

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TRAILHEAD COMMUNITY**

<u>Name of Common Interest Community:</u>	<b>TRAILHEAD COMMUNITY</b>
<u>Type of Common Interest Community:</u>	<b>PLANNED COMMUNITY</b>
<u>Name of the Association:</u>	<b>TRAILHEAD OWNERS ASSOCIATION, INC.</b>
<u>Person Executing the Supplement:</u>	<b>MOONBEAM BOULDER, LLC</b>

DECLARATION OF COVENANTS,  
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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
TRAILHEAD COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TRAILHEAD COMMUNITY (this "Declaration") is made and entered into by Moonbeam Boulder, LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the City of Boulder, County of Boulder, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that the Map of the Property is being recorded simultaneously herewith and that all of the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which shall run with the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1.     DEFINITIONS**

**Section 1.1.     *Agencies.***

"Agencies" collectively means the agencies, corporations and entities that purchase, insure or guarantee residential mortgages, including the United States Housing and Urban Development (HUD), the United States Department of Veterans Affairs (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), and the Colorado Housing and Finance Authority.

**Section 1.2.        *Allocated Interests.***

“Allocated Interests” means the share of Assessments and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one and the denominator of which is the total number of Lots within the Community from time to time. However, the Allocated Interest for each Lot is subject to change as provided in this Declaration, including a decrease in the Allocated Interests of each Lot upon the annexation of additional property to this Community.

**Section 1.3.        *Articles.***

“Articles” means the Articles of Incorporation for Trailhead Owners Association, Inc., a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

**Section 1.4.        *Assessment.***

“Assessment” means annual Assessments and special Assessments, which are provided for and described in this Declaration. For purposes of Article 4 of this Declaration, “Assessment” means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys’ fees, and any other charges that are provided for in this Declaration.

**Section 1.5.        *Association.***

“Association” means Trailhead Owners Association, Inc., its successors and assigns, a community association as provided in CCIOA.

**Section 1.6.        *Board of Directors.***

“Board of Directors” or “Board” means the body, regardless of name, designated in this Declaration, the Articles and the Bylaws of the Association to act on behalf of the Association. The Board may appoint one or more committees as it deems appropriate, from time to time, in carrying out any of its purposes. Each committee serves at the pleasure of the Board, has only such authority as may be given to it by the Board from time to time, and serves only in an advisory capacity to the Board; all actions and writings of each such committee are subject to review and approval by the Board.

**Section 1.7.        *Builder.***

“Builder” means (i) any Person who acquires more than one Lot for the purpose of constructing a residential structure on each such Lot for sale to the public and (ii) any Person who acquires more than one Lot for sale to any Person fitting the description in clause (i) and/or for constructing a residential structure on any of such Lots for sale to the public.

**Section 1.8.        *Bylaws.***

“Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

**Section 1.9. CCIOA.**

“CCIOA” means the Colorado Common Interest Ownership Act, as set forth in Colorado Revised Statutes §§ 38-33.3-101, et seq., as the same may be amended from time to time. In the event that CCIOA is repealed, CCIOA as it exists on the date this Declaration is recorded shall remain applicable.

**Section 1.10. City.**

“City” means the City of Boulder, State of Colorado.

**Section 1.11. Clerk and Recorder.**

“Clerk and Recorder” means the office of the Clerk and Recorder in the County.

**Section 1.12. Common Elements.**

“Common Elements” means any real property (including Improvements located thereon) and fixtures owned, used pursuant to Easement rights or leased by the Association, and the access rights provided under certain public access easements identified on the Map (but excluding all other Lots). The Common Elements at the time of recordation of this Declaration include those elements and rights described on Exhibit B attached hereto and incorporated herein by this reference.

**Section 1.13. Community.**

“Community” means the real estate and Improvements described in this Declaration, as supplemented and amended from time to time. The Community is a planned community under CCIOA. The name of the Community is “Trailhead Community”.

**Section 1.14. County.**

“County” means the County of Boulder, State of Colorado.

**Section 1.15. Declarant.**

“Declarant” means Moonbeam Boulder, LLC, a Colorado limited liability company, and any other Person(s) to whom Declarant, by recorded document, expressly assigns one or more of Declarant’s rights under this Declaration (which shall be the extent of Declarant’s rights to which such assignee succeeds).

**Section 1.16. Declaration.**

“Declaration” means this Declaration of Covenants, Conditions and Restrictions of Trailhead Community and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including plats and maps.

**Section 1.17.     *Design Book.***

“Design Book” means that certain Design Pattern Book for the Community recorded with the Clerk and Recorder, as amended from time to time.

**Section 1.18.     *Design Review Committee or Committee.***

“Design Review Committee” or “Committee” means the committee appointed by Declarant until automatic termination of the Special Declarant Rights as provided in Section 1.29 of this Declaration and then by the Association, which Committee shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

**Section 1.19.     *Development Rights.***

“Development Rights” means the following rights or combination of rights reserved by Declarant, as provided in this Declaration:

- 1.19.1.     build and complete Improvements in the Community;
- 1.19.2.     add real estate to this Community;
- 1.19.3.     create Lots and/or Common Elements;
- 1.19.4.     subdivide or replat Lots; and
- 1.19.5.     withdraw real estate from this Community.

Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. Declarant may also assign one or more Development Rights to an Owner of a Lot through a Supplemental Declaration executed by Declarant. Declarant’s rights to exercise Development Rights shall terminate automatically as provided in Section 1.29 of this Declaration.

**Section 1.20.     *Governing Documents.***

“Governing Documents” means this Declaration, the Articles, the Bylaws, the Policies, the Map, as amended, the Design Book, any design or architectural guidelines of the Association and any rules and regulations, policies and procedures, or design guidelines of the Association.

**Section 1.21.     *Improvements.***

“Improvements” means all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features. The foregoing shall include buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks,

plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, utilities facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any. For purposes of Article 5 of this Declaration (Design Review Committee) and only in such Article, the word “exterior” shall be inserted immediately preceding the fourth word “improvements” in the first sentence of this Section.

**Section 1.22.     *Include.***

“Include” or “including” means including without limitation or including, but not limited to.

**Section 1.23.     *Lot.***

“Lot” means each platted lot included in the real property described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and “Lot” shall include all lots created as a result of such subdivision or replatting), or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements (which may include one or more platted lots) and any publicly dedicated property. Each Lot shall constitute a “unit” under CCIOA, and it shall not be necessary to use the term “unit” as a part of a legally sufficient description of a Lot. Each Lot shall be depicted on the Map.

**Section 1.24.     *Lots that May Be Included.***

“Lots that May Be Included” means thirty (30) Lots, which shall be the maximum number of Lots that may be subject to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in or constructed as part of the Community.

**Section 1.25.     *Map.***

“Map” means the community map of the Project recorded with the Clerk and Recorder, depicting a plan of all or a part of the Property subject to this Declaration and any supplements and amendments thereto. The Map and any supplements thereto are hereby incorporated herein by reference as if set forth in their entireties.

**Section 1.26.     *Member.***

“Member” means all Owners of a Lot collectively or, following termination of the Community, of all former Owners entitled to distributions of proceeds under CCIOA or their heirs, personal representatives, successors or assigns.

**Section 1.27.     *Nonprofit Act.***

“Nonprofit Act” means the Colorado Revised Nonprofit Corporation Act, as set forth in Colorado Revised Statutes §§ 7-121-101 et seq., as the same may be amended from time to time.

**Section 1.28.     *Owner.***

“Owner” means each fee simple title holder of a Lot, including Declarant, a Builder, or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one Owner of a Lot.

**Section 1.29.     *Period of Declarant Control.***

“Period of Declarant Control” means a length of time expiring twenty (20) years after initial recording of this Declaration in the office of the Clerk and Recorder. However, the Period of Declarant Control shall terminate earlier upon the first of the following events to occur, if any of the following occur within the time period that is specified in the first sentence of this Section: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; (b) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Lots to the Declaration was last exercised.

**Section 1.30.     *Permittees.***

“Permittees” means and includes an Owner’s family members, tenants, sub-tenants, contractors, subcontractors, agents, employees, licensees, lessees, sublessees, guests and invitees (including invitees and guests of lessees and sublessees) and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers and visitors.

**Section 1.31.     *Person.***

“Person” means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

**Section 1.32.     *Policies.***

“Policies” means the responsible governance policies of the Association adopted by the Board as required by CCIOA.

**Section 1.33.     *Project.***

“Project” means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Lots, and the Common Elements.

**Section 1.34.     *Rules.***

“Rules” means the rules and regulations of the Association that govern the use of the Lots, Common Elements and any property owned or managed by the Association, as amended from time to time by the Board.

**Section 1.35.      *Security Interest.***

“Security Interest” means an interest in real estate or personal property (including in one or more Lots), created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.9 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration, “Security Interest” shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator’s assignee, or a remote assignee, and the land records in the County in which such property is located show the Administrator as having the record title to the Lot.

**Section 1.36.      *Security Interest Holder.***

“Security Interest Holder” means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.9 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the County in which such property is located, show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

**Section 1.37.      *Special Declarant Rights.***

“Special Declarant Rights” means the following rights, which rights are hereby reserved for the benefit of Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate that may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as Declarant no longer owns any portion of the property described on the attached Exhibit A.

**Section 1.38.      *Supplemental Declaration.***

“Supplemental Declaration” means a written instrument containing covenants, conditions, restrictions or equitable servitudes, or any combination thereof, that may hereafter be recorded on any portion of the Community and/or any real property that is (or has been) annexed to this Declaration.

**Section 1.39.      *Unoccupied Lots.***

“Unoccupied Lots” means and includes those Lots that do not have completed Improvements. For purposes of this definition, Improvements within a Lot are deemed completed when the City or County (or other applicable governing authority) has issued a certificate of occupancy for the Improvements located on or within such Lot.

**ARTICLE 2.      MEMBERSHIP AND VOTING RIGHTS**

**Section 2.1.      *Membership.***

The Association shall have one class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one membership and there is only one Member per Lot, even if multiple Owners own the Lot.

**Section 2.2.      *Voting Rights.***

Each Member shall be entitled to one vote for each Lot owned, except that no votes allocated to a Lot owned by the Association may be cast. The total number of votes that may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

**ARTICLE 3.      ASSOCIATION**

**Section 3.1.      *Association.***

The Association has been or will be formed as a Colorado non-profit corporation under the Nonprofit Act. The Association shall perform functions and hold title to and manage the Common Elements and personal property as provided in this Declaration, the Articles and the Bylaws for the Association. It shall have all powers necessary or desirable to effectuate such purposes, including the right to (a) operate, regulate, manage, maintain, alter, repair, replace, and charge fees in connection with the operation and use of the Common Elements; (b) enforce all provisions of this Declaration; and (c) perform all rights and obligations granted to the Association under the Governing Documents. The administration and management of the Common Elements shall be governed by the Governing Documents.

**Section 3.2.      *Board of Directors.***

The affairs of the Association shall be managed by a Board of Directors. During the Period of Declarant Control, the Board of Directors shall consist of two persons or such other number as determined by Declarant. Following expiration or termination of the Period of Declarant Control, the



Board of Directors shall consist of three persons. Subject to Section 3.4 hereof, the Board of Directors shall be elected by the Members. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Except for those matters expressly reserved to the Members as provided in the Governing Documents and the Nonprofit Act, the Board may act in all instances on behalf of the Association, to:

- (a) Adopt and amend bylaws, rules and policies;
- (b) Determine common expenses and adopt and amend the Budget for revenues, expenditures and reserves;
- (c) Collect Assessments;
- (d) Accept title to and/or agree to maintain Improvements within the Project funded, constructed, installed and/or maintained by Declarant;
- (e) Agree to maintain or otherwise contract for the maintenance of parking spaces, sidewalks and/or landscaping areas within any particular Lot (other than Common Elements, which shall be maintained by the Association) at such Lot Owner's election and expense;
- (f) Hire and terminate managing agents and other employees, agents and independent contractors;
- (g) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;
- (h) Make contracts and incur liabilities, except that any agreement for professional management of the Association's business or contracts providing for services to the Association by Declarant shall be subject to the limitations described in below;
- (i) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (j) Cause additional Improvements to be made as a part of the Common Elements;
- (k) Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, subject to restrictions imposed by this Declaration or the Act,
- (l) Subject to compliance with the Owner consent requirements imposed under Section 312 of the Act, dedicate, grant and convey any Common Element as public right-of-way to the Town or the County, in which event effective upon recording of such dedication and conveyance the public right-of-way so conveyed will be removed from the Project and thereafter no longer subject to the terms and conditions of this Declaration;

(m) Grant easements, leases, licenses and concessions through or over the Common Elements;

(n) Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements (other than those Limited Common Elements described in Sections 202(1)(b) and (d) of the Act), provided that no fee, charge or payment may be assessed against any Owner or, absent such Owner's approval, its Permittees;

(o) Enforce any rules or policies adopted by the Board, including enforcement by levying and collecting charges or fines for the violation thereof;

(p) Impose charges (including late charges and default interest) for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of provisions of the Governing Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within 30 days after they become due);

(q) Impose reasonable charges for the preparation and recordation of amendments to this Declaration, the Map or statements of unpaid Assessments;

(r) Provide for the indemnification of its officers and members of the Board to the extent permitted by applicable law and maintain directors' and officers' liability insurance;

(s) Assign its right to future income, including the right to receive Assessments; provided, however, that such Board action shall be effective only with the consent of Owners holding sixty-seven percent (67%) of the Association votes;

(t) Exercise any other powers conferred by this Declaration or the Association Bylaws;

(u) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including those powers specified by the Nonprofit Act; and

(v) Exercise any other powers necessary and proper for the governance and operation of the Association.

### **Section 3.3.      *Authority of the Board of Directors.***

Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee, without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles or Bylaws of the Association.

**Section 3.4.        *Election of Part of the Board of Directors During the Period of Declarant Control.***

During the Period of Declarant Control, no later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Members other than Declarant or a Builder, provided that Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by the Members other than Declarant or a Builder, provided that Declarant reserves the right to appoint a majority of the Board.

**Section 3.5.        *Authority of Declarant During the Period of Declarant Control.***

Except as otherwise provided in this Article, during the Period of Declarant Control, Declarant or Persons appointed by Declarant may appoint all officers and directors of the Association, and may remove all officers and directors which have been appointed by Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Association before termination of the Period of Declarant Control; but, in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

**Section 3.6.        *Termination of Period of Declarant Control.***

After termination of the Period of Declarant Control, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors shall elect the officers. After the Members other than Declarant elect a majority of the Executive Board, Declarant shall deliver to the Association all Common Elements and property of the Owners and of the Association held by or controlled by Declarant, if and to the extent required by the Act.

**Section 3.7.        *Budget and Review or Audit.***

3.7.1.        Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by eighty percent (80%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last approved by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

3.7.2. The Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, at least once every two years by a Person select by the Board of Directors. Such Person need not be a certified public accountant except in the case of an audit.

3.7.2.1. An audit shall be required only when both of the following conditions are met:

(i) The Association has annual revenues or expenditures of a least two hundred fifty thousand dollars (\$250,000.00); and

(ii) An audit is requested by Owners holding of at least one-third (1/3) of the votes in the Association.

3.7.2.2. Copies of an audit or review under this subsection 3.7.2 shall be made available upon request to an Owner beginning not later than thirty (30) days after its completion.

**Section 3.8. *Association Books and Records.***

3.8.1. The Association's books and records shall be subject to an audit or a review as further provided in this Declaration. Subject to the fourth sentence of this Section, the Association shall make available for inspection and copying by Owners, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles, Bylaws, Design Book, Policies, rules and regulations, other applicable design guidelines, minutes of the most recent annual Association's meeting and of any Board meetings that occurred within the most recent six (6) months prior to such request, Association operating budget for the year in which such request is made, Association's annual income and expenditures statement, and Association's annual balance sheet. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith. However, the Board of Directors may, at any time(s), prior or subsequent to a request for inspection and/or copying, determine that items are confidential and should not be made available. "Reasonably Available" shall mean available during normal business hours, upon prior notice of at least five (5) business days.

3.8.2. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.8. of this Declaration, Section 3.8. shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

**Section 3.9. *Information Regarding Security Interests on Lots.***

Each Member shall, within twenty (20) days of encumbering such Member's Lot with a Security Interest, and at other times upon request of the Association, provide the Association with the name and address of such Security Interest Holder, a copy of the instrument(s) creating the Security Interest(s), and the loan number(s) (or other identifying number of such Security Interest(s)). Within twenty (20) days

after any change in the name or address of a Security Interest Holder on a Member's Lot, and at other times upon request of the Association, such Member shall provide the aforesaid information to the Association with respect to each Security Interest held by such Security Interest Holder.

**Section 3.10.      *Rules and Regulations and Policies and Procedures.***

Rules and regulations and policies and procedures concerning and governing the Lots, Common Elements, and/or this Community may be adopted, amended and/or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures. The rules and regulations and policies and procedures may state procedural requirements, interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications. The Board has the authority to adopt or vary one or more rules and regulations or policies and procedures that are different for different types of residences, if any exist. Any rules and regulations or policies and procedures that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

**Section 3.11.      *Cooperation with Other Community Associations and/or any Districts.***

3.11.1.      The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters, to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association, any other community association(s) and/or any district(s), or to otherwise cooperate with any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community association(s) and/or any district(s), as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s), and/or any district(s) to collect Assessments, other charges, or other amounts which may be due to such entity and to permit any such entity to collect Assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by any other community association(s) and/or any district(s).

3.11.2.      Without limiting the generality of the foregoing, the governing board of a metropolitan district may furnish covenant enforcement and/or design review services within such metropolitan district if the Board of Directors enters into a contract with a metropolitan district to define the duties and responsibilities of each of the contracting parties, including the covenants that may be enforced by said metropolitan district, and if the covenant enforcement

services of such metropolitan district do not exceed the enforcement powers granted by this Declaration, the rules and regulations of the Association, or any similar document containing the covenants to be enforced.

**Section 3.12.      *Management Agreements and Other Contracts.***

Any agreement for professional management of the Association's business or other contracts providing for the services of Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the Period of Declarant Control shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and HUD or VA requires such approval).

**Section 3.13.      *Merger.***

Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in Section 1.37 of this Declaration.

**Section 3.14.      *Compliance with Maintenance Manuals.***

Notwithstanding anything to the contrary, the Board of Directors, acting on behalf of the Association, shall comply with all maintenance manuals, if any, given by Declarant to the Board of Directors or the Association, or otherwise obtained by the Board of Directors or the Association, regarding maintenance, repair and/or replacement of any portion of the Community or any Improvements therein. Further, the Board of Directors shall cooperate, at no cost or expense to the Board of Directors, with all inspections that may be undertaken by or at the request of Declarant, on or with respect to the Community and Improvements therein.

**Section 3.15.      *Notice of Meetings and Other Matters of the Association.***

Notices of any meetings, newsletters and other correspondence or documents concerning the Association shall be sent to Declarant at the same time that such notices, newsletters, and other correspondence or documents are sent to the Members. However, the foregoing shall expire on the earlier of (a) a recording by Declarant waiving the requirements set forth in this Section 3.15 or (b) twenty (20) years after initial recording of this Declaration in the County.

**Section 3.16.      *Submission of Matters to Owners.***

Notwithstanding any provision of this Declaration, the Articles or the Bylaws to the contrary, at any time following the expiration or termination of the Period of Declarant Control, any Owner or group of Owners holding twenty percent (20%) or more of the votes in the Association for the matter in question shall have the right to require the Board to submit the decision of the Board of Directors

regarding the matter to a vote of the Owners in their capacity as Members of the Association. If the Owners make a decision different from the Board by a vote of at least fifty-one percent (51%) of all eligible votes outstanding (not fifty-one percent (51%) of the votes that may be cast by Owners present at a meeting) or such higher percentage as may be specified in this Declaration or the Act, the decision of the Owners shall govern the actions of the Association.

## **ARTICLE 4. ASSESSMENTS**

### **Section 4.1. *Personal Obligation for Assessments.***

Each Owner of a Lot, including Declarant and each Builder, by acceptance of a deed to a real property interest within the Project, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association annual Assessments or charges, special Assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such Assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all Assessments, fees, charges and other amounts attributable to their Lot. Each amount, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person(s) who was the Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts (including Assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

### **Section 4.2. *Purpose of Assessments.***

The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities that may be required of the Association, or the Board of Directors, or that the Association, or the Board of Directors, may be empowered to pursue pursuant to any of the Governing Documents or by law; provided, however, that such Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

### **Section 4.3. *Rate of Annual and Special Assessments.***

4.3.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual and special Assessments against the Unoccupied Lots shall be set at a lower rate than the rate of annual Assessments and special Assessments against other Lots, because the Unoccupied Lots receive and benefit from fewer services funded by such Assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Unoccupied Lots shall pay annual and special Assessments at the rate

of forty percent (40%) of any annual Assessment or special Assessment charged to Lots other than the Unoccupied Lots. Annual Assessments may be paid in regular increments over such period of time (monthly, quarterly or otherwise) as the Board deems appropriate and as set forth in the Policies.

4.3.2. The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced by the Association on a periodic basis.

4.3.3. Prior to automatic termination of the Special Declarant Rights as provided in Section 1.37 of this Declaration, Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute an advance against future amount (including Assessments) due from Declarant; provided, however, that any such advances which have not been credited against amounts (including Assessments) due from Declarant as of termination of the Period of Declarant Control shall then be repaid by the Association to Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the Period of Declarant Control terminates; and provided further, however, that any of such advances which are not repaid to Declarant shall continue to constitute advances against amounts (including Assessments) due from Declarant until conveyance by Declarant of all of the property described on the attached Exhibit A. If Declarant elects in its discretion to pay any amounts as provided in this subparagraph, Declarant shall not, under any circumstances, be obligated to continue advance payment or funding of any amount(s) in the future.

**Section 4.4.        *Date of Commencement of Annual Assessments.***

Annual Assessments shall commence at such time as the Board of Directors may determine in its discretion, provided that the Board must have adopted a budget that has not been vetoed by the Members, as provided in this Declaration. Budgets shall continue to be so adopted by the Board of Directors no less frequently than annually. The annual Assessments shall be due and payable in monthly installments, in advance or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first assessment year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

**Section 4.5.        *Special Assessments.***

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of the votes of sixty-seven percent (67%) of the Association votes cast by Members and, during the Period of Declarant Control, the vote of Declarant, each voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (pursuant to Section 4.6 of this Declaration), 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 any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any expense or deficit incurred by the Association. Any such special Assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the special Assessments against Unoccupied Lots shall be set in accordance with subsection 4.3.1 hereof. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.6 hereof. Notwithstanding the foregoing, special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

**Section 4.6.        *Notice and Quorum for Any Special Assessments.***

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 hereof shall be sent to all Members not less than fourteen (14) days nor more than fifty (50) 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 Association votes 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 sixty (60) days following the preceding meeting.

**Section 4.7.        *Assessments/Charges for Services to Less than All Lots in the Community.***

The Association may, at any time and from time to time, provide services to any other areas containing less than all of the Lots in the Community. If such services are not funded by the annual Assessments or special Assessments, then such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lots for which such service is to be provided, with such agreement to include a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services (including overhead expenses of the Association). Services that may be provided by the Association pursuant to this Section include, (a) the construction, care, operation, management, maintenance, repair, replacement, reconstruction and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions for such areas; (c) the enforcement of the provisions of any Supplemental Declaration or any other document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for such Owners.

**Section 4.8.        *Lien for Assessments.***

4.8.1. The Association has a lien on each Lot for any amount levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as Assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments,

each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.8.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the County, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the Assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

**Section 4.9.        *Priority of Association Lien.***

4.9.1. A lien under this Article 4 is prior to all other liens and encumbrances on a Lot except:

4.9.1.1. liens and encumbrances recorded before the recordation of the Declaration;

4.9.1.2. a Security Interest on the Lot that has priority over all other security interests on the Lot and that was recorded before the date on which the amount(s) due to the Association became delinquent; and

4.9.1.3. liens for real estate taxes and other governmental assessments or charges against the Lot.

4.9.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.9.1.2 to the extent, if any, provided in CCIOA.

4.9.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts made by the Association.

4.9.4. The Association's lien on a Lot for Assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

**Section 4.10.        *Certificate of Status of Assessments.***

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished after written request within such times as required by law, and is binding on the Association, the Board of

Directors, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

**Section 4.11.      *Application of Payments to the Association.***

Application of payments received by the Association from Owners for payment of amounts due to the Association by such Owners, shall be applied first to the payment of attorneys fees, fines, late charges and any other amounts (other than annual Assessments or special Assessments) due to the Association (in the order listed), if any; second to the payment of accrued interest at the rate specified in Section 4.12 below, if any; and third to the payment of annual Assessments and Assessments due to the Association.

**Section 4.12.      *Effect of Non-Payment of Assessments; Remedies of the Association.***

Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a monthly late charge in such amount as may be determined, from time to time, by the Board of Directors. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, in a foreclosure action, such judgment or decree shall include interest (as provided above) and reasonable attorney's fees, together with the costs of the action, and may include late charges, as above provided. No Owner may be exempt from liability for payment of any Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the Assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

**Section 4.13.      *Surplus Funds.***

Any surplus funds of the Association remaining after payment of or provision for Association expenses, and any prepayment of or provision for reserves, shall be retained by the Association and need not be paid to the Owners or credited to them.

**Section 4.14.      *Working Capital Fund.***

The Association shall require the first Owner (other than Declarant or a Builder) of any Lot who purchases that Lot from Declarant or a Builder, to make a non-refundable contribution to the Association in an amount equal to three (3) times the then current monthly installment of the annual Assessment (regardless of whether or not annual Assessments have commenced as provided in Section 4.4 of this Declaration). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Builder of each Lot and shall be for the use and benefit of the Association, including to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the

same become due. Upon the transfer of his Lot, an Owner may be entitled to a credit from his transferee (but not from the Association) for the aforesaid contribution to working capital fund.

**Section 4.15.      *Other Charges.***

The Association may levy and assess charges, costs and fees for matters including the following, in such amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

**Section 4.16.      *Charges for Misconduct.***

If any Association expense is caused by the misconduct of any Owner or his Permittees, the Association may assess that Association expense exclusively against such Owner and his Lot.

**ARTICLE 5.      DESIGN REVIEW COMMITTEE**

**Section 5.1.      *Composition of Committee; Authority of Representative.***

5.1.1. The Design Review Committee shall consist of three (3) or more persons. Until automatic termination of the Special Declarant Rights as provided in Section 1.37 of this Declaration, Declarant has the right to appoint the Design Review Committee; subsequent to such date, the Design Review Committee shall be appointed by the Board of Directors. The power to "appoint" the Design Review Committee, as provided herein, shall include the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor. The appointments of all then-current members of the Committee who were appointed by Declarant shall automatically terminate at such time as Declarant's power to appoint members of the Design Review Committee expires. The members of the Design Review Committee shall not be "officers" of the Association as a result of their membership on the Committee and thus, as a result of such membership on the Committee, shall not have any of the rights or duties attributable to officers of the Association.

5.1.2. The Committee may at any time, from time to time, appoint a representative to act on its behalf. If the Committee does so, then the actions of such representative shall be the actions of the Committee, subject to the right of appeal as provided below. However, if such a representative is appointed by the Committee, then the Committee shall have full power over such representative, including the power to at any time withdraw from such representative any of

such representative's authority to act on behalf of the Committee and the power to at any time remove or replace such representative.

**Section 5.2.        *Review and Approval by Committee; Reimbursement for Expenses; Requirement for Approval by Governmental Entities.***

Except as provided in Section 5.9 and Section 5.13 of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, plans for erosion control, windbreaks and grading plan, as well as such other materials and information as may be required by the Design Review Committee), shall have been first submitted to and approved by the Design Review Committee.

5.2.1. The Design Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the then-existing surroundings, residences, landscaping and structures.

5.2.2. In its review of such plans, specifications and other materials and information, the applicant shall submit an initial review fee of \$350.00 (as such fee may be adjusted from time to time by the Board), and the Design Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in excess of such fee in the review and approval process (including costs associated with hiring professionals to review such materials on behalf of the Design Review Committee). Such amounts, if any, shall be levied in addition to the Assessments against the Lot for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of Assessments, as more fully provided in this Declaration.

5.2.3. In addition to the required approvals by the Design Review Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in any Improvement. In the event of any changes required by a governmental entity to plans and specifications previously approved by the Design Review Committee, such changes must be again submitted for approval in accordance with Section 5.4 below.

**Section 5.3.        *Delegation (and Acceptance) of Design Review and Approval.***

5.3.1. Declarant, during the time when Declarant has the right to appoint the Design Review Committee, and the Board thereafter, may delegate any or all design review and/or approval functions pursuant to this Declaration to any other architectural/design review

committee, and may accept from any architectural/design review committee(s) delegation of any or all review and/or approval functions of such architectural/design review committee(s). The Committee shall also have the right and authority to otherwise cooperate with any architectural/design review committee in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time.

5.3.2. The party with the right to appoint the Design Review Committee may, at any time, determine to reclaim the delegated rights. To reclaim the delegated rights, written notice must be given to the governing body of the entity to whom delegation was made, that such right is being reclaimed by the Association, and the reclamation shall be effective upon receipt of the notice by the governing body of the entity to whom delegation was made. No delegation of design review and/or approval shall constitute a waiver of the Association's right of design review and/or approval as provided in this Declaration.

5.3.3. The Association has the authority and ability to delegate the rights and duties under this Article with conditions and restrictions that the entity accepting the delegation must follow.

**Section 5.4.        *Procedures.***

The Design Review Committee shall decide each request for approval within sixty (60) days after the complete submission of the plans, specifications and other materials and information which the Design Review Committee may require in conjunction therewith. If the Design Review Committee fails to decide any request within sixty (60) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then the request for approval shall be deemed to have been denied by the Design Review Committee.

**Section 5.5.        *Vote and Appeal.***

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Design Review Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Design Review Committee decides a request for approval, then any Owner shall have the right to an appeal of such decision to the full Design Review Committee, upon a request therefor submitted to the Design Review Committee within thirty (30) days after such decision by the Design Review Committee's representative. Subsequent to conveyance by Declarant of all of the property described on the attached Exhibit A, any Owner shall have the right to appeal a Design Review Committee decision to the Board of Directors, upon a written request therefor submitted to the Board of Directors within thirty (30) days after such decision by the Design Review Committee.

**Section 5.6.        *Prosecution of Work After Approval.***

After approval of any proposed Improvement by the Design Review Committee, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity

with the terms and conditions of the approval. Failure to complete the proposed Improvement within fifteen months after the date of approval of the application, as evidenced by a Letter of Compliance (as defined in the Design Book) or such lesser time as may be provided on the application for approval, or to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval of Improvements by the Design Review Committee and a violation of this Article; provided, however, that the Design Review Committee may, in its discretion, grant extensions of time for completion of any proposed Improvement(s). The obligation to commence or complete the initial residential dwelling on a Lot shall not be governed by the timing requirements described in this Section 5.6 but instead by any contractual obligations agreed upon between Declarant and the Owner.

**Section 5.7.        *Inspection of Work.***

The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted by the Design Review Committee. However, unless the Design Review Committee expressly states, in a written document, that an Improvement is being or has been completed in conformance with the Design Review Committee approval therefor, no such conformance shall be implied from any inspection of the Improvement either during the work or after completion thereof.

**Section 5.8.        *Standards/Guidelines.***

Except as provided in the last sentence of this Section, the Design Review Committee, with the advice of the Board of Directors, has the authority, at any time from time to time, to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, rules and regulations to interpret and implement the provisions of this Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Design Review Committee, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the Design Review Committee. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Declaration. Notwithstanding the foregoing, all standards and guidelines promulgated by the Design Review Committee or the Board shall require and be subject to obtaining any necessary governmental approvals.

**Section 5.9.        *Variance.***

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 10 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the

application of any such conditions and restrictions. Such variances or adjustments shall be granted only if the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the Community and shall not be in contravention of the general intent and purpose hereof. Nothing in this Section shall obviate the need for obtaining approval from the City in connection with any variance or adjustment if approval is otherwise required from the City.

**Section 5.10.      *Waivers; No Precedent.***

The approval or consent of the Design Review Committee, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Design Review Committee or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter or an approval or waiver by the City for such matter. The granting or denial of a variance or adjustment by the Design Review Committee, or any representative thereof, shall not be deemed to constitute a waiver of any right to grant or deny any other or future variance or adjustment by the Design Review Committee or any representative thereof, as to any other request for variance or adjustment or other matters whatsoever.

**Section 5.11.      *Records.***

The Design Review Committee shall maintain written records (which may be in electronic form) of all applications submitted to it and all actions taken by it thereon for such period of time as may be determined by the Board of Directors from time to time and, subject to Section 3.8 of this Declaration, such records shall be available to Members for inspection at reasonable hours of the business day.

**Section 5.12.      *Liability.***

Neither the Design Review Committee nor any members thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Owner or other Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, the Design Review Committee shall not be responsible for the safety, whether structural or otherwise, of the Improvement(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the Design Review Committee shall not be deemed an approval of any of the same. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by the Design Review Committee.

**Section 5.13.      *Declarant's and Builder's Exemptions.***

5.13.1. Notwithstanding anything herein to the contrary, until automatic termination of the Special Declarant Rights as provided in Section 1.37 of this Declaration, Declarant shall be exempt from the provisions of this Article except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in subsection 5.2.3 hereof).



5.13.2. Notwithstanding anything to the contrary contained in this Declaration, as long as a Builder has received design approval from Declarant, such Builder shall be exempt from the provisions of this Article except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in 5.2.3 of this Declaration). The exemption contained in this subsection shall expire upon the termination of the Special Declarant Rights as provided in Section 1.37 of this Declaration.

## **ARTICLE 6. INSURANCE**

### **Section 6.1. Insurance.**

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including CCIOA, which insurance shall include property insurance and commercial general liability insurance. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including fidelity coverage and personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors or officers on behalf of the Association, as well as insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion from time to time.

### **Section 6.2. Insurance on the Structures on Lots.**

The Board or its agent may (but shall not be obligated to) obtain and maintain, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, a policy of property insurance covering the structure(s) located on each Lot, except for land, excavations, foundations and other matters normally excluded from property policies, in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Such insurance shall afford protection against at least the following:

6.2.1. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

6.2.2. such other risks as shall customarily be covered with respect to designs similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available.

### **Section 6.3. General Provisions of Insurance Policies.**

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days prior written notice

thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest on the Lot insured by such insurance policy. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall also contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

**Section 6.4.        *Deductibles.***

The Association may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, that falls within the deductible portion of a policy that is carried by the Association may, at the election of the Board of Directors in its discretion, be borne by the Person who is responsible for the repair and maintenance of the property that is damaged or destroyed; be apportioned among the Persons sharing in a joint duty of repair and maintenance; and/or be partly or wholly borne by the Association and/or any such Person(s). Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect such amounts from said Owner(s) in the same manner as any Assessment.

**Section 6.5.        *Payment of Insurance Proceeds.***

Any loss covered by an insurance policy described in Section 6.1 or Section 6.2 hereof must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 7.1 of this Declaration, the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired, restored or replaced and any budget or reserve deficit funded, or unless the Community is terminated.

**Section 6.6.        *Association Insurance as Primary Coverage.***

If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of

insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any Assessment.

**Section 6.7.        *Acceptable Insurance Companies.***

Each insurance policy purchased by the Association or Owners under this Article 6 must be written by an insurance carrier that is authorized by law to do business in the State of Colorado. Neither the Association nor any Owner shall obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) that could prevent mortgagees or any Owner from collecting insurance proceeds.

**Section 6.8.        *Insurance to be Maintained by Owners.***

An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon, as well as on personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot. Each Owner shall obtain and maintain liability insurance coverage for a minimum of \$1,000,000 for bodily injury, including death, and property damage arising out of a single occurrence or in the aggregate. Such minimum amount of insurance shall be adjusted every five years by the increase in the CPI Index from the year of recordation of this Declaration. The CPI United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Items-All Urban Consumers (base year 1982-84=100) for the U.S. City Average, shall be the CPI Index utilized for such adjustment, or other similar index if such index is not then readily available. In addition, each Lot shall be insured in an amount not less than the full replacement value of the Improvements thereon and such insurance shall name the Association as an additional insured under the policy. In the event the homeowners' insurance policies held by different Owners of Lots or held by an Owner and the Association and that are underwritten by different insurers, the Owner shall be responsible for ensuring that such Owner's insurer agrees, in the event damage occurs to the covered property, to facilitate payment of the insurance proceeds when two or more insurers are involved and that each insurer will pay (a) all undisputed proceeds and (b) all disputed proceeds (subject to the right of each such insurer to recover from the other insurers any such sums for which the other insurers are found to be liable).

**ARTICLE 7.        DAMAGE OR DESTRUCTION**

**Section 7.1.        *Damage or Destruction.***

7.1.1. Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

7.1.1.1. the Community is terminated; or

7.1.1.2. repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

7.1.1.3. the Members casting sixty-seven percent (67%) of the Association's votes, in person or by proxy, including every Member whose Improvements will not be rebuilt, vote not to rebuild; or

7.1.1.4. prior to conveyance of any Lot to a Person other than Declarant, a Security Interest Holder rightfully demands all or a substantial part of the insurance proceeds.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Lots.

## **Section 7.2.       *Lots.***

Except as otherwise provided in Section 7.1, any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner(s) thereof. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Lot do not commence repair and reconstruction within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Design Review Committee then the Association may, in its reasonable discretion, after providing the notice required in Section 8.3 hereof, enter upon the Lot and complete such repair and reconstruction. If the Members vote not to rebuild any Lot, that Lot's Allocated Interests are automatically reallocated as if the Lot had been condemned as provided in Section 12.11 of this Declaration, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations. Alternatively, the Association may instead enter upon the Lot for the purpose of demolishing the damaged structure, removing all debris and restoring the Lot to a vacant unoccupied Lot condition.

## **ARTICLE 8.       MAINTENANCE**

### **Section 8.1.       *General.***

8.1.1. Maintenance, repair and replacement of the Common Elements (including private alleyways, private drive areas and drainage easements) and all Improvements located thereon (including street lights in the private alleyways and/or private drive areas, mailbox kiosks, plazas,

and picnic areas, if any), and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by a local government entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. In addition, pursuant to that certain Subdivision Agreement between the City of Boulder and Declarant for the Project (the "Subdivision Agreement"), the Association shall also be responsible for maintenance of all Common Facilities and Common Areas (as defined in the Subdivision Agreement). Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time, including publicly dedicated property and Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance, repair and replacement that is provided for in this subsection shall, subject to Section 8.5 hereof, be collected by the Association as Assessments and paid as Association expenses.

8.1.2. Except as provided in subsection 8.1.1 above, the maintenance, repair and replacement of each Lot, and the Improvements thereon, shall be performed by the Owner(s) thereof at such Owner's sole cost and expense. However, the foregoing is subject to the provisions of Section 8.5.

**Section 8.2.        *Changed or Added Improvements.***

Any Improvement that has been changed, altered or modified by or for an Owner or occupant of a Lot shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Lot after conveyance of such Lot by Declarant, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner of such Lot. However, the Board of Directors may at any time, by resolution, elect to have the Association provide such maintenance, repair or replacement; provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

**Section 8.3.        *Association's Right to Maintain, Repair and Reconstruct.***

In the event any Owner shall fail to perform his maintenance, repair, and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner(s) by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or reconstruction, or to demolish any changed structure, remove debris and restore the Lot to a vacant unoccupied Lot condition. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair, reconstruction, demolition, removal or restoration shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to "Assessments" as provided in Article 4 of this Declaration (Assessments), including interest, late charges and lien rights.

**Section 8.4.        *Non-Interference with Grade and Drainage.***

Each Owner shall maintain the grading on its Lot (including grading around the building foundation at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage (as defined below). Similarly, the Association shall maintain the grading on the Common Elements (including areas within Lots that are subject to drainage easements as shown on the Map) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner and the Association agree, for themselves and their, heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property within the Project. Except as to Declarant, in the event that it is necessary or desirable to change the established drainage over any Lot or the Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Design Review Committee for its review and approval in accordance with Article 5 of this Declaration (Design Review Committee), and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities. For purposes of this Section, “established drainage” is defined as the drainage that exists at the time final grading by Declarant is completed.

**Section 8.5.        *Acts or Omissions.***

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair, reconstruction, demolition, removal or restoration of the Common Elements, a Lot, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of a Permittee of Owner’s, the cost or expense of such repair, maintenance, replacement, reconstruction, demolition, removal or restoration to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado, and any amounts incurred by the Association for such repair, maintenance, replacement and/or reconstruction shall be added to the Assessments to which such Owner’s Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration (Assessments). A determination of the act or omission of any Owner, or a Permittee of an Owner, and the amount of the Owner’s liability therefor, shall be made by the Board of Directors at a hearing after notice to the Owner.

**ARTICLE 9.        EASEMENTS**

**Section 9.1.        *Other Easements.***

In addition to any other easements that may be granted or reserved elsewhere in this Declaration or by law, the following Sections describe easements to which the Community is or will be subject.

**Section 9.2.        *Access Easement for Repairs.***

Each Lot shall be subject to an easement in favor of the Association, including the agents, employees and contractors thereof, for performing maintenance, repair, replacement and/or reconstruction, or other services as provided in the Governing Documents, including maintenance, repair,

replacement and/or reconstruction pursuant to Article 8 of this Declaration (Exterior Maintenance); and for and incidental to enforcement of any term or provision of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any dwelling unit located on a Lot shall not be subject to the easements provided for in this Section.

**Section 9.3.        *Access Easement.***

Each Lot shall be subject to certain nonexclusive easements in favor of the Association and the Lot Owners, including all Permittees of such Owners, for the purpose of clear and unhindered vehicular and/or pedestrian ingress and egress, as well as the installation of underground utilities to each Owner's Lot. The easements described in this Section include (a) those specific easements depicted on the Map, which have the boundaries and limitations as shown on the Map and (b) a nonexclusive easement as necessary to accomplish the purposes described in this Section, provided that such easements do not extend beyond ten feet inside the boundaries of any Lot and do not extend within, under or across the interior of any Improvements located on a Lot. The Owners of the Lots on which portions of the access easement described in this Section 9.3 is located retain the rights of ownership, use and occupancy of the portions of their respective Lots upon which the easement is located insofar as said ownership, use and occupancy does not impair the use and enjoyment of the easement as described in this Section. No Owner may obstruct or restrict the full permitted use of the easement by any other party entitled to use same under this Declaration. The Association shall be responsible for the maintenance, improvement, repair, replacement, and clearing of major obstructions (including snow removal) from the easement area.

**Section 9.4.        *Utilities Easement.***

Declarant hereby reserves for itself and the Association a blanket easement upon, across, over and under the Common Elements for utilities and the installation, use, replacement, repair and maintenance of utilities, including water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect, use, and maintain the necessary facilities, equipment and appurtenances on the Common Elements, and to affix, use, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.37 of this Declaration, at which time said reserved right shall vest in the Association. The easement provided

for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

**Section 9.5.        *Drainage Easement.***

Drainage easements for the benefit of the Lot Owners, Declarant and the Association are identified on the Map. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist that may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon the drainage easements, at any time, to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.29 of this Declaration, at which time said reserved right shall vest solely in the Association. All costs incurred by Declarant or the Association to make repairs or corrections resulting from a Lot Owner's negligence or intentional misconduct shall be paid by Lot Owner.

**Section 9.6.        *Hospital Drainage Easement.***

That certain Common Element identified as Outlot 3 on the Map is subject to easement rights granted to The Community Hospital Association ("*Hospital Association*") pursuant to a certain Drainage/Detention Easement Agreement with the Hospital Association. Pursuant to such agreement, the Hospital Association holds an easement for storm water drainage and detention across Outlot 3 and reimburses the Association for certain expenses associated with the same. All expenses incurred by the Association in maintaining such drainage and detention areas and in complying with the obligations under the agreement not otherwise reimbursed by the Hospital Association shall be expenses apportioned among the Lots in accordance with Allocated Interests and included in Assessments.

**ARTICLE 10.    RESTRICTIONS**

**Section 10.1.    *General Plan.***

It is the intention of Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots.

**Section 10.2.    *Restrictions Imposed.***

The Community is subject to the recorded easements, licenses and other matters listed on Exhibit C attached hereto and incorporated herein by this reference. In addition, Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.



**Section 10.3.      *Residential Use; Professional or Home Occupation.***

Subject to Section 12.7 of this Declaration, Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that the following conditions are satisfied:

10.3.1. The business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

10.3.2. The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

10.3.3. The business does not result in an undue volume of traffic or parking within the Community, which determination may be made by the Board in its sole discretion from time to time;

10.3.4. The business conforms to all zoning provisions and is lawful in nature; and

10.3.5. The business conforms to any rules and regulations and policies and procedures that may be imposed by the Board from time to time on a uniform basis to protect the peace, tranquility and quality of the Community.

**Section 10.4.      *Household Pets.***

No animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of a Lot. The Association shall have, and is hereby given, the right and authority, from time to time, to: set a maximum number of household pets; set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of any provision of this Section. If the Association determines that any of the foregoing have been or are being violated, the Association may take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and all costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 4 of this Declaration (Assessments).

**Section 10.5.      *Temporary Structures; Unsightly Conditions.***

No structure of a temporary character, including a house, trailer, tent or shack shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other capital improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvement shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from the street or from any other Lots.

**Section 10.6.      *Miscellaneous Improvements.***

10.6.1. 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 a street number, and except for a “For Sale,” “Open House,” “For Rent” or security sign(s) of not more than a total of five (5) square feet in the aggregate, which pertains to that Lot. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by Declarant and/or any Builder (with the written consent of Declarant) shall be permissible.

10.6.2. Other than during initial construction, no construction materials, wood piles, or storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot.

10.6.3. Except for solar panels, which are regulated by law, no types of refrigerating, cooling or heating apparatus shall be permitted on a roof. Additionally, no such apparatus shall be permitted elsewhere on a Lot except when appropriately screened and approved by the Design Review Committee.

10.6.4. Except as may otherwise be permitted by the prior approval of the Design Review Committee, no exterior radio antenna, television antenna, audio, visual reception device, antenna, or satellite dish of any type shall be installed, placed, erected or maintained on any Lot; provided, however, that any such devices may be erected or installed by Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those antenna (including certain satellite dishes) specifically covered by the Telecommunications Act of 1996 or regulations adopted thereunder, as amended. As to antenna (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 regulations adopted thereunder, as amended, the Association shall be empowered to adopt rules and regulations or policies and procedures governing the types of antenna that are permissible and, to the extent permitted by the Telecommunications Act of 1996 or regulations adopted thereunder, as amended, establishing reasonable, non-discriminatory restrictions or requirements relating to appearance, safety, location and maintenance.

10.6.5. Fences shall be permitted only in accordance with the prior approval of the Design Review Committee; except such fences as may be constructed or installed or located by Declarant or Builder in their development of, or construction of Improvements in, the Community.

10.6.6. No wind generators, hanging articles (including clotheslines), drying yards, or service yards, shall be constructed, installed, erected or maintained on any Lot, except with the prior, written approval of the Design Review Committee.

10.6.7. Dog runs shall be permitted on a Lot only with the prior, written approval of the Design Review Committee.

10.6.8. All structures must comply with applicable law and the requirements of the Design Review Committee.

**Section 10.7.      *Vehicular Parking, Storage and Repairs.***

10.7.1. No house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding pickup trucks that are 1 ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Lot unless such parking or storage is entirely within the garage area of any Lot or will be suitably screened from view in accordance with the requirements, and prior written approval of, the Design Review Committee (subject to subject to any provisions of any guidelines or standards adopted by the Design Review Committee). A “commercial vehicle” means a vehicle that: is used to transport cargo or passengers for profit or hire, or otherwise to further the purposes of a business or commercial enterprise; and may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle. However, any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

10.7.2. Except as otherwise provided in this and the next sentence, no recreational vehicles, or disassembled or partially disassembled vehicles of any type, shall be parked, stored, maintained, or used on any Lot (unless such parking or storage will be within the fully enclosed garage of a Lot). However, recreational vehicles may be temporarily parked for a maximum of three (3) consecutive days in the driveway of a Lot. Recreation vehicles shall include, but not be limited to, motor homes, pick-up trucks with camper shells, trailers, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation.

10.7.3. Except for designated parking spaces and areas within the Community, parking shall not be permitted on the private alleyways or private drive areas in the Community and the Association may elect to post the same.

10.7.4. Except as provided above, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked anywhere in the Community. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seven days or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed. Notwithstanding the foregoing, Owners may park vehicles on driveways within their own Lots while on vacation or during a period of illness and such vehicles shall not be deemed to be abandoned.

10.7.5. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 10.7.1, 10.7.2, 10.7.3, or 10.7.4 hereof, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.7.6. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within a completely enclosed structure which screens the sight and sound of the activity from the street, alley, and from adjoining property. The foregoing restriction shall not be deemed to prevent the washing and polishing of any motor vehicle, boat, trailer, motor cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing on a Lot.

10.7.7. This Section 10.7 shall be construed and applied in accordance with all applicable laws, including CCIOA.

**Section 10.8.      *Compliance with Laws.***

Each Owner shall comply, and shall cause his or her Permittees to comply, with all applicable laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Project. Nothing shall be done or kept in or on any Lot or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same.

**Section 10.9.      *Compliance with Governing Documents.***

Each Owner shall comply strictly with, and shall cause his or her Permittees to comply strictly with, all of the provisions of the Governing Documents, and the decisions and resolutions of the Association or the Design Review Committee adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Board in the name of the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.

**Section 10.10.     *Property to be Maintained.***

Each Owner shall at all times maintain his or her Lot in a manner consistent with the standard of first class residential real estate properties of comparable size in the Boulder area. 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 same are visible from any neighboring Lot or street, except as necessary during any period of construction. No unsightliness or waste shall be permitted on or in any part of a Lot. Each Owner shall install, plant, maintain, repair, replace, alter and service as appropriate the yard, grass, flowers, trees, shrubbery and other landscaping features on the Lot.

**Section 10.11.     *No Nuisances, Offensive, Hazardous, or Annoying Activities.***

No nuisances or offensive activity shall be permitted on any part of the Community nor shall anything be done or placed on or in any part of the Community that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No activity shall be conducted on any part of the Community that is or might be unsafe or hazardous to any person or property. No odor shall be emitted on any part of the Community that is noxious or offensive to others. Without limiting the generality of the foregoing, no firearms shall be discharged within any part of the Community (including the Lots) and no open fires shall be lighted or permitted within the Community, except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property and provided further that such products and substances are stored, used, transported and disposed of strictly in accordance with all applicable environmental laws. In no event shall the items set forth herein be deemed to be a complete list of nuisance or offensive activities prohibited hereunder, and the Board shall have the right to terminate any other nuisance or otherwise offensive activity carried on by an Owner in violation of the provisions hereof. As used herein, the term “nuisance” shall not include any activities of Declarant that are reasonably necessary to the development of and sales activities in the Community.

**Section 10.12.     *No Annoying Lights, Sounds or Odors.***

No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot that is unreasonably loud or annoying; and no odor shall be permitted from any Lot that is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted that violates any applicable laws, ordinances or regulations or that may be seen, heard or smelled from any Lot.

**Section 10.13.     *Restrictions on Trash and Materials.***

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup; provided, however, that no such container shall be deposited on a street for garbage pickup prior to 5:00 a.m. on the day such

garbage will be picked up. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

**Section 10.14. *Utility Systems.***

Utility systems located on or serving a Lot shall be operated and maintained efficiently and in a manner that does not place undue operating, maintenance, repair or replacement costs on the mechanical and utility systems of another Lot or the Common Elements.

**Section 10.15. *Leases.***

The term “lease,” as used herein, shall include any agreement for the leasing or rental of a Lot, Improvement thereon, or any portion thereof, and shall specifically include month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, under the following conditions:

10.15.1. All leases shall be in writing;

10.15.2. All leases shall be for a term of at least thirty (30) days; and

10.15.3. All leases shall provide that the terms of the lease and lessee’s occupancy of the leased premises shall be subject in all respects to the Governing Documents; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

**Section 10.16. *Restrictions on Mining or Drilling.***

No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

**Section 10.17. *Declarant’s Use.***

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Project such facilities as Declarant deems reasonably necessary or incidental to the completion and sale of the Lots. Without limiting the generality of the foregoing, Declarant may maintain management offices, construction facilities and equipment, storage areas, signs, sales offices, parking areas and lighting facilities. Declarant expressly reserves the right to locate any sales office or management office within or on any Lot owned by Declarant and designated from time to time. The rights retained by Declarant in this Section 10.17 shall terminate upon conveyance by Declarant of all of the Lots to Owners other than Declarant or 20 years after the recording of this Declaration, whichever occurs first.

**Section 10.18.     *Use of Common Elements.***

Each Owner and Owner's Permittees may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board may adopt rules or policies governing or restricting the use of the Common Elements. Each Owner and Owner's Permittees, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to its Lot, agrees to be bound by any such adopted rules or policies. No Owner or Owner's Permittees shall cause, or further, an obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements, without prior written consent of the Board or if appointed by the Board, the Design Review Committee. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board.

**ARTICLE 11.           PROPERTY RIGHTS IN THE COMMON ELEMENTS**

**Section 11.1.       *Owners' Easements of Enjoyment.***

Subject to this Article 11, every Owner shall have a non-exclusive right and easement for the purpose of access to their Lots and for use for all purposes for which they were intended, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

**Section 11.2.       *Extent of Owners' Easements.***

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner that violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Owner may place any structure on the Common Elements. In addition, such rights and easements are subject to the following rights of the Association:

11.2.1. The right of the Association to borrow money for any purpose and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with CCIOA; and

11.2.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

11.2.3. The right of the Association to promulgate and publish standards, guidelines, rules and regulations or policies and procedures, with which each Member shall strictly comply; and

11.2.4. The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid and, for any reasonable period of time as a result of any infraction of the Governing Documents; and

11.2.5. The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with CCIOA. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful shall not be deemed a transfer within the meaning of this subsection; and

11.2.6. The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, and their Permittees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

11.2.7. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

**Section 11.3.      *Declarant Use of Common Elements.***

Easements are hereby granted to and reserved by Declarant and to each Builder on, over, under and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's or Builder's obligations or exercising any Special Declarant Rights or other rights of Declarant, and no Owner shall engage in any activity that will temporarily or permanently interfere with Declarant's easements through the Common Elements.

**Section 11.4.      *Delegation of Use.***

Any Owner may delegate his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

**Section 11.5.      *Payment of Taxes or Insurance by Security Interest Holders.***

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments that are in default and that may be or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

**Section 11.6.      *Conveyance or Encumbrance of Common Elements.***

Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with CCIOA and this Declaration.



**Section 11.7.      *Designation of Common Elements.***

Declarant in recording this Declaration has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements is not dedicated hereby for use by the general public.

**Section 11.8.      *Duty to Accept Property and Facilities Transferred by Declarant.***

The Association shall accept title to any property, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by Declarant, together with responsibility to perform all duties and functions of the Association that are set forth in this Declaration or otherwise assumed by the Association. As of the date of recording of this Declaration, interests that are planned to be transferred by Declarant to the Association are planned to consist only fee simple title to Common Elements and/or easements, in the property described on the attached Exhibit A.

**ARTICLE 12.           GENERAL PROVISIONS**

**Section 12.1.      *Enforcement; Fines.***

12.1.1. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Governing Documents may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. Remedies for violation(s) of the Governing Documents shall be cumulative and no remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under any of such documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter.

12.1.2. Subject to the following sentence, the Association shall have the right to levy and collect fines (as provided in Article 4 of this Declaration (Assessments)) for the violation of the Governing Documents. Prior to collection of any fines, the Association, the Board of Directors, or an authorized management company of the Association, shall mail a notice of violation to the Person(s) alleged to be in violation of any such provision and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated, within ten (10) days after the notice of violation has been mailed or such other time as the Board of Directors may decide in its discretion from time to time; failure of a notified Person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

**Section 12.2.      *Severability.***

All provisions of this Declaration, the Articles and the Bylaws are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions that shall remain in full force and effect.

**Section 12.3.      *Conflict of Provisions.***

In case of any conflict between this Declaration and a Supplemental Declaration, this Declaration shall control. In case of any conflict between this Declaration and the Articles or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles and the Bylaws of the Association, the Articles shall control.

**Section 12.4.      *Conflict with the Act.***

In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with CCIOA, the terms or provisions of CCIOA shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with CCIOA, and any conflict with or violation of CCIOA by any terms or provisions of this Declaration shall be affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

**Section 12.5.      *Annexation; Withdrawal.***

12.5.1. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

12.5.2. Declarant hereby reserves the right, from time to time, to record one or more documents in order to clarify the effect of any annexation(s), including any matters contained in subsection 12.5.1. Each such document(s), if any such document(s) are recorded by Declarant in its discretion, may state the legal description(s) of any property that has been annexed, and may include such other provisions that Declarant, in its discretion, may determine in order to clarify any matter having to do with annexation of such property to this Declaration.

12.5.3. Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration, including (as to Lots), those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document). Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

12.5.4. The property that is described on the attached Exhibit A and each portion of the Community that is annexed to this Declaration by Declarant shall be subject to a right of withdrawal by Declarant. Such withdrawal may be accomplished, if at all, in accordance with CCIOA. However, Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, no later than automatic termination of the Special Declarant Rights as provided in 1.28 hereof.

**Section 12.6.      *Subdivision or Replatting of Lots.***

Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by Declarant in the Community. Without limiting the generality of the foregoing, Declarant reserves the right to move any Lot line(s) on Lot(s) owned by Declarant, for the purpose of accommodating Improvements that are constructed or are to be constructed. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.29 hereof. Not Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by, or with the consent of, Declarant.

**Section 12.7.      *Declarant's and Builder's Use.***

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, as well as any Builder (but only with the express written consent of Declarant), to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots and development and construction of Improvements. The foregoing includes locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations it determines in its reasonable discretion from time to time. Any real estate used as a sales office, management office, or a model, shall be a Lot or Common Elements, as designated in this Declaration or any other recorded document. Further, nothing contained in this Declaration shall limit the rights of Declarant or require Declarant to obtain approvals:

12.7.1. to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

12.7.2. to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or

12.7.3. to require Declarant to seek or obtain any approvals under this Declaration for any such activity.

**Section 12.8.      *Duration, Revocation, and Amendment.***

12.8.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this

Declaration (including Section 12.5 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests.

12.8.2. Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.37 of this Declaration.

12.8.3. Notwithstanding anything to the contrary contained in this Declaration, this Declaration, may be amended in whole or in part, at any time from time to time, by Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.37 of this Declaration.

12.8.4. Except as to amendments that may be made by Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration that may be made by Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by Declarant and shall require no other signatory.

**Section 12.9.      *Registration of Mailing Address.***

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the Period of Declarant Control shall be sent by registered or certified mail, postage prepaid, c/o Moonbeam Boulder, LLC, 2595 Canyon Blvd., Suite 200, Boulder, CO 80302, unless such address is changed by the Association during the Period of Declarant Control; subsequent to termination of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

**Section 12.10.    *HUD or VA Approval.***

During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more first Security Interests and HUD or VA require such approval: annexation of additional real

property (if Declarant desires to obtain HUD or VA approval of the property that is being annexed and HUD or VA require such approval); amendment of this Declaration, except as provided in Section 12.5, and subsections 12.8.2 and 12.8.3 hereof, termination of this Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.13 of this Declaration.

**Section 12.11. *Eminent Domain.***

The taking by eminent domain of a Lot(s) or Common Elements, or any portion thereof, shall be done in accordance with applicable law, including CCIOA.

**Section 12.12. *Indemnification.***

To the extent (i) permitted by applicable law and (ii) not covered by the insurance required under Article 6 above, each Owner (“***Indemnifying Owner***”), by taking title to a Lot, is hereby deemed to covenant to indemnify, defend, and hold harmless the Association, Declarant, each other Owner, its Security Interest Holder, and their respective partners, officers, directors, shareholders, members, managers, employees, and agents (each, an “***Indemnified Party***”) from and against any and all claims, actions, damages, liabilities and demands asserted by third persons (other than Indemnified Parties), including those for loss of life, personal injury and property damage, occasioned by or arising directly or indirectly, out of or in connection with the use, occupancy, operation or ownership (as applicable) by such Owner of his or her Lot or the easement areas associated with such Lot, or the failure of such Owner to perform any obligation with respect to those easement areas associated with such Owner’s Lot that such Owner is required to operate, maintain, and/or repair under the terms of this Declaration. An Indemnified Party shall provide the Indemnifying Owner with prompt notice of any claim or other matter for which the Indemnified Party may seek indemnity under this Article; provided, however, that the failure to provide such notice shall relieve the Indemnifying Owner of its indemnity obligations only to the extent that the Indemnifying Owner is damaged or prejudiced by such failure. The Indemnifying Owner or its covering insurer shall defend the Indemnified Party with respect to any such claim at the Indemnifying Owner’s expense, with attorneys selected by the Indemnifying Owner who may also represent the Indemnifying Owner. If the Indemnified Party retains separate attorneys for its defense, it shall do so at its own expense. The Indemnifying Owner shall have sole right to conduct such defense (including decisions concerning the forum) and settle any claim, suit, proceeding, or other matter brought by the third party, provided that the Indemnified Party is released from any liability with respect to such claim. The Indemnified Party shall cooperate with the Indemnifying Owner in the defense of any claim, including the provision of documents and witnesses.

**Section 12.13. *Limitation on Liability.***

The Association, the Board of Directors, the Design Review Committee, Declarant, any Builder, and the officers, directors, managers, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 12.16 shall apply to this Section.

**Section 12.14.    *No Representations, Guaranties or Warranties.***

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Design Review Committee, any Builder, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, freedom from hazardous or toxic materials, substances or gases, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 12.16 shall apply to this Section.

**Section 12.15.    *Disclaimer Regarding Safety.***

DECLARANT, THE BUILDERS, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE DESIGN REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE BUILDERS, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE DESIGN REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, OR IN THE ARTICLES, BYLAWS, RULES AND REGULATIONS OR POLICIES AND PROCEDURES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 12.16 SHALL APPLY TO THIS SECTION.

**Section 12.16.    *Waiver.***

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges Declarant, the Association, the Board of Directors, the Design Review Committee, each Builder, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including those contained in and Section 12.12, 12.14 and 12.15.

**Section 12.17.    *Headings.***

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

**Section 12.18. Gender.**

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

**Section 12.19. Run with Land; Binding Upon Successors.**

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements that are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

DECLARANT:

MOONBEAM BOULDER, LLC, a Colorado limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ as \_\_\_\_\_ of Moonbeam Boulder, LLC, a Colorado limited liability company.

Witness my hand and official seal.

{ S E A L }

Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF TRAILHEAD COMMUNITY

(Community)

PARCEL A:

BEGINNING AT THE NORTHEAST CORNER OF BLOCK 5, MOUNTAIN HIGHTS, AN ADDITION TO THE CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID BLOCK 5, AND THE NORTHERLY LINE OF SAID BLOCK 5 EXTENDED WESTERLY, 160.9 FEET TO A POINT ON THE EAST LINE OF BLOCK 7 IN SAID MOUNTAIN HIGHTS; THENCE NORTHERLY ALONG THE EAST LINE OF SAID BLOCK 7, A DISTANCE OF 5.96 FEET TO THE NORTHEAST CORNER OF LOT 9, BLOCK 7, IN SAID MOUNTAIN HIGHTS; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID LOT 9, AND THE NORTHERLY LINE OF SAID LOT 9, EXTENDED WESTERLY, A DISTANCE OF 239.91 FEET; THENCE SOUTHERLY AND PARALLEL TO THE EASTERLY LINE OF SAID BLOCK 5, TO A POINT ON THE NORTHERLY LINE OF CONCORD AVENUE EXTENDED WESTERLY AS LAID OUT AND PLATTED ON THE AMENDED PLAT OF BLOCKS 10, 11, 12 AND 13, MAXWELL'S ADDITION TO BOULDER, COLORADO; THENCE EASTERLY ALONG SAID NORTHERLY LINE OF CONCORD AVENUE EXTENDED WESTERLY TO A POINT ON THE WESTERLY LINE OF 4TH STREET IN SAID CITY OF BOULDER; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID 4TH STREET, A DISTANCE OF 629 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

PARCEL B:

EASEMENT FOR WATER LINE PURPOSES ACROSS AND UNDER THE FOLLOWING DESCRIBED TRACT:

A STRIP OF LAND LOCATED IN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 25 FROM WHICH A 30.00 WITNESS CORNER (AT THE CENTERLINE OF ALPINE AVENUE) TO THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 25 BEARS NORTH 00°00'49" EAST (ASSUMED MERIDIAN), A DISTANCE OF 1,343.25 FEET; THENCE NORTH 00°00'49" EAST, A DISTANCE OF 359.77 FEET ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 25 TO THE NORTH LINE OF CONCORD AVENUE EXTENDED WESTERLY; THENCE



SOUTH 89°48'26" WEST, A DISTANCE OF 419.99 FEET ALONG THE NORTH LINE OF CONCORD AVENUE EXTENDED WESTERLY TO THE SOUTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN BOOK 1267 AT PAGE 249; RECEPTION NO. 719604, OF THE RECORDS OF BOULDER COUNTY, COLORADO; THENCE NORTH 00°00'49" EAST, A DISTANCE OF 293.86 FEET ALONG THE WEST LINE OF THAT TRACT OF LAND AS DESCRIBED IN SAID BOOK 1267 AT PAGE 249 TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 85°22'00" WEST, A DISTANCE OF 27.80 FEET; THENCE SOUTH 04°00'00" EAST, A DISTANCE OF 12.43 FEET; THENCE SOUTH 77°49'43" WEST, A DISTANCE OF 15.15 FEET; THENCE NORTH 04°00'00" WEST, A DISTANCE OF 15.38 FEET; THENCE NORTH 82°30'00" WEST, A DISTANCE OF 76.52 FEET; THENCE NORTH 67°48'00" WEST, A DISTANCE OF 36.03 FEET; THENCE NORTH 51°40'00" WEST, A DISTANCE OF 29.36 FEET; THENCE NORTH 14°00'00" WEST, A DISTANCE OF 9.88 FEET; THENCE NORTH 35°05'00" WEST, A DISTANCE OF 14.16 FEET; THENCE NORTH 61°30'00" WEST, A DISTANCE OF 56.55 FEET; THENCE SOUTH 66°09'00" WEST, A DISTANCE OF 116.93 FEET; THENCE SOUTH 85°20'00" WEST, A DISTANCE OF 26.41 FEET; THENCE NORTH 77°25'00" WEST, A DISTANCE OF 11.10 FEET; THENCE NORTH 16°32'30" EAST, A DISTANCE OF 22.05 FEET; THENCE NORTH 76°54'00" EAST, A DISTANCE OF 7.66 FEET; THENCE SOUTH 13°06'00" EAST, A DISTANCE OF 10.08 FEET; THENCE NORTH 85°20'00" EAST, A DISTANCE OF 17.45 FEET; THENCE NORTH 66°09'00" EAST, A DISTANCE OF 121.77 FEET; THENCE SOUTH 61°30'00" EAST, A DISTANCE OF 67.45 FEET; THENCE SOUTH 35°05'00" EAST, A DISTANCE OF 20.48 FEET; THENCE SOUTH 14°00'00" EAST, A DISTANCE OF 7.56 FEET; THENCE SOUTH 51°40'00" EAST, A DISTANCE OF 22.12 FEET; THENCE SOUTH 67°48'00" EAST, A DISTANCE OF 31.97 FEET; THENCE SOUTH 82°30'00" EAST, A DISTANCE OF 77.54 FEET; THENCE NORTH 85°22'00" EAST, A DISTANCE OF 27.94 FEET TO A LINE THAT IS 10.0 FEET WESTERLY AS MEASURED AT RIGHT ANGLES FROM AND PARALLEL WITH THE WEST LINE OF THAT TRACT OF LAND AS DESCRIBED IN SAID BOOK 1267 AT PAGE 249; THENCE NORTH 00°00'49" EAST, A DISTANCE OF 261.76 FEET PARALLEL WITH THE WEST LINE OF THAT TRACT OF LAND AS DESCRIBED IN SAID BOOK 1267 AT PAGE 249; THENCE SOUTH 89°59'11" EAST, A DISTANCE OF 10.00 FEET TO THE WEST LINE OF THAT TRACT OF LAND AS DESCRIBED IN SAID BOOK 1267 AT PAGE 249; THENCE SOUTH 00°00'49" WEST, A DISTANCE OF 276.00 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF TRAILHEAD COMMUNITY

(Common Elements)

- Drainage Facilities and Easements as shown on the Map
- Public Access Easements shown on the Map
- Outlots 1, 2 and 3 as shown on the Map
- Access Easements identified on the Map across Lots 9, 10, 11, 17 and 22
- Access Easement granted by Hospital Association pursuant to Access Easement Agreement recorded \_\_\_\_\_ at Reception No. \_\_\_\_\_ (subject to the limitations on use set forth therein)
- All sidewalks throughout the Community (not otherwise dedicated to and owned by the City)
- Project identification signs
- Any utilities serving the Association or more than one Lot
- Irrigation infrastructure for Outlots, Rights-of-Ways and any other Common Elements
- Street improvements (not otherwise dedicated to and owned by the City)

EXHIBIT C

TO

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF TRAILHEAD COMMUNITY

(Certain Title Exceptions)

If recorded, the following documents are recorded in the office of the Clerk and Recorder of Boulder County, Colorado:

1. TAXES AND ASSESSMENTS FOR THE YEAR OF RECORDING OF THIS DECLARATION AND FOR SUBSEQUENT YEARS, NOT YET DUE AND PAYABLE.
2. TERMS, CONDITIONS AND PROVISIONS OF UNRECORDED TEMPORARY EASEMENT AND REVOCABLE LICENSE AGREEMENT DATED NOVEMBER 7, 2009 BY AND BETWEEN CAROL L. GRASSE, GIL MILLION AND THE CITY OF BOULDER, AS DISCLOSED TO THE COMPANY.
3. RIGHT OF PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED JULY 09, 1895, IN BOOK 100 AT PAGE [85](#).
4. RESERVATION OF UTILITIES BY THE CITY OF BOULDER OVER THOSE VACATED STREETS AND ALLEYS WITHIN MOUNTAIN HEIGHTS (SIC) ADDITION, AS SET FORTH IN ORDINANCE #1804 DATED JULY 6, 1954, AND RECORDED SEPTEMBER 27, 2011 UNDER RECEPTION NO. [3173398](#).
5. TERMS, CONDITIONS AND PROVISIONS OF NOTICE OF DISPOSITION RECORDED JUNE 14, 1984 AT RECEPTION NO. [627573](#).
6. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT RECORDED OCTOBER 11, 1995 UNDER RECEPTION NO. [1554294](#).
7. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT RECORDED OCTOBER 11, 1995 UNDER RECEPTION NO. [1554296](#).

8. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE FINAL PLAT OF TRAILHEAD SUBDIVISION RECORDED \_\_\_\_\_ UNDER RECEPTION NO. \_\_\_\_\_.
9. TERMS, CONDITIONS AND PROVISIONS OF SUBDIVISION AGREEMENT RECORDED \_\_\_\_\_ UNDER RECEPTION NO. \_\_\_\_\_.
10. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN ACCESS EASEMENT AGREEMENT RECORDED \_\_\_\_\_ UNDER RECEPTION NO. \_\_\_\_\_.
11. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN DETENTION/DRAINAGE EASEMENT AGREEMENT RECORDED \_\_\_\_\_ UNDER RECEPTION NO. \_\_\_\_\_.