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**AMENDMENT  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
MASTERS CLUB  
TO  
AMEND THE DECLARATION TO BROADEN EASMENTS FOR THE  
BENEFIT OF THE TOWN AND TO ELIMINATE FIRST MORTGAGEE RIGHTS**

THIS AMENDMENT is made this \_\_\_ day of

**RECITALS**

A. Genesee Development Company No.5, a Colorado general partnership (the "Declarant") created the Masters Club Planned Community (the "Community") by recording a Declaration of Covenants, Conditions, and Restrictions of Masters Club in the real property records of Douglas County, State of Colorado in Book 618 at Page 429 on January 9, 1986 (the "Declaration").

B. The Planned Community consists of Lots as described in the Plat of Plum Creek Fairway Five Subdivision, Filing No.2, recorded on April 17, 1985 at Reception Number 351050, in the Office of the Clerk and Recorder of Douglas County, Colorado, and as those Lots have been made subject to the Declaration.

C. Pursuant to Article XIII, Section 7 of the Declaration, the approval of 51 % of each class of Members is required to approve any amendment to the Declaration; unless otherwise provided in the Declaration.

D. Pursuant to Article XI, Section 1(f) of the Declaration, the approval of 67% of each class of Members' and 67% of the First Mortgagees is required to amend material provisions of the Declaration, including any provisions which are for the express benefit of First Mortgagees. With regard to First Mortgagees, the Declaration provides that:

"... the Association shall not, unless it has obtained the prior written consent of at sixty seven percent (67%) of the First Mortgagees of Lots (based upon one vote for each Mortgage owned);.....

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- (f) Add or amend any material provisions of this Declaration, the Articles of Incorporation, or Bylaws of the Association, . . . provided that any First Mortgagee who receives a written request to approve any of such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days of its receipt of such request, shall be deemed to have approved such request. . . "

See Article XI, Section 1 of the Declaration.

E. The Declaration provides the Association with an easement for the maintenance, repair, replacement and improvement of the Common Areas, including the private roads and streets contained with the Properties, in Article IX, Section 4 and Article XII, Section 4 (the "Existing Easement").

F. The Owners and the Association desire to amend parts of the Declaration, as amended and supplemented of record, for the following purposes:

- (i) to broaden the Existing Easements for the benefit of the Town of Castle Rock, to facilitate a proposed dedication of the current private streets in the Masters Club Planned Community, so that those streets, may subsequently become public streets of the Town of Castle Rock;
- (ii) to allow the Association to create and to grant the Town a specific easement, consistent with the Existing Easement the Association has for maintenance of private streets, for maintenance of the private streets (as they may be dedicated to the Town), with that easement to be created Within an existing 10' utility easement area as shown on the Plat; and
- (iii) to eliminate special First Mortgagee rights provided for under the Declaration,. so that the Association and the Owners may seek to dedicate the current private streets as public streets without the approval of First Mortgagees and so that future or further amendments can be made to the Declaration without notice to or participation of First Mortgagees, "as is currently provided for in the Declaration.

G. The Owners and the Association, desire, by virtue of this Amendment and intend, upon the recording of this Amendment, that all conflicting provisions in the Declaration with this Amendment shall be controlled, superseded and replaced by this Amendment.

H. All Owners are aware of the provisions of the Declaration allowing for amendment, by virtue of the record notice of the Declaration, by acts and disclosures, newsletters, meetings and notices of the Association, and by other means.

1. This Amendment has been prepared and determined by the Association and by the Owners approving this Declaration to meet the above purposes and to be reasonable and not burdensome.

J. The purpose of the Association, as provided in the Declaration, is to preserve the value and desirability of the Community and the Lots of the Owners and to further the interests of the residents of the Community and Members of the Association.

K. The undersigned, being the President and Secretary of the Association, hereby certify that

- (i) at least 67% of the Members of the Association consented to this Amendment; and
- (ii) that this Amendment has been approved by at least 67% of the First Mortgagees, based on the lack of negative responses to this proposed amendment consistent with Article XI, Section 1 of the Declaration.

NOW THEREFORE, the Declaration is amended as set forth in this Amendment.

I.. Amendments. The Declaration is hereby amended as follows:

(a) **Addition of Section. Article XII (12), Section 6 is added to the Declaration as follows:**

12.6 Town of Castle Rock Maintenance Easement.

(a) Upon the dedication of the streets and any related areas within the Masters Club Planned Community to the Town of Castle Rock by vote of the Members, the Town of Castle Rock shall deemed to be granted and conveyed, by the Association, and shall be deemed to have, by virtue of this Amendment, a have a 10 foot easement along those roads over the areas depicted as "10' Utility Easement" on the Plat ("Easement Property").

(b) This easement shall be a non-exclusive permanent easement to allow the Town of Castle Rock, its employees, contractors and agents to construct, operate, maintain and repair, from time to time, the dedicated public streets and certain right-of-way facilities and related appurtenances.

(c) The easement area given to the Town of Castle Rock is the same as the Existing Easement area that the Association has, for maintenance of the private streets, and the easement rights of the Association shall remain in that area.

(d) All activity by the Town of Castle Rock and its contractors and agents shall be maintained within the Easement Property boundaries.

(e) Upon completion of any construction, reconstruction or repair allowed for under this section by the Town or its contractors or agents, the surface of the Easement Property shall be restored to its pre-existing condition.

(f) The Association reserves the right to use the Easement Property for any lawful purpose and to grant to others the right to use the Easement Property, so long as such use is not inconsistent with, and does not unreasonably interfere with, the use of the Easement Property by the Town of Castle Rock for the purposes set forth above in this section and so long as such use is not inconsistent with, and does not unreasonably interfere with, the uses allowed in the Easement Area under the Plat.

(g) The easement granted in this section shall not be deemed to constitute a dedication for public use or to create rights in the general public in or to the Easement Property or any portion thereof.

(h) To the extent permitted by law, the Town of Castle Rock shall indemnify the Owners and the Association from any and all liability, costs or expenses incurred as a result of the Town of Castle Rock's use of the Easement Property under its easement rights under this section. The Town of Castle Rock shall obtain and keep in full force and effect general liability insurance covering its action and activities under the easement in an amount at least equivalent to the Town of Castle Rock's liability under the Colorado Governmental Immunity Act. This indemnification shall not constitute a waiver or release by the Town of Castle Rock of any immunity or limitation or liability under the Governmental Immunity Act.

(i) Any breach of this easement shall give rise to the non-breaching party's right to bring an action against the breaching party for injunctive or other equitable relief and/or damages. In the event of such action, the prevailing party shall be entitled to recover its reasonable attorney fees from the other party.

(j) This section of the Declaration cannot be amended without the written consent of the Town of Castle Rock.

(k) The Association agrees to and shall indemnify the Town of Castle Rock from claims of any Owners related to the Town's use of the Easement Property.

**(b) Addition of Section Regarding Special First Mortgagee Rights. Article XI (11), Section 5 is added to the Declaration as follows:**

11.5 Elimination of all Special Rights of First Mortgagees. All special rights granted to First Mortgagees in the Declaration are hereby eliminated effective on the recording of this document.

II. No Other Amendments. Except as amended by the terms of this Amendment and previous amendments, the Declaration shall remain in full force and effect.

