

**AMENDED AND RESTATED**  
**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**SUNDIAL**

<u>Name of Common Interest Community:</u>	<b>SUNDIAL</b>
<u>Type of Common Interest Community:</u>	<b>PLANNED COMMUNITY</b>
<u>Name of the Association:</u>	<b>SUNDIAL HOMEOWNERS ASSOCIATION, INC.</b>
<u>Person Executing the Declaration:</u>	<b>SUNDIAL HOMEOWNERS ASSOCIATION, INC.</b>

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF SUNDIAL**

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- Exhibit A – Community
- Exhibit B – Common Elements
- Exhibit C – Certain Title Exceptions

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF**

**SUNDIAL**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNDIAL (this “*Declaration*”) is made and entered into by SUNDIAL HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation (the “*Association*”).

**WITNESSETH:**

WHEREAS, WL HOMES, LLC, a Delaware limited liability company, created Sundial (the “*Community*”) by submitting the property described on **Exhibit A** (the “*Property*”) to the Declaration of Covenants, Conditions and Restrictions of Sundial, recorded on February 13, 2001 in the real property records of the County of Boulder, State of Colorado at Reception No. 2118202 (the “*Original Declaration*”); and

WHEREAS, the Association approved a First Amendment of the Declaration of Covenants, Conditions, and Restrictions of Sundial on July 15, 2003, and caused the same to be recorded in the real property records of the County of Boulder, State of Colorado at Reception No. 2534961 on December 4, 2003 (the “*First Amendment*”); and

WHEREAS, Article XI, Section 6(a) of the Original Declaration provides that the Original Declaration may be modified upon the approval, by vote or agreement, of sixty-seven percent (67%) of the Owners, and the First Amendment did not alter this provision; and

WHEREAS, the Association, having the approval of at least sixty-seven percent (67%) of the voting Members of the Association, desires to amend and restate in full the Original Declaration and First Amendment in their entirety by virtue of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Sundial, with the intent that, upon its recording, this Declaration shall supersede and replace all prior recorded declarations, amendments, and supplements thereto, including, without limitation, the Original Declaration and First Amendment.

NOW, THEREFORE, the Association hereby provides as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1.** “**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.

**1.2.** “**ALLOCATED INTERESTS**” mean the number of votes in the Association, and the percentage of Assessments for Common Expenses that are allocated to each Lot within the Community. The formulas used to establish the Allocated Interests are as follows:

(a) Each Lot is entitled to one vote.

(b) The percentage share of Assessments for Common Expenses for each Lot is based on a fraction, the numerator of which is one and the denominator of which is the total number of Lots in the Community.

**1.3.** “**ARTICLES**” means the Articles of Incorporation for **SUNDIAL HOMEOWNERS 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.

**1.4.** “**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.

**1.5.** “**ASSOCIATION**” means **SUNDIAL HOMEOWNERS ASSOCIATION, INC.**, a Colorado nonprofit corporation, and its successors and assigns, a community association as provided in CCIOA.

**1.6.** “**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.

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

**1.8.** “**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 shall remain applicable as it exists on the date this Declaration is recorded.

**1.9.** “**CITY**” means the City of Longmont, State of Colorado.

**1.10.** “**CITY CODE**” means the Municipal Code for the City of Longmont, as amended from time to time.

**1.11.** “**CLERK AND RECORDER**” means the office of the Clerk and Recorder in the County.

**1.12.** “**COMMON ELEMENTS**” means all portions of the Project, except the Lots and the Improvements thereon. The Common Elements include: (a) land and landscaping within the Project not otherwise designated on the Plat or in this Declaration as part of a Lot, including those areas identified on **Exhibit B**; (b) all easements, access rights provided under public access easements as shown on the Plat, and off-site entitlements included with or running for the benefit of the Property (whether in title or by contract); (c) all monument or directional signage, if any, mailboxes and stands, irrigation systems for the Project, all exterior lighting located within the Project (but specifically excluding any lighting within a

Lot or street lighting installed on a public street and maintained by the City), and all areas required to be maintained by the Association pursuant to City requirements, including those areas identified on **Exhibit B**; and (d) those parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

**1.13. “COMMON EXPENSES”** shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including, without limitation: (a) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws; (b) all other expenses of owning, administering, operating, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (c) all expenses incurred for the benefit of more than one Owner; (d) insurance premiums and deductibles for the insurance carried under Article 6; (e) all expenses incurred by the Association in maintaining any public right of ways required to be maintained by the City and (f) all expenses lawfully determined to be Common Expenses by the Board.

**1.14. “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 “*Sundial*.”

**1.15. “COUNTY”** means the County of Boulder, State of Colorado.

**1.16. “DAY”** or “**DAYS**” means any day or specified number of days as shown on a calendar, including a Saturday, Sunday, or holiday. Unless the context requires otherwise, a day refers to the twenty-four-hour period of such day, beginning at midnight.

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

**1.18. “DESIGN REVIEW COMMITTEE”** means the committee appointed by the Association, which Committee shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

**1.19. “GOVERNING DOCUMENTS”** means this Declaration, the Articles, the Bylaws, the Policies, the Plat, as amended, any design or architectural guidelines of the Design Review Committee or Association and any rules and regulations, policies and procedures, or design guidelines of the Design Review Committee or the Association.

**1.20. “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, without limitation, 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 and only in such Article, the word “exterior” shall be inserted immediately preceding the fourth word “improvements” in the first sentence of this Section.



**1.21.** “**INCLUDE**” or “**INCLUDING**” means including without limitation or including, but not limited to.

**1.22.** “**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 Plat.

**1.23.** “**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.

**1.24.** “**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.

**1.25.** “**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.

**1.26.** “**OWNER**” means each fee simple title holder of 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.

**1.27.** “**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.

**1.28.** “**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.

**1.29.** “**PLAT**” means the community plat of the Project recorded on February 9, 2000 at Reception No. 2020543 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 Plat and any supplements thereto are hereby incorporated herein by reference as if set forth in their entireties.

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

**1.31.** “**PROJECT**” means the common interest community governed by this Declaration and as shown on the Plat consisting of the Property, the Lots, and the Common Elements.

**1.32.** “**REPAIR WORK**” shall mean all maintenance, repair, and replacement work, including reasonable costs of plans and specifications, inspections, supervision and other related costs. All Repair Work performed by the Association shall be performed so as to as is appropriate to maintain the

functionality and prolong the life of the Improvement in question and include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition. All Repair Work performed by an Owner shall be performed as determined by the Board to be appropriate to maintain the functionality and prolong the life of the Improvement in question and to include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition.

**1.33. “RESIDENCE”** shall mean those Improvements constructed within a Lot as a residential dwelling unit.

**1.34. “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.

**1.35. “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 4.10 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 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.

**1.36. “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 4.10 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2, 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.

## **ARTICLE 2**

### **MEMBERSHIP AND VOTING RIGHTS**

**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.

**2.2. VOTING RIGHTS.** Each Member shall be entitled to one vote for each Lot owned. 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**

**3.1. ASSOCIATION.** The Association has been 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.

**3.2. BOARD OF DIRECTORS.** The affairs of the Association shall be managed by a Board of Directors. The Board of Directors shall consist of no fewer than three (3) Members and no more than five (5) Members, provided that the number of Directors may be adjusted as set forth in the Bylaws. 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 the Association;
- (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;
- (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 City 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, 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 in accordance with the Policies;

(q) Impose reasonable charges for the preparation and recordation of amendments to this Declaration, the Plat 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.

**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, CCIOA, or the Nonprofit Act.

### **3.4. BUDGET AND REVIEW OR AUDIT.**

3.4.1. 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.

3.4.2. 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.

3.4.2.1. 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.

3.4.2.2. Copies of an audit or review under this subsection 3.4.2 shall be made available upon request to an Owner beginning not later than thirty (30) days after its completion.

### **3.5. ASSOCIATION BOOKS AND RECORDS.**

3.5.1. The Association's books and records shall be subject to an audit or a review as 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, 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.

3.5.2. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.5 of this Declaration, Section 3.5 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

**3.6. 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.

**3.7. 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. 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.

**3.8. COOPERATION WITH OTHER COMMUNITY ASSOCIATIONS.** 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).

**3.9. AUTHENTICATED ELECTRONIC REPRESENTATION.** Notwithstanding anything to the contrary contained in any of the Governing Documents, to the extent not prohibited by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities.

In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

**3.10. SUBMISSION OF MATTERS TO OWNERS.** Notwithstanding any provision of this Declaration, the Articles or the Bylaws to the contrary, 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 more than fifty percent (50%) of all eligible votes outstanding (not more than fifty percent (50%) 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**

**4.1. PERSONAL OBLIGATION FOR ASSESSMENTS.** Each Owner of a Lot, 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 upon notice and demand (except as otherwise expressly provided in this Declaration, and further provided that no notice is required for annual Assessments), 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.

**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, for the maintenance of the Common Elements, including maintenance, operation, repair and replacement of drainage facilities and easements, irrigation facilities, landscaping and fencing, and play structures, 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.

**4.3. ALLOCATION OF COMMON EXPENSES.** Except as otherwise expressly provided in this Declaration, all assessments for Common Expenses shall be allocated among the Lots in accordance with their Allocated Interests as provided in Section 1.2 above. Such assessments will be determined by

multiplying the total amount of each category of Common Expenses by the respective Allocated Interest for each Lot.

**4.4. RATE OF ANNUAL AND SPECIAL ASSESSMENTS.**

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association, including the payment of all anticipated Common Expenses, and shall be apportioned among the Lots in accordance with their Allocated Interests. 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.

4.4.2. 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.

**4.5. ANNUAL ASSESSMENTS.** Annual Assessments shall be set by the Board of Directors 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. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

**4.6. 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, each voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (pursuant to Section 4.7 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. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.7 hereof.

**4.7. NOTICE AND QUORUM FOR ANY SPECIAL ASSESSMENTS.** Written notice of any meeting called for the purpose of taking any action authorized under this Section 4.7 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 fifty percent (50%) 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.



**4.8. 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 4.8 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.

**4.9. LIEN FOR ASSESSMENTS.**

4.9.1. 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 Article 4 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.

4.9.2. 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.

**4.10. PRIORITY OF ASSOCIATION LIEN.**

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

4.10.1.1. liens and encumbrances recorded before the recordation of the Original Declaration;

4.10.1.2. 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

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

4.10.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.10.1.2 to the extent, if any, provided in CCIOA.

4.10.3. 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.

4.10.4. 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.

**4.11. 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.

**4.12. 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 annual Assessments and other Assessments due to the Association; second, to the payment of attorney fees, fines, late charges and any other amounts (other than annual Assessments or other Assessments) due to the Association (in the order listed), if any; and third, to the payment of accrued interest at the rate specified in Section 4.13 below, if any.

**4.13. 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 eight (8%) per annum, or at such 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 in accordance with the Policies. 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.

**4.14. 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.

**4.15. WORKING CAPITAL FUND.** The Association shall require the purchaser of any Lot 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 4.5 of this Declaration). Said contribution shall be collected and transferred to the Association at the time of closing of the sale 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.

**4.16. 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.

**4.17. 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**

**5.1. BOARD OF DIRECTORS, DESIGN REVIEW COMMITTEE.** The Board of Directors shall be the governing body of the Association for all design review matters and approvals described in this Article 5. The Board may at any time, from time to time, appoint a Design Review Committee or individual representative to act on its behalf. If the Board does so, then the actions of the Design Review Committee or such representative shall be the actions of the Board, subject to the right of appeal as provided below. However, if the Design Review Committee or a representative is appointed by the Board, then the Board shall have full power over the Design Review Committee or representative, including the power to at any time withdraw any authority of the Design Review Committee or a representative to act on behalf of the Board and the power to at any time remove or replace members of the Design Review Committee or a representative.

**5.2. REVIEW AND APPROVAL BY BOARD; REIMBURSEMENT FOR EXPENSES; REQUIREMENT FOR APPROVAL BY GOVERNMENTAL ENTITIES.** Except as provided in Section 5.8 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 Board), shall have been first submitted to and approved by the Board.

5.2.1. The Board 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 as set and adjusted from time to time by the Board, and the Board may require that the applicant(s) reimburse the Board for the actual expenses incurred by the Board 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 Board). Such amounts, if any, shall be levied in addition to the Assessments against the Lot for which the request for Board 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 Board 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 Board, such changes must be again submitted for approval in accordance with Section 5.3 below.

**5.3. PROCEDURES.** The Board shall decide each request for approval within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Board may require in conjunction therewith. If the Board fails to decide any request within thirty (30) 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 approved by the Board.

**5.4. 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 written request therefore submitted to the Design Review Committee within thirty (30) days after such decision by such representative. If the Design Review Committee decides a request for approval (whether by original decision or an appeal), then any Owner shall have the right to appeal such decision to the Board, upon a request therefor submitted to the Board within thirty (30) days after such decision by the Design Review Committee.

**5.5. PROSECUTION OF WORK AFTER APPROVAL.** After approval of any proposed Improvement by the Board, 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 twelve months after the date of approval of the application, as evidenced by a Letter of Compliance 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 Board and a violation of this Article; provided, however, that the Board may, in its discretion, grant extensions of time for completion of any proposed Improvement(s).

**5.6. INSPECTION OF WORK.** Upon reasonable notice to the Owner, the Board 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 Board. However, unless the Board expressly states, in a written document, that an Improvement is being or has been completed in conformance with the Board approval therefor, no such conformance shall be implied from any inspection of the Improvement either during the work or after completion thereof.

**5.7. STANDARDS/GUIDELINES.** Except as provided in the last sentence of this Section, the Board 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 Board, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the Board. 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 Board shall require and be subject to obtaining any necessary governmental approvals.

**5.8. VARIANCE.** The Board 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.

**5.9. WAIVERS; NO PRECEDENT.** The approval or consent of the Board, 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 Board 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 Board, 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 Board or any representative thereof, as to any other request for variance or adjustment or other matters whatsoever.

**5.10. RECORDS.** The Association 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 from time to time and, subject to Section 3.5 of this Declaration, such records shall be available to Members for inspection at reasonable hours of the business day.

**5.11. LIABILITY.** Neither the Board 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 Board 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 Board 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 Board.

## **ARTICLE 6**

### **INSURANCE**

**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.

**6.2. 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.

**6.3. 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.

**6.4. PAYMENT OF INSURANCE PROCEEDS.** Any loss covered by an insurance policy described in Section 6.1 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.

**6.5. 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.

**6.6. 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.

**6.7. 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 (including flood insurance) 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 is advised to obtain and maintain adequate liability insurance coverage for bodily injury, including death, and property damage; the Association will not provide liability insurance on behalf of individual Owners. In addition, each Lot Owner shall obtain insurance 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.

## **ARTICLE 7**

### **DAMAGE OR DESTRUCTION**

#### **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 that 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 any Person, 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.

**7.2. RESIDENCES.** 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 Board then the Association may, in its reasonable discretion, after providing the notice required in Section 8.2 hereof, enter upon the Lot and complete such repair and reconstruction. If the Members vote not to rebuild any Residence, that Lot's Allocated Interests are automatically reallocated as



if the Lot had been taken through eminent domain as provided in Section 13.6 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**

#### **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. The Association shall regularly inspect the Common Elements and other items of the Project that are not otherwise specifically required to be maintained by an Owner for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary. Further, the Association may, but shall not be obligated to, 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 8.4 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 8.4, and nothing in this Article shall eliminate any requirement to obtain approval from the Association or the Board in connection with an alteration or replacement of any improvements. Each Owner shall regularly inspect its Lot, the improvements located on its Lot for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary.

**8.2. 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.

**8.3. NON-INTERFERENCE WITH GRADE AND DRAINAGE.**

8.3.1. 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 Plat) 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. 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 Board for its review and approval in accordance with Article 5 of this Declaration, and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities, including the City. For purposes of this Section, "*established drainage*" is defined as the drainage that exists at the time the Project was initially completed.

**8.4. 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**

**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.

**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; 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 Residence located on a Lot shall not be subject to the easements provided for in this Section.

**9.3. ACCESS EASEMENT.** Each Lot shall be subject to certain nonexclusive easements in favor of the Association and other 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 Plat, which have the boundaries and limitations as shown on the Plat and (b) a nonexclusive easement as necessary to accomplish the purposes described in this Section, provided that such easements 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.

**9.4. UTILITIES EASEMENT.** The Association possesses a blanket easement for utilities and the installation, use, replacement, repair and maintenance of utilities, including water, sewer, gas, telephone, electricity and computer cable, if any, upon, across, over and under (a) the Common Elements and (b) those portions of Lots as depicted on the Plat or on a Utility Plan approved by the City (but in no event within, under or across any Improvements located on a Lot). 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. 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.

**9.5. DRAINAGE EASEMENT.** Drainage easements for the benefit of the Lot Owners and the Association are identified on the Plat. 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. The Association has 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 the Association may deem necessary or desirable in their sole discretion from time to time. All costs incurred by the Association to make repairs or corrections resulting from a Lot Owner's negligence or intentional misconduct shall be paid by Lot Owner.

**9.6. ENCROACHMENT EASEMENTS.** If there is an encroachment of Common Elements upon a Lot, or Improvements on a Lot upon Common Elements or another Lot, a valid easement for the encroachment and maintenance thereof shall exist so long as such encroachment does not materially adversely interfere with the use or occupancy of any portion of the Project. Encroachments referred to herein include encroachments caused by (a) errors in the original construction of the Residences, (b) errors in the Plat, (c) settling, rising or shifting of the earth and (d) changes in position caused by repair or reconstruction of all or any part of the Project.

**9.7. ACCESS EASEMENTS FOR EMERGENCIES AND REPAIR WORK.**

9.7.1. A general non-exclusive easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property, including all Lots and all Common Elements in the proper performance of their duties; provided, however, that the foregoing shall not be construed to relieve law enforcement officers of the obligation to obtain a warrant for entry into any portion of the Residence if a warrant would otherwise be required by applicable law.

9.7.2. Some of the Common Elements are or may be located within a Lot. All Owners shall permit a right of entry to the Board, a managing agent, or any other person authorized by the Board or a managing agent, whether the Owner is present or not, for access through each Lot to all Common Elements, from time to time, as may be necessary for Repair Work for any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Lot.

9.7.3. Notwithstanding anything in Section 9.7.1 to the contrary, for Repair Work other than emergency Repair Work, entry shall be made only on a regular business day during regular business hours, after providing the Owner with at least one (1) day's written notice. Any non-emergency Repair Work that will affect access to or use of a particular Lot shall be done only at times approved by such Lot Owner, which approval will not be unreasonably withheld, such that Repair Work does not interfere with the normal operations of the affected Lot. In an emergency, entry shall be made at any time, provided that a reasonable effort according to the circumstances is made to give advance notice of entry and to minimize the effect of any such entry on any Owner and such Owner's Permittees and invitees.

9.7.4. The Board or its managing agent is granted the authority to use such reasonable force as is necessary to gain entry into a Lot or the Residence located thereon in the event of an emergency, if no other means of entry is available in view of the circumstances.

9.7.5. All damage to the interior or any part of a Residence resulting from the Repair Work of any of the Common Elements at the instance of the Association shall be paid for as part of the General Assessment by all of the Owners benefitted by the Repair Work. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort or lost profits arising from the Repair Work or other action taken to comply with any law, ordinance or order of any

governmental authority. Restoration of the damaged Improvements shall be to a condition substantially the same as the condition in which they existed prior to damage.

9.7.6. Notwithstanding the foregoing, if any such damage is the result of the failure of an Owner to provide the authorized managing agent with a key to its respective Lot and/or the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of repairing such damage. In the event an Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board may pay for said damages and charge such Owner responsible as a Default Assessment.

**9.8. ADDITIONAL EASEMENTS.** If at any time after the date hereof (a) additional emergency easements are required by law or by insurance underwriting requirements generally applicable to residential projects, (b) any additional easements for access to or use of utilities are reasonably necessary for the use and operation of any one or more Lots, or (c) any additional easements are necessary or desirable to effectuate the purposes of this Declaration, each Owner shall, within a reasonable time after written request by any other Owner, grant such easement; provided, however, that (x) no Owner granting any such easement is required to construct Improvements, expend any monies, or incur other material liabilities in order to provide such easement (other than costs paid solely by the Owner(s) for whose benefit such easement is to be granted), (y) such easement will not materially increase expenses, or create any material additional expenses, for any portion of the Project (unless allocated to and paid by the Owner(s) for whose benefit such easement is to be granted or unless required by law), and (z) the use of such easement will be non-exclusive and will not unreasonably interfere with the access to, operation, use or enjoyment of such Owner's Lot or violate or interfere with the rights or interests of such Owner's Permittees. The Owners requesting any such easement shall pay all costs and expenses in connection with the approval and granting of any such easement, including all engineering fees, recording charges and legal fees and expenses reasonably incurred by the Owners or any of them in connection therewith. If new easements are created, this Declaration and Plat shall be amended, if necessary, by the Association, and such easements shall have the same force, effect and priority as if such easements were originally contained herein.

## ARTICLE 10

### RESTRICTIONS

**10.1. GENERAL PLAN.** It is the intention of the Association to establish and enforce a general plan for the improvement, development, use and occupancy of the Lots.

**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. 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.

**10.3. RESIDENTIAL USE; PROFESSIONAL OR HOME OCCUPATION.** Lots shall be used for residential use only, including uses that are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes other than a home occupation as permitted by the City

Code. Notwithstanding the foregoing, any such home occupation must comply with all other terms of this Declaration, the Rules, and the other Governing Documents of the Association, and must not disturb the character of the Community or be a nuisance to other Owners, as the same may be reasonably determined by the Board, in its sole discretion.

**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, are kept in compliance with the City Code 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.

**10.5. TEMPORARY STRUCTURES; UNSIGHTLY CONDITIONS.** No structure of a temporary character, including a 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, as determined by the Board in its sole discretion.

**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, except as expressly provided below, and further provided that any sign placed on any Lot shall be consistent with the City Code applicable to such Lot. Subject to the foregoing, the following signs shall be permissible:

- 10.6.1.1. A "For Sale," "Open House," or "For Rent" sign;
- 10.6.1.2. A security sign(s) depicting the security provider's logo;

10.6.1.3. Political signs (*i.e.*, a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue) are permissible no more than forty-five (45) days prior to an election and no more than seven (7) days following such election. Political signs number be no larger than the lesser of (a) the maximum size allowed by the City Code as applicable to the Lot displaying the political sign, or (b) 36 by 48 inches;

10.6.1.4. Such other signs as the Association may from time to time permit pursuant to the Rules, which Rules may specify the size of such sign, its location on the Lot, and length of time such sign may be displayed.

10.6.2. 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, and otherwise in locations as are approved by the Board, 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 Board and the City, as necessary.

10.6.4. Except upon the prior approval of the Board and in full compliance with the City Code, 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 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) that 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 in accordance with the Rules established by the Association, as revised from time to time. Installation of fencing requires the prior approval of the Board and must comply with the City Code.

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 Board and compliance with the City Code.

10.6.7. Dog runs shall be permitted on a Lot only with the prior, written approval of the Board and compliance with the City Code.

10.6.8. All Improvements must comply with applicable law.

## **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 one 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 the parking or storage is within a garage area of a Lot. 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. 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. Notwithstanding the foregoing, vehicles may be temporarily parked in the driveway of any Lot for purposes of loading and unloading, such duration to be set forth in the Rules.

10.7.2. Parking shall not be permitted in or on the Common Elements in the Community except when necessary for loading or maintenance purposes or as authorized by the Board.

10.7.3. 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 three (3) 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.

10.7.4. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 10.7.1, 10.7.2, or 10.7.3 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.

10.7.5. 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 that 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 or minor maintenance 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. Without limiting the generality of the foregoing, “minor maintenance” is maintenance that is completed on the same day such maintenance is commenced.

10.7.6. Garage spaces located within the Lots may only be used for vehicular parking, bicycle parking, temporary storage and utility functions in accordance with applicable provisions



of this Declaration and reasonable Rules established from time to time by the Association. Under no circumstances shall garage areas be converted into habitable living areas.

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

**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.

**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 Board 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.

**10.10. PROPERTY TO BE MAINTAINED.** Owners shall at all times maintain their respective Lots and Improvements thereon in a well-kept and attractive manner and in compliance with the Rules, as reasonably determined by the Board in its sole discretion. 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.

**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 outdoor barbecue unit, fireplace, or firepit which must be attended at all times, 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.

**10.12. NO ANNOYING LIGHTS, SOUNDS OR ODORS.** No light shall be emitted from any Improvements on a Lot that is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Improvements on a Lot that is unreasonably loud or annoying; and no odor shall be permitted from any Improvements on a 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. All outdoor lighting and light fixtures shall comply with the City Code.

**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 p.m. on the day prior to the day such garbage will be picked up and such container shall be removed by 7:00 p.m. on the day garbage is collected. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any other Lot, public street, or Common Element. 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; they must be stored behind a fence or in the garage of each Lot. Trash containers shall comply with the City Code.

**10.14. UTILITY SYSTEMS.** Utility systems located on or serving a Improvements on 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 other Improvements on any other Lot or the Common Elements.

**10.15. LEASES.** The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, Improvements thereon, or any portion thereof, and shall specifically include any subleases. Any Owner shall have the right to lease his Lot and the Improvements thereon under the following conditions:

10.15.1. All leases shall be in writing, and notice of the lease, including the name of the tenant(s) and the duration of the lease, shall be delivered to the Board of Directors or the Association's managing agent, if any, within thirty (30) days after such lease has been signed by the parties thereto;

10.15.2. With the exception of pre- or post-closing occupancy agreements entered into in connection with the sale of a Lot to a new owner, all leases shall be for a minimum of ninety (90) days; and

10.15.3. All leases shall provide that the lease and the 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 Governing Documents in any respect shall be a default under the lease. Upon the Association's reasonable request (which specifically includes the Association's

right to ensure the enforcement of this Section 10.15), Owners shall submit a copy of the lease of any leased Lot to the Association for review.

**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.

**10.17. 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

### RIGHTS IN THE COMMON ELEMENTS

**11.1. OWNERS' EASEMENTS OF ENJOYMENT.** Subject to this Article 11, every Owner and its Permittees shall have a non-exclusive right and easement of enjoyment in and to the Common Elements, plus a right and easement of ingress and egress over, across, and upon the Common Elements for the purpose of entering and exiting such Owner's Lot from and to any public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Lot and shall be perpetual and indefeasible.

**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 and other Owners:

11.2.1. The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations now or subsequently contained in this Declaration and the Plat concerning Common Elements; and

11.2.2. 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

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

11.2.4. The right of the Association to promulgate and publish standards, guidelines, Rules concerning the Lots, Common Elements or any other property managed by the Association, as the Association may reasonably determine is necessary or prudent, with which each Member shall strictly comply; and

11.2.5. The right of the Association to grant licenses and leases for the use and enjoyment of the Common Elements; and

11.2.6. 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, after reasonable notice and an opportunity to be heard in accordance with the Policies; and

11.2.7. 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

11.2.8. 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

11.2.9. 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.

**11.3. COMMON ELEMENTS.** Each Owner of a Lot has a non-exclusive right to use the Common Elements without hindering or encroaching upon the lawful rights of other Owners and in accordance with the Rules. Without the prior written approval of Owners holding sixty-seven percent of the votes in the Association, no Common Element may be abandoned, partitioned, subdivided, encumbered, sold or transferred; provided, however, that (a) easements may be granted by the Association over Common Elements, for public or private Utilities or for other public purposes consistent with the intended use of the Common Elements and (b) leases and licenses to use the Common Elements may be granted by the Association to Owners or others on arms-length terms and for commercially reasonable consideration, without such approval being required. No reference to Common Elements shall be required to be made in any deed, Security Interest, instrument of conveyance or other instrument describing the Lot.

**11.4. 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.

**11.5. 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.

## **ARTICLE 12**

### **DISPUTE RESOLUTION**

The provisions of this Article 12 are not intended to waive or alter the applicability of C.R.S. § 13-20-801 *et seq.*, to any action brought by Owners or by the Association, as the term “action” is defined by C.R.S. § 13-20-802.5(1). It is intended that Owners and the Association fully comply with all applicable provisions of both this Article 12 and C.R.S. § 13-20-801 *et seq.*

**12.1. REGULATORY DISPUTES.** Any claim, controversy, or dispute involving (a) classification by the Board of constituent categories (but not specific dollar amounts themselves) of Common Expenses; (b) proposed Rules and regulations that will have a material adverse effect upon the permitted uses of Owners within the Lots; or (c) any other matters upon which the Association and an aggrieved party may mutually agree, shall be resolved by binding arbitration in accordance with the rules established by the Denver office of the American Arbitration Association according to its “fast track” or other available expedited proceedings. The single arbitrator shall be an experienced operator or manager of a common interest community project in the County and/or surrounding area. Judgment upon the determination of the arbitrator may be entered and enforced by the District Court for the County. A condition precedent for any arbitration shall be reconsideration by the Board of the matter in question in an effort to resolve such dispute without the need for binding arbitration.

**12.2. OTHER DISPUTES BETWEEN PARTIES.** Any controversy, claim, dispute, or other matter in question (collectively, “*Claim*”) between or among the Association, one or more Owners, Directors of the Association, or any other person who agrees to be bound by the Dispute Resolution provisions of this Declaration must be determined by binding arbitration in accordance with Colorado’s Uniform Arbitration Act, Colorado Revised Statutes Section 13-22-201, *et seq.*, and the provisions set forth in this Section 12.2. “*Claim*” will not include: (i) any dispute described in Section 12.1 above, (ii) any action by the Association to collect Assessments or other amounts due from any Owner, (iii) any action by the Association to obtain a temporary restraining order or emergency equitable relief and such ancillary relief as a court may deem appropriate to maintain the status quo, (iv) any suit between Owners that does not involve the Association as a party, to the extent such suit asserts a cause of action independent of the Governing Documents, or (v) any action in which an indispensable party is not a party bound by this Declaration unless such indispensable party agrees to be bound by this Declaration for purpose of resolution of the Claim. By accepting the deed to a Lot, each Owner waives any right to a judicial proceeding and a jury trial in connection with the resolution of any Claim. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a “*Claim*” as defined herein, that the mandatory Dispute Resolution provisions contained in this Article are activated.

12.2.1. Mediation.

i. Any Claim shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve Claims between them by mediation that shall be conducted by the arbitrator selected as provided herein in accordance with such arbitrator's mediation rules. Request for mediation shall be filed in writing with the other party(ies) and with the arbitrator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties.

ii. The parties shall share the mediator's fee and any filing fees pro rata according to the number of parties. The mediation shall be held in the arbitrator's Colorado offices in or physically closest to Longmont, Colorado, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

12.2.2. Arbitration.

i. Any Claim shall be subject to and decided by arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with subsection 12.2.1 of this Section 12.2.

ii. Claims that are not resolved by mediation shall be decided by arbitration that shall be conducted by the arbitrator in accordance with the arbitrator's arbitration rules as then currently in effect. The demand for arbitration shall be filed in writing with the other party(ies) and with the arbitrator.

iii. The parties shall share the arbitrator's fee and any filing fees pro rata according to the number of parties.

iv. A demand for arbitration shall be made within a reasonable time after the Claim has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. All Claims are subject to the laws, rules and regulations of the State of Colorado and its political subdivisions, including the Construction Defect Reform Act, Colorado Revised Statutes §13-20-801 et seq. with respect to any claims asserted for construction or design defects.

v. Except as specifically provided below, no arbitration of any Claim shall include, by consolidation or joinder or in any other manner, any person not an Owner, the Association or a Director of the Association, except by written consent of one or more parties and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any Claim not described in the written consent or with a person or entity not named or described therein.

vi. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

vii. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator shall award the prevailing party all reasonable costs and expenses, including attorney fees, costs and expert witness fees.

12.2.3. Arbitrator. The parties may agree on an arbitrator. If they are unable to agree, arbitration and mediation will be conducted by the Denver office of the American Arbitration Association, or its successor, utilizing its rules appropriate to the subject matter of the dispute. If the American Arbitration Association no longer exists and is without successor, the parties will contact the Judicial Arbitrator Group, the Colorado Home Builders Association/Better Business Bureau Alternative Dispute Program, or other agreed upon dispute resolution organization or service (in that order of priority) and will use its procedures to select an arbitrator.

**12.3. INITIATION OF LITIGATION BY THE ASSOCIATION.** In addition to compliance with the foregoing alternative dispute resolution procedures set forth in this Section 12.3, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by Owners holding sixty-seven percent (67%) of the votes in the Association, except that no such approval shall be required for actions or proceedings: (i) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens; (ii) initiated to challenge ad valorem taxation or condemnation proceedings; (iii) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or (iv) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**12.4. CONSENSUS FOR ASSOCIATION ACTION.** The Association shall not commence any action, mediation or arbitration unless at least a majority of the Board of Directors and the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated consent to the commencement of proceedings. The Association may seek such consent from the Owners, however, only after it delivers notice or ballots to all Members of the Association in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. The delivery of the notices or ballots shall also include written materials that provide:

- (a) A description of the Claim;
- (b) A copy of any other party's written response thereto, including any settlement proposal;
- (c) A statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association seeks to assert;
- (d) A statement that any recovery from the action may not result in receipt of sufficient or any funds to pay all costs of remedying the Claim as estimated by experts retained by the Association;
- (e) An estimate of the cost to the Association in prosecuting the cause of action; and

(f) A description of the agreement with the attorneys whom the Board of Directors proposes to retain to prosecute the cause of action.

**12.5. BINDING EFFECT.** This Article 12 and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the County to the fullest extent permitted under the laws of the State of Colorado.

**12.6. UTILIZATION OF FUNDS RESULTING FROM THE CLAIM.** In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based on the Claim, after payment of fees and costs incurred in connection with prosecution of the Claim, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions that were the subject of the Claim or otherwise for purposes of remedying the Claim.

**12.7. VESTED RIGHTS OF PARTY.** Notwithstanding any amendment of this Article 12, any party as defined in Article 12 who has performed, acted or been involved in any work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein (i) shall be deemed to have a vested right in the terms of this Article 12 as in effect at the time of such any work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein, with no applicability of the terms of any subsequent amendment; (ii) to the extent of any express or implied contract relating to such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein, shall be deemed to have incorporated into such contract the terms of this Article 12 as enacted and in effect at the time of such contracting with no applicability of the terms of any subsequent amendment; (iii) shall expressly be entitled to enforce the provisions of this Article 12 as enacted and in effect at the time of such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein, with no applicability of the terms of any subsequent amendment; (iv) shall not be affected by any subsequent amendment to Article 12; and (v) any subsequent amendment to Article 12 shall not alter such party's right and entitlement to enforce the terms of Article 12 as enacted and in effect at the time of such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein with no applicability of the terms of any subsequent amendment. The rights and provisions of this Article 12 may be altered as to any such party only by the written consent of such party.

## **ARTICLE 13**

### **GENERAL PROVISIONS**

**13.1. 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.

**13.2. CONFLICT OF PROVISIONS.** 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.



**13.3. 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).

**13.4. DURATION, REVOCATION, AND AMENDMENT.**

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

13.4.2. 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.

**13.5. 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 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.

**13.6. 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.

**13.7. 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, 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.

**13.8. LIMITATION ON LIABILITY.** The Association, the Board of Directors, the Design Review Committee, 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 13.11 shall apply to this Section.

**13.9. 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 the Association, the Board of Directors, the Design Review Committee, 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 13.11 shall apply to this Section.

**13.10. DISCLAIMER REGARDING SAFETY.** 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 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 13.11 SHALL APPLY TO THIS SECTION.

**13.11. WAIVER.** By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Association, the Board of Directors, the Design Review Committee, 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 Sections 13.8, 13.9 and 13.10.

**13.12. 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.

**13.13. 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.

**13.14. 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 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 \_\_\_\_\_, 2023.

Sundial Homeowners Association, Inc., a  
Colorado nonprofit corporation

By: \_\_\_\_\_  
\_\_\_\_\_, President

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF BOULDER                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, President of Sundial Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

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

**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF SUNDIAL**

**(Community)**

LOTS 1 THROUGH 47, INCLUSIVE, BLOCK 1;  
LOTS 1 THROUGH 12, INCLUSIVE, BLOCK 2;  
LOTS 1 THROUGH 20, INCLUSIVE, BLOCK 3;  
LOTS 1 THROUGH 20, INCLUSIVE, BLOCK 4;  
LOTS 1 THROUGH 17, INCLUSIVE, BLOCK 5;  
LOTS 1 THROUGH 14, INCLUSIVE, BLOCK 6;  
LOTS 1 THROUGH 14, INCLUSIVE, BLOCK 7;  
LOTS 1 THROUGH 14, INCLUSIVE, BLOCK 8;  
LOTS 1 THROUGH 12, INCLUSIVE, BLOCK 9;  
LOTS 1 THROUGH 12, INCLUSIVE, BLOCK 10;  
LOTS 1 THROUGH 7, INCLUSIVE, BLOCK 11;  
AND

OUTLOTS A, B, C, D and F,

Dodd Estates 1<sup>st</sup> Filing, City of Longmont, County of Boulder, State of Colorado, in accordance with the Final Plat thereof recorded February 9, 2000 at P-50, F-2 #21, 22, 23, Reception No. 2020543, in the office of the Clerk and Recorder of Boulder County, Colorado;

**EXHIBIT B**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS OF SUNDIAL**

**(Common Elements)**

OUTLOTS A, B, C, D and F, Dodd Estates 1<sup>st</sup> Filing, City of Longmont, County of Boulder, State of Colorado, in accordance with the Final Plat thereof recorded February 9, 2000 at P-50, F-2 #21, 22, 23, Reception No. 2020543, in the office of the Clerk and Recorder of Boulder County, Colorado (the "*Plat*"); and

The maintenance of landscaping improvements located within that certain portion of the public Right-of-Way dedication of Pace Street and 17<sup>th</sup> Street included within the boundaries of Dodd Estates 1<sup>st</sup> Filing, City of Longmont, County of Boulder, State of Colorado, as required pursuant to the terms and conditions of the Plat.

**EXHIBIT C**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS OF SUNDIAL**

**(Certain Title Exceptions)**

1. Terms, provisions, conditions, easements and other matters set forth on the final plat of Dodd Estates 1<sup>st</sup> Filing, County of Boulder, State of Colorado, recorded February 9, 2000 at Reception No. 2020543.
2. Terms, conditions and provisions of Annexation Agreement recorded August 8, 1997 at Reception No. 1721334.
3. Terms, conditions and provisions of Memorandum of Agreement recorded March 15, 2000 at Reception No. 2029006.
4. Irrigation Ditch Easement recoded at Reception No. 1351290, and existing Rough and Ready Irrigation Ditch adjacent to Outlot E, Dodd Estates 1<sup>st</sup> Filing.
5. An Oil and Gas Lease for a primary term of three years dated April 23, 1976, recorded May 14, 1976, on Film 925 at Reception No. 176656, and any and all assignments thereof or interests therein.
6. An easement for ingress and egress and incidental purposes granted to J.J.R. Partnership, a Colorado general partnership, by the instrument recorded October 20, 1993 on Film 1890 at Reception No. 1351290.
7. Terms, agreements, provisions, conditions and obligations as contained in Ordinance 96-58, a Bill for a Conditional Ordinance Approving the Dodd Estate Annexation and R1, R2 and C2 Zonings recoded August 8, 1997 at Reception No. 1721333.
8. All notes and easements as shown on the recorded Dodd Estate Annexation Map recoded August 8, 1997 at Reception No. 1721335 and found in the Boulder County Records at Plan File No. P-40, F-3, #38.
9. Reservations set forth in United States Patent recorded December 28, 1883 in Book 59 at Page 310.