Section 2. Variances. It shall remain the prerogative and in the jurisdiction of the Committee to review applications and grant approval for exceptions to this Declaration. Variations and deviations from these requirements and restrictions shall be made at the sole discretion of the Committee.

ARTICLE IV

GENERAL PROVISIONS

Section 1. Enforcement. The Committee, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by the committee 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. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of Lone Tree Filing No. 1. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. The easement areas of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions hereof which shall remain in full force and effect.

ISSUE #1

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners. Any amendment must be recorded.

Section 5. Arbitration Required For Any Claim Hereunder. Except as otherwise herein provided, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in the State of Colorado, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction hereof; provided, however, that this paragraph shall have no applicability to any remedies available to a mortgagee under Colorado law or to remedies or foreclosure of a lien with respect thereto.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 2nd day of December, 1981.

MARKUP #1 ->

MARKUP #1 · POTENTIAL STATUTE CONFLICT

BOARD & COUNSEL REVIEW

Sec. 4. (p. 5): Declaration amendment clause requires an owner vote percentage exceeding the 67% statutory ceiling in C.R.S. § 38-33.3-217(1)(a)(I).

Statutory / Legal Reference: C.R.S. § 38-33.3-217(1)(a)(I)

Statutory Comparison: Under C.R.S. § 38-33.3-217(1)(a)(I), the declaration may be amended only by the affirmative vote or agreement of unit owners of units to which more than 50% of the votes in the association are allocated, or any larger percentage, not to exceed 67%, that the declaration specifies. Any provision in the declaration that purports to specify a percentage larger than 67% is declared void as contrary to public policy, and until amended, such provision is deemed to specify a percentage of 67%.

CURRENT WORDING IN DOCUMENT:

Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners. Any amendment must be recorded.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Pursuant to C.R.S. § 38-33.3-217(1)(a)(I), any requirement in this Declaration for an affirmative vote exceeding sixty-seven percent (67%) of the votes in the Association to amend the Declaration (other than specific boundary/allocated interest modifications governed by § 38-33.3-217(4)) is reduced by operation of law to sixty-seven percent (67%).