agree otherwise. Any surplus of the award or other portion

thereof not used for rebuilding and replacement, shall be used by the Association for the future maintenance of the Common Area.

- (d) The Association shall give any first Mortgagee of a Lot timely written notice of any condemnation proceedings or threat thereof.

## ARTICLE XII

### INSURANCE

Section 1. Insurance on Common Area. The Association shall maintain insurance covering all improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance on the improvements located on the Common Area.

- (a) A policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land, excavation and other items normally excluded from coverage) of the improvements located on Common Area with an "Agreed
- (b) Amount Endorsement: or its equivalent, a "Demolition Endorsement" or its equivalent, and if necessary, an "increased Cost of Construction Endorsement" or "Contingent Liability from Operating of Building Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:
  - (i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; an
  - (ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.
- (c) A comprehensive policy of public liability insurance covering all of the Common Area insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and such other risks as shall customarily the covered with respect to projects similar in construction, location, and use.
- (d) The Association shall maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements.
  - (i) all such fidelity bonds shall name the Association as an obligee; and
  - (ii) such fidelity bonds shall be written in an amount equal to at least the estimated annual operating expenses of the Association, including reserves; and
  - (iii) such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.
- (e) All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a member of the Association

and shall provide that the policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all insureds, including the Mortgagees of any Residence. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any first Mortgagee of any Residence upon written request. The insurance shall be carried in blanket form naming the Association as the insured, as trustee for each of the Owners.

Section 2. Reappraisal. The Association shall, at least every year obtain an appraisal for insurance purposes which shall be maintained as a permanent record, showing that the insurance in any year represents one hundred percent (100%) of the full replacement value of the improvements on the insurable Common Area.

Section 3. Notice of Damage. The Association shall upon written request notify each first Mortgagee of a Residence wherever damage to the Common Area and the improvements situated thereon exceeds Ten Thousand Dollars (\$10,000.00). Said notification shall be delivered within fifteen (15) days after the event causing the damage.

### ARTICLE XIII

#### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the Properties for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended only by an instrument signed by not less than ninety percent (90%) of the Owners of Lots within the Properties.

Senate Bill 100, signed into law by Governor Owens, June 6, 2005 supersedes Section 5, effective January 1, 2006. Section 8 38-33.3-217 (I) is amended.

Necessary percentage of affirmative votes needed to amend a declaration may be no higher than sixty seven percent (67%). Any association's documents that specify a higher percentage will be deemed to read 67%.

See Page 12 of Senate Bill 100, for the full text of this amendment on the Indian Creek web site at: [www.managementandmaintenance1.com/indiancreek](http://www.managementandmaintenance1.com/indiancreek)

Any such amendment must be properly recorded. Notwithstanding the above, unless all of the first Mortgagees of Lots (based upon one vote for each first Mortgage owned or held) have given their prior written approval, the Association shall not be empowered or entitled to:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Owners (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this clause);
- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (c) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the maintenance of the Common Area;
- (d) fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (e) use hazard insurance proceeds for losses to any of the Common Area for other than the repair, replacement or reconstruction of such Area; and

Further, notwithstanding the foregoing, Declarant hereby reserves and is hereby granted the right and power, until such time as all Lots within the Property are conveyed by Declarant to record a Special Amendment to this Declaration to amend this Declaration; (i) to comply with the requirements of the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation; and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first Mortgagees of deeds of trust encumbering the Lots. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a special amendment on behalf of each Owner and Mortgagee. Each deed, Mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute and record special amendments.

No special amendment made by Declarant shall affect or impair the lien of the first Mortgage or deed of trust upon a Lot or any warranties made by an Owner or a first Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure or guarantee any first Mortgages on such Lots.

Section 4. Annexation. Additional real property described on Exhibit "A" attached hereto and incorporated by reference herein may be annexed to the Properties by Declarant, its successors and assigns, and parcels of such additional real property may be designated as Common Area by Declarant without consent of the Owners at any time or times prior to December 31, 1986. Said annexation shall occur when the Declarant records a certificate of annexation describing the real property which is to be annexed and on the date of recording of said certificate, said real property shall be deemed part of the Properties and shall be subject to all of the terms hereinabove set forth. Additional real property other than areas described on Exhibit "A" may be annexed to the Properties only with the consent of three-fourths (3/4) of each class of Members.

Section 5. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions, provided any such agencies have insured or guaranteed or own any Mortgage secured by a Lot.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 20<sup>th</sup> day of October, 1982.

M. J. BROCK & SONS, INC.

ATTEST:

	By:
Asst. Secretary	Jack R. Harter, Ex. Vice President
STATE OF COLORADO	)
	) ss.
CITY AND COUNTY OF DENVER	)

The foregoing Declaration of Covenants, Conditions and Restrictions was acknowledged before me this 20<sup>th</sup> day of October, 1982. by Jack R. Harter as Ex. Vice President and Richard Downing, as Asst. Secretary of M. J. BROCK & SONS, INC.

Witness my hand and official seal.

My commission expires: March 21, 1986

\_\_\_\_\_  
 Notary Public  
 Address: 718 17<sup>th</sup> Street, Suite 1950  
 Denver, Colorado 80202

EXHIBIT A

TO

DECLARATIONS OF COVENANT, CONDITIONS AND RESTRICTIONS  
OF INDIAN CREEK

All that land contained and included within the boundaries of Indian Creek Filing No. 3 a resubdivision of Indian Creek Filing No. 2, being a part of the Southwest quarter of Section 21, Township 4 South, Range 67 West, of the 6<sup>th</sup> P.M., City and County of Denver, State of Colorado.