


WHEN RECORDED RETURN TO:  
BROWNSTEIN HYATT FARBER SCHRECK PC  
410 17TH STREET, 22ND FLOOR  
DENVER, CO 80202-4437  
ATTN: ADAM FELDMAN

  
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**MASTER DECLARATION  
FOR  
PALISADE PARK**

THIS MASTER DECLARATION FOR PALISADE PARK ("**Declaration**") is made as of October 11, 2007, by KEVAMRA, LLC, a Colorado limited liability company, with an address of 1437 Larimer Street, Denver, Colorado 80202 ("**Declarant**").

**RECITALS**

A. Certain capitalized terms used in this Declaration that are not defined elsewhere in this Declaration, shall have the meaning given them in Section 1.7 below.

B. Declarant is the owner of certain real estate in the City and County of Broomfield ("**Broomfield**"), in the State of Colorado, which real estate is described and generally depicted on Exhibit A attached hereto (the "**Project Area**").

C. Broomfield has approved a PUD for the Project Area.

D. Declarant desires to create a planned community, as that term is defined in the Colorado Common Interest Ownership Act, on the Real Property under the name of "**Palisade Park**," in which portions of the Real Property will be designated for separate ownership, with allowed diverse mixed uses, including, without limitation, residential uses, office uses, retail uses, restaurant uses, medical uses, commercial uses and public open space uses. Portions of the Real Property may be designated for ownership by the Palisade Park Owners Association, Inc., Palisade Metropolitan District No. 1 & 2 and other portions may be designated for ownership by Local Associations.

E. Declarant, by this Declaration, desires:

- (a) to allow for and encourage the purposes of the Development Plan;
- (b) to provide for the maintenance, repair, improvement and replacement of the Common Elements as set forth in this Declaration;
- (c) to provide for the implementation of the powers and duties of the Board and the Architectural Control Committee as set forth in this Declaration and the other Governing Documents; and
- (d) to preserve and enhance the Community;
- (e) to implement the purposes of the Association as provided for in this Declaration and as provided for in any of the other Governing Documents.

F. Declarant desires to provide for the development of the Project Area to achieve these stated general purposes, and to allow the Community to undertake and continue these stated purposes as integral and fundamental aspects of the Community.

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G. Declarant has caused "**Palisade Park Owners Association, Inc.**," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, in accordance with the Act and the Non-Profit Act, as an owners' association, for the purpose of exercising the functions set forth in this Declaration.

Now, therefore, Declarant declares as follows:

## ARTICLE 1 SUBMISSION/DEFINED TERMS

Section 1.1 Submission of Real Property to the Declaration. Declarant hereby submits the real estate described on Exhibit B attached hereto and such additional real estate as may be subsequently added to the provisions of the Act, as it applies to large planned communities, to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date immediately prior to repeal shall remain applicable. Additional real estate may subsequently be added to the Real Property, as more particularly described in this Declaration.

Section 1.2 Purpose and Intent. Declarant declares that this Declaration is made for the purposes set forth in the recitals of this Declaration. This Declaration is intended to and provides a flexible and reasonable procedure for the future expansion of the Community. An integral part of the Development Plans are the creation and operation of the Association, to own, operate and maintain various Common Elements, and to administer and enforce this Declaration and the other Governing Documents.

Section 1.3 Binding Effect. Declarant hereby declares that all of the Real Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Declaration, except such portions of the Real Property as are a part of or are subsequently dedicated as right-of-way, public street, road or highway or dedicated as and used as a public park (the term "**public park**" as it is used in this Section 1.3 does not refer to any park that may be a Local Common Element, but rather refers to a public park that is owned or maintained by a governmental or quasi-governmental entity, such as Broomfield or a special district) or for school uses. Portions of the Real Property once subject to this Declaration that become exempt upon dedication as a right-of-way, public street, road or highway, or dedicated as and used as a public park or for school uses, shall, upon vacation of all or any part of the dedication, then again be subject to this Declaration, to the extent of such vacation. Declarant declares that this Declaration shall run with the Real Property and shall be binding on all parties having any right, title or interest in the Real Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof.

Section 1.4 Name and Title. The type of Common Interest Community is a planned community, as defined in the Act. The Community is located in the City and County of Broomfield. The name of the Community is "**Palisade Park.**" The name of the Community can be changed, upon the recommendation of the Board, and Declarant's approval of the Board's recommendation. Upon the adoption of a new name for the Community, the Association shall adopt and record an amendment to this Declaration, and the right to such amendment, as provided for above, is expressly reserved by Declarant for 20 years from the date of recording of

this Declaration. The name of the Association is the "**Palisade Park Owners Association, Inc.**"

Section 1.5 Governing Documents. The Community's Governing Documents consist of the following, as each may be amended from time to time: (a) Articles; (b) Bylaws; (c) Declaration; (d) plats, maps (as those terms are used in the Act), and deeds, as appropriate; (e) Supplemental Declarations, if any; (f) Rules and Regulations; (g) Board Resolutions, and (h) Design Criteria, if any. In the event of any conflict between the Governing Documents, as amended from time to time, the order of priority of the documents for resolving conflicts shall be as follows: Declaration, Supplemental Declarations, Articles, Bylaws, Rules and Regulations and Design Criteria.

Section 1.6 More Restrictive Provisions. Nothing in Section 1.5 shall preclude the Design Criteria, any Supplemental Declaration or other recorded covenants applicable to any portion of the Community from containing additional restrictions or provisions that are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control.

Section 1.7 Defined Terms. Each capitalized term in this Declaration or in the plats or maps shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or in a plat or map, or unless the context requires otherwise, all as set forth below:

(a) "**Act**" shall mean the Colorado Common Interest Ownership Act, C.R.S. Section 38-33.3-101, et seq., as it may be amended and/or renumbered from time to time.

(b) "**Agency**" shall mean collectively the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development ("HUD"), the Veterans Administration ("VA"), the Colorado Housing and Finance Authority ("CHFA") or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

(c) "**Annexed Property**" shall mean any real estate within the Project Area added to the Association Area.

(d) "**Allocated Interests**" shall mean the applicable Assessment liability and the votes in the Association allocated to each Unit Equivalent in this Declaration, as allowed for in the Act. The formulas used to establish the Allocated Interests are described in Article 3.

(e) "**Architectural Control Committee**" shall mean the Committee established in accordance with Section 10.4 below.

(f) "**Articles**" shall mean the Articles of Incorporation for Palisade Park Owners Association, Inc., as such may be amended from time to time.



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(g) "**Assessments**" shall mean the funds required to be paid by each Owner in payment of the Common Expense liability including without limitation the Maintenance Assessment, Local Service Assessment, Reimbursement Assessment, the Working Fund Assessment, Special Assessment, Common Expenses attributable to fewer than all Units, and any other assessment, fine, charge or fee as allowed or provided for by this Declaration or the Act.

(h) "**Association**" shall mean Palisade Park Owners Association, Inc., a Colorado nonprofit corporation, which Association shall be a "unit owners' association" as defined in the Act, and its successors and assigns.

(i) "**Association Area**" shall mean any real estate which hereafter becomes subject to this Declaration in accordance with provisions hereof.

(j) "**Broomfield**" shall mean the City and County of Broomfield, Colorado.

(k) "**Board**" shall mean the body designated in this Declaration to act on behalf of the Association.

(l) "**Builder**" shall mean a homebuilder, commercial property developer, general contractor or other party, which may also be an Owner, other than Declarant, that (1) acquires one or more Units, without a home, office building or commercial building constructed thereon, for the purpose of constructing the initial Improvements upon the Unit or for the purpose of reselling to a third party, or that (2) purchases one or more parcels of land in the Community for further subdivision, development, and resale in the ordinary course of its business.

(m) "**Bylaws**" shall mean the Bylaws adopted by the Association, as such may be amended from time to time.

(n) "**Commercial Sub-association**" shall mean any Unit Owners' association organized and established or authorized pursuant to this Declaration, the Act and a Sub-association Declaration, the membership of which is composed of Owners of Commercial Units within that portion of the Real Property covered by that Sub-association Declaration.

(o) "**Commercial Unit**" shall mean and include each Unit that is not a Residential Unit. Commercial Unit shall include any Unit that is used for restaurant, retail, office, commercial, medical, recreational, and any other related uses.

(p) "**Common Elements**" shall mean any Real Property within the Community (i) owned by the Association (other than any Unit acquired by the Association through a foreclosure of its Assessment lien), (ii) leased by the Association, (iii) constituting the easement area under any easement, naming the Association as grantee, or (iv) for which the Association has maintenance responsibility pursuant to any written agreement with any governmental authority having jurisdiction over the Real Property. The Common Elements may consist of one or more entrance areas and entry monumentation identifying the Community entrances, as well as one or more landscaped medians in one or more arterial or collector streets, which landscaped medians may be designated by Declarant as Common Elements on one or

more plat or maps. The term Common Elements may include property that has been dedicated to the City and County of Broomfield subject to a maintenance agreement or revocable license agreement.

(q) **"Common Expenses"** shall mean expenditures made or liabilities incurred by or on behalf of the Association and paid as Assessments, together with any allocations to reserves, including, but not limited to:

(i) Expenses of administration, maintenance, repair or replacement of any Common Elements or property owned or maintained (under an easement, license or contract) by the Association;

(ii) Expenses related to the Architectural Control Committee;

(iii) Expenses declared to be Common Expenses by the Governing Documents or by the Act;

(iv) Expenses agreed upon as Common Expenses by the Board;

(v) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held or maintained (under an easement, license or contract) by the Association; and

(vi) The costs and expenses imposed on the Association, benefiting fewer than all Units, when assessed exclusively against those Units benefited, which may include late charges, attorneys' fees, fines, and interest charged by the Association.

Common Expenses do not include any taxes, assessments, fees or other charges levied by the District for services, improvements, maintenance, repair or replacement performed by the District.

(r) **"Community"** means the planned community ("Palisade Park") created by this Declaration.

(s) **"Community Manager"** shall mean any one or more persons or companies engaged or employed by the Association, that is engaged to perform any of the duties, powers or functions of the Association. The term "Community Manager" shall not include the Association itself.

(t) **"Declarant"** shall mean Declarant named in this Declaration, and any successor or assignee designated by written notice or assignment executed by the then Declarant and executed by the successor or assignee and recorded (as required by the applicable provisions of the Act), to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.

(u) **"Declaration"** shall mean this Master Declaration for Palisade Park, as amended and/or supplemented from time to time.



(v) "**Design Criteria**" shall mean the written design guidelines, criteria, standards and procedures proposed by the Architectural Control Committee and approved by the Board from time to time and any and all amendments to the same.

(w) "**Development Plan**" shall mean the Palisade Park PUD dated April 4, 2006, as supplemented or amended from time to time, recorded in the City and County of Broomfield at Reception No. 2006003955.

(x) "**Development Rights**" and "**Special Declarant Rights**" shall mean those rights set forth in Article 9 of this Declaration and those rights set forth in the Act.

(y) "**District**" or "**Metropolitan District**" shall collectively mean the Palisade Metropolitan District No.'s 1 and 2.

(z) "**Governing Documents**" shall mean those documents listed in Section 1.5 of this Declaration, as they may be amended and/or supplemented from time to time.

(aa) "**Gross Floor Area**" shall mean the calculation of floor area of a building which shall be the gross interior floor area of all floors of the building, excluding any basement area, and exterior balconies and decks. Gross Floor Area shall be calculated in accordance with ANSI/BOMA Z65.1 Standard (1996) for office buildings and BOMA/SIOR 2001 for retail or industrial buildings.

(bb) "**Improvements**" shall mean structures or improvements of any kind installed within or upon a Unit.

(cc) "**Local Association**" shall mean any Commercial Sub-association or Neighborhood Sub-association.

(dd) "**Local Common Element**" shall mean portions of the Real Property that are for the primary use and benefit of the Owners of certain Units within the Community, but less than all Units that (i) are designated by any recorded instrument including this Declaration or any Supplemental Declaration as a Local Common Element and, to the extent approval thereof is required of Declarant, are approved by Declarant as a Local Common Element, or (ii) are designated by Declarant pursuant to Article 9 as a Local Common Element, or (iii) are designated by the Association as a Local Common Element pursuant to Section 38-33.3-302 of the Act. Local Common Elements shall include, but shall not be limited to, any infrastructure, systems or utilities that benefit certain Owners of the Community, but less than all Units; provided however, a Local Common Element shall not include any portion of such infrastructure, system or utilities that serves an individual Unit or connects the individual Unit to such infrastructure, system or utilities (e.g. a underdrain serving a Unit and any connection for such underdrain into the main underdrain system would not be deemed to be a Local Common Element hereunder; however, the main underdrain system would be a Local Common Element). The Local Common Elements shall be maintained either by a Local Association or the Association. The term Local Common Elements may include property that have been dedicated to the City and County of Broomfield subject to a maintenance agreement or revocable license agreement.

(ee) "**Local Service Assessment**" shall mean any assessment for expenditures made or liabilities incurred by or on behalf of the Association for services that benefit the Owners of certain Units within the Community, but less than all Units of the Community, such as for a Local Common Element or for performing services on behalf of a Local Association when the Local Association is failing to provide said service(s), together with an allocation for reserves, and including late charges, attorneys' fees, fines and interest charged by the Association.

(ff) "**Maintenance Assessment**" shall mean any assessment for common expenses, incurred by or on behalf of the Association for the costs of operating the Association; maintaining and managing the Common Elements; and installing landscaping and other flora, entry signage and similar improvements upon the Common Elements; together with an allocation for reserves.

(gg) "**Maintenance Fund**" shall mean the account into which the Board shall deposit monies paid to the Association from the Working Fund Assessments and any portions of the Maintenance Assessments as determined by the Board.

(hh) "**Member**" shall mean all Persons who constitute the Owner of a Unit, as more fully provided for in the Bylaws.

(ii) "**Membership**" shall mean the rights and obligations associated with being a member of the Association.

(jj) "**Neighborhood Sub-association**" shall mean any Unit Owners' association organized and established or authorized pursuant to this Declaration, the Act and a Sub-association Declaration, the membership of which is composed, in whole or in part, of Owners of Residential Units within that portion of the Real Property covered by that Sub-association Declaration.

(kk) "**Nonprofit Act**" shall mean the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101 et seq. as it may be amended and/or renumbered from time to time.

(ll) "**Owner**" shall mean any Person, or, if more than one, all Persons collectively, holding fee simple title to a Unit, as reflected in the real property records of the county in which that Unit is located. The Declarant is the initial Owner of any Unit created by or subject to this Declaration.

(mm) "**Period of Declarant Control**" shall mean the period of time commencing on the date of recordation of this Declaration and expiring on the earliest of (1) 20 years after the date of recordation of this Declaration, (2) 60 days after conveyance of 75% of the Unit Equivalents That May Be Created to Owners other than Declarant, or (3) 6 years after the last conveyance of a Unit by Declarant in the ordinary course of business; provided, however, that if the Period of Declarant Control has not terminated pursuant to the foregoing provisions, the Period of Declarant Control shall in any case terminate on the date upon which all property in the Project Area has become a part of the Community and the last Unit within the Community has been conveyed by Declarant.

(nn) "**Person**" shall mean any individual, corporation, partnership, limited liability company, joint venture, trust, estate, or any other person or entity capable of holding title to real property under Colorado law.

(oo) "**Project Area**" shall initially mean all of the real estate described in Exhibit A attached hereto, all or any portion of which may from time to time be made a part of the Association Area. The Project Area includes all rights and easements appurtenant to the real estate described in Exhibit A attached hereto. The use and enjoyment of any of such rights and easements by any Person shall, from and after the date upon which the portion of the Project Area to which such rights and easements are appurtenant has been annexed to the Association Area as hereinafter provided, be subject to the terms and provisions of this Declaration. The Project Area may be expanded as provided in Section 9 of this Declaration, may be reduced as provided in Section 9 of this Declaration and may be marketed, developed and constructed in phases as provided in Section 9 of this Declaration. The Project Area shall also include any additional lands as may later become subject to Declarant's rights of annexation, as allowed for in this Declaration and the Act.

(pp) "**Real Property**" shall mean the real estate described in Exhibit B, and such additional portions of the Project Area or other real estate as subsequently may be annexed to the Real Property pursuant to Sections 9.2 and a Supplemental Declaration, together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(qq) "**Reimbursement Assessment**" shall have the meaning given that term in Section 7.4 below.

(rr) "**Residential Unit**" shall mean and include any Unit primarily intended or zoned for residential uses pursuant to the Development Plan.

(ss) "**Rules and Regulations**" means all rules, regulations, procedures, as the same may be adopted and amended from time to time by the Board, pursuant to this Declaration, including, without limitation, the Design Criteria, if any.

(tt) "**Sub-association Declaration**" shall mean a written recorded instrument creating a common interest community containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which affects any portion, but not all, of the Real Property. No Sub-association Declaration may be filed against any portion of the Real Property or the Project Area, during the Period of Declarant Control, without Declarant's prior written consent.

(uu) "**Supplemental Declaration**" shall mean a written recorded instrument, executed by Declarant, that subjects additional real estate from the Project Area to the Declaration.

(vv) "**Unit**" or "**Units**" shall mean a physical portion of the Community, designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration (including plats or condominium maps), such as a condominium unit or a lot.



(ww) "Unit Equivalents" shall mean a Unit, such as a Residential Unit, Commercial Unit, or a portion of a Unit, such as a portion of a Commercial Unit.

(xx) "Unit Equivalents That May Be Created" shall mean the aggregate total of 1,500 Unit Equivalents, consisting of up to:

(i) 500 Residential Units, where for each such Unit one detached single family home has been or may be constructed. Each Residential Unit is one Unit Equivalent;

(ii) 800 Unit Equivalents, for Commercial Units, based on one Unit Equivalent for every 500 square feet of Gross Floor Area within the buildings on those Units; and

(iii) 200 for Units or Unit Equivalents allocated to any of the above uses or to other uses.

The aggregate total, as set forth above, shall be the maximum number of Unit Equivalents that may be subject to this Declaration if all of the Project Area becomes a part of the Community. The aforesaid number of Unit Equivalents That May Be Created is not, however, a representation or guaranty by Declarant as to the actual number of Units that will ultimately be included in or constructed as part of the Community.

(yy) "Working Fund Assessment" shall mean the Assessment described in Section 6.4 below.

## ARTICLE 2 THE ASSOCIATION OPERATIONS

Section 2.1 General Purposes and Powers of the Association. The Association, acting through the Board, shall perform functions and manage the Community as provided for in the Governing Documents, to meet the purposes of this Declaration. The Association shall also have all power necessary or desirable to effectuate its purposes as an owners association under the Act, including those set forth in Section 38-33.3-302, and as provided for in this Declaration, and any of the powers available to an association under the Nonprofit Act.

Section 2.2 Deemed Assent, Ratification and Approval. All Owners, occupants and residents in the Community shall be deemed to have assented to, ratified and approved the general purposes of this Declaration and the power, authority, management responsibility and designation of the Association, acting through the Board as allowed for in this Declaration.

Section 2.3 Governing Statutes and Documents. The Association shall be governed by the Act, this Declaration, the Articles, Bylaws and Rules and Regulations, as all of the same may be amended and/or supplemented from time to time.

Section 2.4 Duty of the Board to Exercise Judgment and Be Reasonable; Rights of Owners. In furtherance of the purposes of this Declaration, the Owners shall have the right and

benefit to the administration of the Community by the Board, the Board shall exercise reasonable judgment and act reasonably on behalf of the Association and Owners.

Section 2.5 Community Manager. The Board may, by written resolution, delegate authority to a Community Manager, provided no delegation shall relieve the Board of final responsibility.

Section 2.6 Election of the Board of the Association. The Board shall be elected by the Owners; provided, however, that, as allowed for in this Declaration and described in Section 2.7 below, Declarant shall have the sole right to appoint all or certain of the members of the Board during the Period of Declarant Control.

Section 2.7 Declarant's Right to Appoint During Period of Declarant Control.

(a) During the Period of Declarant Control, Declarant shall have the following appointment rights:

(i) From and after the date of recordation of this Declaration until the date that is 60 days after the date that 25% of the Unit Equivalents That May Be Created have been conveyed to Owners other than Declarant, Declarant may appoint and remove all members of the Board.

(ii) From and after the date that is 60 days after the date that 25% of the Unit Equivalents That May Be Created have been conveyed to Owners other than Declarant, until the date that is 60 days after the date that 50% of the Unit Equivalents That May Be Created have been conveyed to Owners other than Declarant, the Owners other than Declarant shall have the right to elect a number of the members of the Board equal to the greater of one or 25% (rounded to the nearest whole number) of the total number of the members of the Board, and Declarant may continue to appoint and remove all other members of the Board.

(iii) From and after the date that is 60 days after the date that 50% of the Unit Equivalents That May Be Created have been conveyed to Owners other than Declarant until the date of termination of the Period of Declarant Control, the Owners other than Declarant shall have the right to elect a number of the members of the Board equal to the greater of one or 33.3% (rounded to the nearest whole number) of the total number of members of the Board, and Declarant may continue to appoint and remove all other members of the Board. From and after termination of the Period of Declarant Control, the Owners, including Declarant (if Declarant is then an Owner), shall elect a Board of at least three members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant.

(b) Declarant may voluntarily surrender any or all of the foregoing rights to appoint and remove officers and members of the Board before termination of the Period of Declarant Control. In that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 2.8 Duty to Provide Audit. The Association shall provide for an annual independent audit of the accounts of the Association. Copies of the audit shall be made available to any Owner, on request, for a reasonable fee for the cost of copying the audit.

Section 2.9 Maintenance Fund. The Board shall establish the Maintenance Fund, into which shall be deposited moneys for maintenance, repair, replacement and improvement of the Common Elements.

Section 2.10 Establishment of Other Funds. The Association may establish other funds as and when needed, and nothing herein shall limit, preclude or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from the other funds maintained by the Association.

Section 2.11 Authority for Disbursements. The Board shall have the authority to make or to authorize an agent to make disbursements of any moneys in the Maintenance Fund or other funds that may be established pursuant to this Declaration.

Section 2.12 Right to Notice and Comment. Pursuant to the Act and under other circumstances as set forth in the Act or this Declaration, where the Act or this Declaration requires that an action be taken after "Notice and Comment," and at any other time the Board determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing.

Section 2.13 Indemnification. To the full extent permitted by law, each officer and director of the Association shall be and is hereby indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such officer or director in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not he or she is an officer or director of the Association at the time such expenses or liabilities are incurred. This indemnification shall not apply in cases where an officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of its duties. In the event of a settlement, the indemnification provided for in this Declaration shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

### ARTICLE 3 MEMBERSHIP, VOTING AND ASSESSMENT ALLOCATIONS

Section 3.1 Membership. Every Person who is an Owner of any Unit that is subject to this Declaration shall be a Member of the Association. There shall be one Membership in the Association for each Unit within the Community. The Person or Persons who constitute the Owner shall automatically be the holder of the Membership appurtenant to the Owner's Unit, and the Membership shall automatically pass with fee simple title to the Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for Membership. Where more than one person holds an interest in any Unit, all those Persons shall be Members.

Section 3.2 Voting Rights of Owners.

(a) Generally. Each Membership shall:

(i) have the right, subject to Sections 3.3 and 3.5 below, to cast votes for the election of the Board; and

(ii) have such other voting rights as provided for in this Declaration.

Except as expressly provided in this Section and in this Declaration, no other voting rights are created by this Declaration.

(b) Bylaws. Except to the extent otherwise addressed in this Declaration or the Articles, the Bylaws shall provide the manner, time, place, conduct and voting procedures for Owner meetings for the purpose of electing the Board.

(c) No Fractionalized Voting. Votes allocated to any Unit must be cast as a block and without dividing or fractionalizing such vote or votes.

(d) No Cumulative Voting. Cumulative voting shall not be permitted in the election of the Board or for any other purpose.

Section 3.3 Voting Allocations. There shall be up to a maximum number of votes equal to the Unit Equivalents That May Be Created and such votes shall be allocated as set forth in this Section 3.3.

(a) Residential Units. One vote shall be allocated to the Owner of each Residential Unit upon which one detached single family home has been or may be constructed. Only Residential Units for which a certificate of occupancy has been issued shall be allocated votes.

(b) Commercial Units. One vote for each 500 square feet of Gross Floor Area within the buildings constructed that are Commercial Units shall be allocated to the Owner of each Commercial Unit. Any Commercial Unit that contains less than 500 square feet shall be allocated one vote. Only Units for which a certificate of occupancy has been issued will be allocated votes. The Board may require as-built plans and specifications to be filed with the Association and may promulgate additional written standards for fairly and uniformly calculating the Gross Floor Area for purposes of this Section.

(c) Allocations Prior to Use and Other Units or Other Uses. For all Units not allocated votes above, based on use, including any Unit comprised entirely of vacant land, regardless of zoning classification or anticipated use, the vote attributable to such Unit shall be one vote per acre of land (rounded to the nearest whole number) comprising that Unit.

Section 3.4 Proxies Of Owners. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner. If a Unit is owned by more than one person, any one co-Owner of the Unit may vote the votes of that Unit or register a protest to the casting of the votes of that Unit by the other co-Owners of the Unit through a duly executed proxy. An Owner

may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. Owners within Local Associations or any designated sub-areas or parcels may appoint a single individual or entity to hold and exercise proxies for some or all of such Owners.

Section 3.5 Declarant Control. Notwithstanding anything to the contrary in this Article 3, during the Period of Declarant Control, Declarant shall have the right to appoint members of the Board as allowed by this Declaration and as allowed by the Act.

Section 3.6 Assessment Allocations. Assessments are allocated as follows:

(a) Maintenance Assessments. Maintenance Assessment allocations are based on the percentage number obtained by dividing the number of the vote or votes allocated to a Unit by the total number of votes allocated to all Units within the Community, as votes are allocated pursuant to this Declaration. The liability for Maintenance Assessments attributable to all Units in a particular Local Association may, at the option of the Board, be assessed against the Local Association, if any. In such a case, the Local Association shall allocate the Maintenance Assessments and assess the Units in the Local Association pursuant to the allocations set forth in the Sub-association Declaration applicable to that Local Association.

(b) Working Fund Assessments. Working Fund Assessments shall be allocated as provided in Section 6.4 below.

(c) Other Assessments. Other Assessments provided for in this Declaration shall be allocated as specifically set forth elsewhere in this Declaration.

Section 3.7 Re-Allocations. When Units are added to or withdrawn from the Community, pursuant to the provisions of this Declaration and the Act, the formulas set forth above shall be used to reallocate the Allocated Interests.

#### ARTICLE 4 UNIT DESCRIPTIONS/Common Elements/EASEMENTS

Section 4.1 Identification of Unit Descriptions. The identification of each Unit is to be shown on an applicable plat, map or deed for properties included in the Community. Every contract for sale, deed, lease, the creation of a security interest, will or other legal instrument may legally describe a Unit by any identifying number established by a plat or map, with reference to the plat or map, and the Declaration, followed by the name of the Community. Reference to the Declaration, plat or map in any instrument shall be deemed to include any supplements or amendments to the Declaration, map or plat, without specific references thereto.

Section 4.2 Common Elements. Other than as specifically set forth in the Development Plan, Declarant is not obligated to construct any particular type or kind of improvements on the Common Elements. Declarant may construct Common Elements for use by the Association, including, but not limited to, entry monumentation and landscaping.

Section 4.3 Duty to Accept Common Elements and Facilities Transferred by Declarant. The Association shall accept any Common Elements or property, including any

Improvements thereon, and personal property transferred to the Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Declaration and any Supplemental Declaration applicable thereto. The improvements on the Common Elements may be changed from time to time by the Board.

Section 4.4 Utility, Map and Plat Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat, map or separate document and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 4.5 Owners' Easements. Subject to Section 4.7 below, each Owner shall have a nonexclusive easement over the Common Elements to use and enjoy the Common Elements, subject to: (a) the Association's right to regulate the use thereof and to promulgate Rules and Regulations that limit the use thereof, (b) any restrictions contained in any deeds of Common Elements to the Association; (c) the right of the Association to suspend rights to use all or a portion of the Common Elements for any period during which any Assessment against such Owner's Unit remains unpaid or for any infraction of this Declaration or the Governing Documents; (d) the right of the Association to allow public use of the Common Elements, with or without a fee or charge; (e) the right, power and authority of the Association to grant any dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act; (f) the right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacement in the Common Elements or as determined by the Board; (g) the right of the Association to charge fees for the use of any recreational facility situated on the Common Elements and to impose membership requirements; (h) the Development Rights and Special Declarant Rights reserved in this Declaration and subject to all other provisions of this Declaration and the Governing Documents. Such easement shall be appurtenant to and shall pass with the title to every Unit.

Section 4.6 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Common Elements or for any expense or liability incurred by the Association that may be sustained by reason of negligence or willful misconduct of such Owner or a guest, tenant, occupant, licensee or invitee of the Owner, and for any violation by such Owner or such Owner's guest, tenant, occupant, licensee or invitee of this Declaration or any Rule or Regulation. The Association shall have the power to levy and collect an Assessment against an Owner to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration or of the Rules and Regulations, including interest and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 4.7 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Common Elements for any lawful purpose, including without limitation, the provision of

emergency services, utilities (including, without limitation, water, sanitary sewer, storm sewer, gas and other energy services), telephone, cable television, fiber optic and other telecommunication services, and other uses or services to some or all of the Owners.

## ARTICLE 5 ASSOCIATION MAINTENANCE RESPONSIBILITIES

Section 5.1 Duty to Manage and Maintain. The Association shall manage, operate, care for, maintain and repair the Common Elements and keep the same in a safe, attractive and desirable condition, as reasonably determined by the Board, for the use and enjoyment of the Owners. The Association may install landscaping and other flora, entry signage, water features and similar improvements situated upon the Common Elements. The Board may delegate the foregoing responsibilities to the Community Manager or to a quasi-governmental agency such as a special district, provided no delegation shall relieve the Board of final responsibility.

Section 5.2 Additional Areas of Maintenance. The Association may also undertake the following:

(a) Maintenance and repair of any portion of the Community, if, in the opinion of the Board, the level and quality of service then being provided by the applicable Local Association is not adequate. All costs of maintenance and repair pursuant to this subsection shall be assessed against the Local Association, or if no Local Association, then to that Unit to which the services are provided. The provision of services in accordance with this subsection shall not constitute discrimination within a class.

(b) Such other maintenance and repair as set forth elsewhere in this Declaration.

Section 5.3 Local Association's Responsibility. The Association may delegate certain maintenance requirements to a Local Association. Upon such delegation, the Owners of Units within each such Local Association shall be responsible for paying, through a separate assessment to the Local Association, the costs of operating, maintaining and insuring certain portions of the Real Property within their Local Association area. This may include, without limitation, the costs of maintaining any Local Common Elements, Local Association signage, entry features, right-of-way and open space between the Local Association and adjacent public roads and private streets within the Local Association, regardless of ownership. Any Local Association having any responsibility for maintenance of property within such Local Association shall perform such maintenance responsibility in a manner consistent with first class, community-wide standards. If it fails to do so, the Association may perform such responsibilities and assess the costs against all Units within such Local Association as a separate Assessment payable to the Association.

**ARTICLE 6  
COVENANT FOR ASSESSMENTS**

Section 6.1 Creation of Association Lien and Personal Obligation to Pay. Each Owner shall be deemed to covenant and agree to pay all Common Expenses in accordance with the Allocated Interests, as Assessments imposed by the Association and assessed against that Owner's Unit. Assessments provided for in this Declaration, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Association shall be the personal obligation of the Owner of the applicable Unit at the time when the Assessment or other charges became due. If additional Units are added to the Community, then the Allocated Interest shall be reallocated.

Section 6.2 Continuing Lien. Each Assessment imposed by the Association, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Association, shall be a continuing lien upon the Unit or Units against which each such Assessment or charge is made.

Section 6.3 No Exemptions, Offsets or Reductions. No Owner may become exempt from liability for payment of any Assessment to the Association by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Assessment is made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board or any other entity is not properly exercising its duties and powers under this Declaration.

Section 6.4 Capitalization of the Association/Working Funds. Each Unit Equivalent shall be assessed a non-refundable payment to the Association in the initial amount of \$100.00, as may be reasonably adjusted from time to time (the "**Working Fund Assessment**"). The contribution by the first Owner of each Unit (other than Declarant or a Builder) and by all subsequent Owners of each Unit shall be collected and paid to the Association at the time of closing of the initial sale and all subsequent sales of the Unit to any party other than Declarant or a Builder, and the sums collected shall be for the use and benefit of the Association, through the Association's Maintenance Fund. Contribution and payment of each Owner's Working Fund Assessment to the Association shall not relieve an Owner from making regular payments of any other Assessments as the same become due.

Section 6.5 Due Dates; Assessment Allocations. Each of the Assessments provided for in this Article shall be allocated as provided for under Section 3.6 of this Declaration. Maintenance Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. Maintenance Assessments may begin on the first day of the month in which conveyance of the first Unit to an Owner other than Declarant or a Builder occurs. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay.

Section 6.6 Maintenance Assessments. The Association may levy Maintenance Assessments against Units upon a 51% vote of the members of the Board, first effective upon conveyance of such Units (to an Owner other than Declarant or Builder), allocated as provided





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for above in Section 3.6 of this Declaration. Until the Association levies a Maintenance Assessment, Declarant may, at its election and discretion, subsidize or assist in the payment of costs and expenses of the Association; provided that Declarant shall not have any obligation whatsoever to subsidize or otherwise contribute to a maintenance fund or other contingency reserve to be used to cover future costs and expenses. After any Maintenance Assessment has been levied by the Association, Maintenance Assessments shall be levied no less frequently than annually by the Association and must be levied in compliance with the Act. Where the obligation to pay a Maintenance Assessment first arises after the commencement of the year or other period for which the Maintenance Assessment was levied, the Maintenance Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

Section 6.7 Other Assessments. The Association shall have the authority to levy the Reimbursement Assessments pursuant to Section 7.4 below. The Association shall have the authority to levy Local Service Assessments in compliance with the Act and this Declaration against Units subject to a Local Service Assessment. The Association shall also have the authority to assess Units for costs of enforcement pursuant to, and as allocated under, other provisions of this Declaration, the Act, or as allowed by court order or law.

In addition to the Maintenance Assessments authorized above, upon a vote of 51% of the members of the Board, the Board may establish at any time a special assessment ("Special Assessment") for the purpose of defraying, in whole or in part, the costs of any capital improvements to the Property or for paying or creating a reserve for, in whole or in part, any expense which the Board is entitled to incur pursuant to the provisions of this Declaration, and which is not scheduled to be paid in an annual budget adopted by the Board. Each Owner shall be liable for such Owner's Unit Equivalent of the total Special Assessment on the date the Special Assessment is established by the Board.

Section 6.8 Statements of Account. The Association shall furnish to an Owner or such Owner's designee (including, without limitation, a prospective purchaser from or lender of such Owner), 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 Unit. The statement shall be furnished within 14 calendar days after receipt of the request and shall be binding on the Association, the Board and every Owner. If no statement is furnished to the Owner or its designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments that were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such written statement.

Section 6.9 Effect of Non-Payment of Assessments. Any Assessment, charge, fine or fee provided for in this Declaration, or any monthly or other installment thereof, that is not fully paid within 10 days after the due date thereof, as established by the Board, shall bear interest at the highest rate of interest allowable under Colorado law, and the Association may assess a reasonable late charge of \$50.00, or such higher amount as may be determined by the Board. Further, the Association may bring an action at law or in equity, or both, against the Persons personally obligated to pay such overdue Assessments, charges, fines or fees, or monthly



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or other installments thereof, and may also proceed to foreclose its lien. An action at law or in equity by the Association against an Owner or a Local Association to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, that are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same.

Section 6.10 Lien Priority. The lien of the Association for all Assessments allowed for in this Declaration is prior to all other liens and encumbrances on a Unit (including any and all liens of a Local Association) except: (a) liens and encumbrances recorded before the recordation of the Declaration; (b) a first lien security interest on the Unit (except as otherwise provided in C.R.S. Section 38-33.3-316(2)(b) or other applicable provisions of the Act with regard to the limited lien priority allowed to the Association); and (c) liens for real property taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption against such assessment lien. The transfer of title to any Unit shall not affect the lien for said Assessments or charges except that transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof. Recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for an Assessment is not required. However, the Association may prepare, or cause to be prepared, and record, or cause to be recorded, in Broomfield, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a notice of lien is filed, the costs and expenses thereof shall be added to the Assessment for the Unit against which it is filed and collected as part and parcel thereof. A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the Assessment becomes due. This Section does not prohibit the Association from taking a deed in lieu of foreclosure. The Association's lien may be foreclosed by the same procedure by which a mortgage or deed of trust on real estate is foreclosed. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same. A judgment or decree in any action brought under this Section shall entitle the Association to costs and reasonable attorneys' fees, which shall be an additional Assessment, and is enforceable by execution. Any payments received by the Association in the discharge of an Owner's obligation may be applied to attorneys' fees and costs first, then late fees, penalties and interest, and then the oldest balance due. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to



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collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver first to the costs of the receivership, including receiver's fees, and then to the Association during the pendency of the action to the extent of the Association's Assessments. If a holder of a first or second lien in a Unit forecloses that lien, the purchaser at the foreclosure sale is not liable for any unpaid Assessments against that Unit which became due before the sale, other than the assessments which are prior to that lien under this subsection. Any unpaid Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable Colorado law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.11 The Budget Process. Before the Association begins to levy Maintenance Assessments, the Board will cause a proposed budget for the Association to be prepared and adopted annually, not less than 30 days prior to the beginning of each fiscal year of the Association. Within 90 days after the Board adopts any proposed budget for the Association, the Board will mail, by ordinary first-class mail, or otherwise deliver, a summary of the proposed budget to all Owners and will set a date for a meeting of the Owners for consideration of the proposed budget. Such meeting will occur within a reasonable time after mailing or other delivery of the summary. The Board will give notice to the Owners of such meeting as provided for in the Bylaws. The budget proposed by the Board does not require actual approval of the Owners and will be deemed approved by the Owners in the absence of a veto at such noticed meeting by Owners representing a majority of all the Units, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners will continue in effect until such time as a subsequent budget proposed by the Board is not vetoed by the Owners. For the first fiscal year of the Association, the Board may adopt Declarant's estimated budget for the Association and assess Maintenance Assessments based on it if the Board submits such budget to the Owners for consideration in accordance with this Section 6.11 within 60 days after adopting it. Additionally, the Association shall comply with the provisions of C.R.S. § 38-33.3-209.4.

Section 6.12 Assessments Against Local Associations. Notwithstanding anything in this Article 6 to the contrary, where a Local Association has expressly assumed, pursuant to the governing documents for that Local Association, an obligation for the payment of Assessments with respect to Units within that Local Association's jurisdiction, so long as the Local Association continues to have that obligation, only that Local Association shall have the personal obligation to pay the applicable Assessments (but nothing in this Section 6.12 shall in any way negate or adversely affect the Association's lien pursuant to Section 6.2 above).

Section 6.13 Exempt Property. The following portions of the Real Property shall be exempt from the Assessments, charges, and liens created herein: (1) all properties dedicated and accepted by applicable governmental entities and devoted to public uses, whether such governmental entity's interest is represented by a fee ownership, by an easement, or in any other



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form of property ownership; (2) any real property owned by the Metropolitan District within the Property; (3) all utility lines and easements; and (4) the Common Elements.

**ARTICLE 7  
 GENERAL RESTRICTIONS**

Section 7.1 Purposes, Plan of Development, Applicability, Effect, Permitted and Prohibited Uses. Declarant has created the Community as a mixed use, planned community, in furtherance of its and every other Owner's collective interests. The Real Property is subject to land development constraints and requirements, Rules and Regulations, Design Criteria, if any, and provisions of this Declaration governing land use, individual conduct, and uses of or actions upon the Real Property as provided in this Declaration. This Declaration establishes affirmative and negative covenants, easements, and restrictions.

Each Unit shall be used only for uses permitted pursuant to the applicable state, county and local zoning rules and regulations and the Development Plan, including, without limitation, single-family residential, commercial office, medical, industrial, warehouse, distribution, manufacturing, research and development and/or retail uses. Notwithstanding the foregoing, the following uses shall be prohibited on the Real Property: a dry cleaning plant (as compared to a drop-off and pickup only facility, which shall be permitted), discotheque, dance hall, nightclub (except that sports bars and/or wine bars that have weekend musical entertainment shall be permitted), pawn shops, amusement gallery, pool room, adult entertainment facility featuring nude or semi-nude dancing or entertainment, gymnasium, massage parlor, adult book store, pin ball or electronic game room, a so-called "head shop" selling or displaying illegal drug paraphernalia, mortuary or funeral parlor, flea markets or similar businesses specializing in the sale of "second-hand" or defective goods, temporary or permanent carnivals (except that temporary carnivals lasting no more than two weeks for special promotional purposes shall be permitted), circuses, amusement parks or gambling establishments, bingo parlor, free-standing cafeterias, public assistance offices, or for the sale of automobiles, trucks, other motorized vehicles, or trailers, or any use that generates an unreasonable volume of traffic (in the sole and absolute discretion of the Board), or for any other use which is prohibited under state, county and local zoning rules and regulations.

Section 7.2 Owner Acknowledgment. Each Owner is subject to this Declaration and the covenants and restrictions contained in this Declaration. By acceptance of a deed, or other instrument establishing title or ownership, each Owner acknowledges that it has been given notice of this Declaration; that use of a Unit is limited by the provisions of the Governing Documents; that the Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents; that the use, enjoyment and marketability of the Units can be affected by this Declaration; and that the restrictions and Rules and Regulations and Design Criteria may change from time to time; provided, however, no action by the Board may invalidate a specific provision of this Declaration. Each Owner shall be responsible for the compliance of such Owner and such Owner's Occupants, their employees, guests and invitees with every provision of this Declaration and the Governing Documents and shall not be relieved of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period of ownership.



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Section 7.3 Use Covenants and Restrictions Based on Zoning. Subject to applicable restrictions of record and the Design Criteria, Units within the Community may be used for purposes allowed by the Development Plan, zoning ordinances and regulations, planned unit development or other local governmental determination and for no other purpose.

Section 7.4 Units to be Maintained. Owners of a Unit are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries, in accordance with the Design Criteria except as such maintenance, repair and replacement are expressly the obligation of any applicable Local Association for that Unit. Each Unit and the Improvements on a Unit, including landscaping thereon, shall, at all times, be kept in a clean, safe, attractive, and slightly condition and in good repair. Violation of this provision by an Owner, or a Local Association, shall permit the Association, after written notice, to enter the Unit or Local Common Element, as the case may be, and cure the violation or cause compliance with this provision and to levy and collect a reimbursement assessment for the costs and expenses of the Association so doing (a "**Reimbursement Assessment**"); provided, however, that there shall be no entrance into the interior of a Unit intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

Section 7.5 Landscaping Requirements of Owners/Restrictions and Maintenance Covenants. Except as required by § 37-60-126 C.R.S., all portions of a Unit not improved with a residence, building, driveway, walkway, patios or deck (referred to as the unimproved area or landscaped areas of a Unit) shall be landscaped by the Owner thereof (other than Declarant) or a Builder. Any unimproved portions of a Unit must be fully landscaped no later than one month after the first occupancy of any portion of the Unit by an Owner (other than Declarant). The landscaping of each Unit, having once been installed, shall be maintained by the Owner, or the applicable Local Association, in a neat, attractive, slightly and well kept condition, which shall include regular mowing of lawns as needed; pruning and trimming of hedges, shrubs, and trees as needed; adequate watering during growing seasons; replacement of dead, diseased or unsightly materials; and regular removal of weeds and debris. If any Owner fails to install such landscaping or fails to maintain such landscaping, the Association may impose a Reimbursement Assessment against the Unit in accordance with Section 7.4. If there is any conflict between the provisions of this Section 7.5 and Section 37-60-126 C.R.S., Section 37-60-126 C.R.S. shall control.

Section 7.6 No Noxious or Offensive Activity. Other than reasonable and customary hospital use, no noxious or offensive activity shall be carried on upon any property within the Community nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable disturbance or annoyance to others.

Section 7.7 Annoying Sounds or Odors. Other than reasonable and customary hospital use, no sound or odor shall be emitted from any property within the Community that is noxious or unreasonably offensive to others.

Section 7.8 No Hazardous Activities. Other than reasonable and customary hospital use, no activity shall be conducted on and no Improvement shall be constructed on any Unit that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Unit and no open fires shall be lighted or

permitted on any Unit except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers. In addition, the production, use, generation, release, emission, storage, disposal and/or distribution of Hazardous Materials (which shall be defined as any hazardous, dangerous or toxic substance, material or waste, including petroleum (including crude oil or any fraction thereof), regulated by any federal, state or local law, regulation or ordinance) on the Real Property shall comply with all applicable laws relating thereto, provided that the Board shall be entitled to prohibit any such activity from occurring on the Real Property if any such Hazardous Materials, or the use thereof, is in the determination of the Board, unreasonably dangerous or offensive. In addition, all exterior storage facilities for such Hazardous Materials shall meet the aesthetic requirements of the Architectural Control Committee. The Architectural Control Committee shall be given written notice by the Owner of the applicable Unit prior to the production, use, generation, release or storage of Hazardous Materials on such Unit. For the purposes hereof, the term "release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels and other containers containing any Hazardous Materials) of any Hazardous Materials. Declarant or the Association may impose such rules and regulations as it deems appropriate with respect to the use, release and disposal of such Hazardous Materials. The foregoing provisions shall not apply to the use, generation, release or storage of insubstantial quantities of Hazardous Materials customarily used in similar commercial facilities, such as janitorial supplies, pool and spa chemicals and photocopying supplies.

Section 7.9 No Unsightliness. Other than reasonable and customary hospital use, all unsightly facilities, equipment, objects and conditions shall be enclosed within an approved structure, including snow removal equipment and garden or maintenance equipment except when in actual use. Owners may not store vehicles or construction/maintenance vehicles or materials on the property unless in structures or facilities approved by the Architectural Control Committee as part of the site approval process.

Section 7.10 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub and tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or appropriately screened from view in a manner that is approved by the Architectural Control Committee, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pickup.

Section 7.11 No Temporary Structures. Except as may be specifically permitted under the Rules and Regulations, no tent, shelter, shack, shed, storage facility, temporary structure or temporary building shall be placed upon any property within the Community except with the prior written consent of the Association.

Section 7.12 Restrictions on Signs and Advertising Devices. No permanent or temporary sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community so as to be evident to public view except in compliance with the Rules and Regulations or Architectural Control Committee approval.



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Section 7.13 Compliance with Laws. Nothing shall be done or kept on any property within the Community in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

Section 7.14 Restriction on Antennae, Pipes and Utility Lines. Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission and reception of electricity, and utility meters or other utility facilities, shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. Any exterior radio antenna, television antenna, satellite dish or other antennae of any type shall be installed or maintained in compliance with the Rules and Regulations.

Section 7.15 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Unit, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Association, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Unit to be suitably landscaped, subject to the approval of the Association, so as to present a pleasing and attractive appearance.

Section 7.16 No Subdivision of Units; No Rezoning. The Owner, other than Declarant, of any unimproved land in the Project Area, shall not have the right to subdivide its Unit (except for a Builder who creates a condominium project upon such Unit) or consolidate two or more Units into one Unit, without the prior written consent of the Association. The Owner of any Unit, other than Declarant, shall have no right to rezone any portion of the Project Area.

Section 7.17 Restrictions on Subordinate Covenants, Maps and Planned Unit Developments on Units.

(a) Until expiration of the Period of Declarant Control, the prior written consent of Declarant, or its assignee (if this restriction and approval right is assigned in writing), shall be required by any Owner or with regard to any Residential Unit or Commercial Unit:

1. before junior or subordinate covenants may be filed of record against all or any portion of a Unit including any Sub-association Declaration; and

2. before any planned unit development, map, plat or re-subdivision may be filed of record against all or any portion of a Unit.

(b) In the event an Owner records covenants against all or any part of a Unit without the written consent required by the provisions of this Section, or in the event an Owner records any planned unit development, map, plat or re-subdivision against all or any part of any Unit without the written consent required by the provisions of this Section, the instruments recorded shall be voidable and shall be deemed voided by Declarant upon Declarant recording a notice to that effect. Notwithstanding the foregoing, however, Builders, and any mortgagees of Builders acquiring title to any lots by foreclosure or deed in lieu of foreclosure, shall have the right to re-subdivide or otherwise modify any subdivision plat in order to make minor lot line modifications, provided such modifications do not increase or decrease the size of any lot by more than 5%.



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(c) Every Sub-association Declaration forming another common interest community that is managed by a Local Association shall contain a provision expressly stating that the Association is permitted to exercise the powers set forth in C.R.S. Section 38-33.3-302(1)(b) with respect to such Local Association.

(d) Every Local Association that is formed pursuant to a Sub-association Declaration shall, by virtue of recordation of the Sub-association Declaration, be irrevocably deemed to have granted to the Association the right, but not the obligation, exercisable in the sole discretion of the Association, to enforce any covenants or perform any of the obligations of the Local Association set forth in the Sub-association Declaration.

(e) Every Sub-association Declaration by this reference shall expressly be subordinate to the provisions of this Declaration and in the event of any conflict between the terms and conditions of any Sub-Association Declaration and this Declaration, the terms and conditions of this Declaration shall control.

Section 7.18 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 7.19 Restriction on Timesharing and Similar Programs. Use or ownership of any Residential Unit for operation of a timesharing, fraction-sharing or similar program, where the right to exclusive use of a Residential Unit rotates among participants in the program on a fixed or floating time schedule over a period of years and all similar ownership or use programs, schemes or clubs is prohibited.

Section 7.20 Right of Board Regarding Rules and Regulations. In furtherance of the purposes of this Declaration, and subject to the Board's duty to exercise judgment and reasonableness on behalf of the Association, the Board may adopt, amend or repeal Rules and Regulations concerning and governing the Community or any portion thereof. The Board may establish and enforce penalties for any infraction thereof, including, without limitation, fines and suspension of use rights and voting privileges.

Section 7.21 Construction Use. It is expressly permissible for Declarant and Builders to perform construction and such other reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, material and equipment storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities, subject, however, to such reasonable Rules and Regulations as the Board may adopt from time to time.



**ARTICLE 8  
INSURANCE/CONDEMNATION**

Section 8.1 Association Insurance and General Terms. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible companies duly authorized and qualified to do business in the State of Colorado. Commencing not later than the time of the first conveyance of a Unit to a Person other than Declarant or a Builder, the Association shall maintain, to the extent reasonably available, policies for insurance described in this Article 8 with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation (to the extent reasonably available) and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 20 days prior written notice to the Association.

(b) All liability insurance shall be carried in blanket form naming Declarant, the Association, the Board, the District, the Community Manager, and the officers and directors of the Association as insureds.

Section 8.2 Association Hazard Insurance on the Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Elements and the other property of the Association, except to the extent that the Association reasonably determines that carrying such insurance would be uneconomical.

Section 8.3 Association Liability Insurance. The Association shall obtain an adequate comprehensive policy of public liability and property damage liability insurance, in such limits as the Board may from time to time determine, but not in any amount less than \$2,000,000 per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. The District may be an additional named insured.

Section 8.4 Association Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 8.5 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 8.6 Association Officers' and Directors' Personal Liability Insurance. The Association shall obtain a broad or expansive form of an officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 8.7 Other Insurance of the Association. The Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 8.8 Association Insurance Premium. Insurance premiums for the above provided insurance shall be a part of the Maintenance Assessment.

Section 8.9 Community Manager Insurance. The Community Manager, if not an employee, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association.

Section 8.10 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 8.11 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association. The Association shall hold any insurance proceeds in trust for the Association and Owners.

Section 8.12 Eminent Domain and Hazard Insurance Allocations and Distributions. In the event of a distribution of eminent domain proceeds or hazard insurance proceeds to the Owners, the distribution shall be made pursuant to C.R.S. 38-33.3-107 and 38-33.3-313 respectively.

## ARTICLE 9 DEVELOPMENT RIGHTS

Section 9.1 Development Rights and Special Declarant Rights. Declarant reserves, for 40 years after the recording of this Declaration (the "Development Rights Period"), the following Development Rights and Special Declarant Rights (which may be exercised with respect to different parcels of real estate at different times, and no assurances are made as to the order in which such rights may be exercised with respect to different parcels of real estate, or whether such rights will be exercised with respect to any particular parcel of real estate):

(a) The rights set forth below in Section 9.2 to subject all or any portion of the Project Area by amending this Declaration, or any other real estate adjacent to the Project Area and owned at that time by Declarant, to all or any portion of this Declaration, to re-plat it as Declarant desires, and to create Units and Common Elements. The consent of the existing Owners or any security interest holders shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation in its sole discretion.



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- (b) The right to add Units and designate uses.
- (c) The right to subject portions of the Real Property owned by Declarant to additional or different covenants, conditions, terms and restrictions, as Declarant may determine.
- (d) The right to relocate boundaries between adjoining Units owned by Declarant, enlarge or reduce Units owned by Declarant, enlarge or reduce the Common Elements, reduce or diminish the size of areas of the Common Elements, subdivide or combine Units, or complete or make improvements on Units owned by Declarant.
- (e) The right, but not the obligation, to construct additional Improvements on Common Elements, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Common Elements and for the benefit of the Association and the Owners.
- (f) The right to create and use and permit others, including the Builders, to use easements through the Community for construction.
- (g) The right to designate or create additional Units and Common Elements, and to convert Units into Common Elements.
- (h) The right to merge or consolidate the Association with any owner association within the Community.
- (i) The right to appoint or remove any officer of the Association or any director during the Period of Declarant Control.
- (j) The right to withdraw any portion of the Community or any Units owned by Declarant from the Community and the terms of this Declaration, as set forth in Section 9.4 below.
- (k) The right to amend the Declaration, maps or plats in connection with the exercise of any development right.
- (l) The right to amend the Development Plan with respect to, or change the permitted use of, any portion of the Project Area that is owned by Declarant.
- (m) The right to make amendments to this Declaration, Bylaws or Articles to meet or comply with any requirement of any Agency.
- (n) The right to amend the Declaration to add additional real estate to the Project Area, provided that the area of any such added real estate shall not exceed 10% (or such larger percentage as may be permitted pursuant to the Act) of the total area of the Project Area described and depicted on Exhibit A to this Declaration.
- (o) The right, for itself and for the Builders, to maintain signs and advertising on the Community to advertise the Community or other communities developed or managed by, or affiliated with Declarant.



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(p) The right, for itself and for the Builders to maintain construction, sales, and management offices, signs advertising the community and models. Declarant also reserves the right for Declarant and any Builder to conduct general sales therefrom.

(q) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

(r) The right to construct underground utility lines, pipes, wires, ducts and conduits, storm drains, detention ponds, and other facilities for the purpose of furnishing services to the Real Property.

(s) The right to approve or disapprove, during the Period of Declarant Control, the recordation of any Sub-association Declaration.

(t) The right to appoint or remove any Architectural Control Committee Member in accordance with Section 10.4. The right to create subcommittees and appoint members to such subcommittees of the Architectural Control Committee.

(u) The right to exercise any additional reserved right created by any other provision of this Declaration.

(v) The right to record one or more Supplemental Declarations with respect to any portion of the Project Area that is to be subject to this Declaration. Such Supplemental Declaration may supplement this Declaration with such additional covenants, conditions, restrictions as Declarant may deem appropriate for that portion of the Project Area. Such Supplemental Declaration may provide for sub-associations.

(w) If all or any part of the Project Area is submitted to this Declaration, this right to reserve real estate for future development shall apply to such real estate as well. Declarant expressly reserves the right to record an instrument surrendering a development right, or withdrawing or de-annexing all or any portion of the Real Property or any real estate reserved for future development in the Declaration from the community by recording a document evidencing such surrender, withdrawal or de-annexation.

(x) The right to market, sell, develop and construct the Community in phases, the timing of which shall occur at any time during the Development Rights Period in the sole and absolute discretion of the Declarant. Declarant may, but shall not be obligated to, complete any or all of the Common Elements, recreational facilities or amenities prior to the time that the last phase of the Community is complete.

Section 9.2 Property Which May Be Annexed. At any time after the date this Declaration is recorded until the expiration of the Period of Declarant's Control, Declarant may, but shall not be required, to unilaterally (and, except as otherwise expressly provided in Section 9.3, without the consent of the Association, the Board, any Owner, any mortgagee or any other Person), add all or any portion of the Project Area to the Association Area and make it subject to this Declaration in accordance with and subject to the provisions of Section 9.3.



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Additionally, upon the consent of the Board, any other real estate may be added to the Association Area at any time. Declarant may exercise its rights of annexation or development in all or any portion of the Project Area over which such rights have not already been exercised, and no assurances are made by Declarant as to the boundaries, timing or order of exercise of any such rights. Further, exercise by Declarant of its rights of annexation or Development Rights with respect to any portions of the Project Area does not require that such rights of annexation or Development Rights must be exercised in all or any other portion of the remainder of the Project Area.

Section 9.3 Manner of Annexation. Declarant, may but shall not be obligated to, add real estate ("**Annexed Property**") within the Project Area to the Association Area. Effective upon the recording of a Supplemental Declaration containing the provisions set forth below in this Section 9.3 and in Section 9.8, the covenants and restrictions contained in this Declaration shall apply to the Annexed Property, and thereafter the rights, privileges, duties and liabilities of the Owners subject to this Declaration shall be the same with respect to the Annexed Property as with respect to other real estate covered by this Declaration.

Improvements installed within areas to be added to this Declaration shall be consistent in quality with the overall Development Plan for the Association Area and shall be of such quality and character as will serve the purposes and objectives for which this Declaration has been established, as determined by Declarant in its sole discretion. Any lien arising from ownership or construction upon real estate added to this Declaration shall affect only such real estate and Improvements located thereon and shall not affect the rights of existing Owners or the priority of any security interest holders.

Upon recordation of a Supplemental Declaration for Annexed Property within the Project Area, such Annexed Property shall thereupon, automatically and without any further action by any other party, be a part of the Association Area and thereafter be subject to the covenants and restrictions and other provisions set forth in this Declaration, for the duration thereof. Until a Supplemental Declaration for Annexed Property within the Project Area is recorded, such Annexed Property shall not be subject to this Declaration, none of the covenants and restrictions in this Declaration shall affect, encumber, apply to or constitute a lien upon title to such Annexed Property, and the Owner of such Annexed Property shall not, by virtue of such ownership, be entitled to any of the rights and benefits to which members of the Association are entitled pursuant to this Declaration.

Section 9.4 No Annexation Required; Reduction of Project Area; Withdrawal of Annexed Property. Notwithstanding any other provision of this Declaration to the contrary, nothing in this Declaration shall be construed to obligate Declarant to make the Project Area or any portion thereof subject to this Declaration. Declarant expressly reserves the right, in its sole discretion, to determine not to make the Project Area or any portion thereof subject to this Declaration. The Project Area may, in Declarant's sole discretion, from time to time be reduced to delete any portion of the Project Area (which has not theretofore been made a part of the Association Area), provided that Declarant is the Owner of such portion, effective upon the recordation of a written instrument, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion shall thereafter be deleted from the Project Area under this Declaration. Additionally, Annexed Property within the Association

  
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Area may be withdrawn from the Association Area and from this Declaration for any reason, including correction of a surveyor error or other technical or clerical error. Such withdrawal may be accomplished by the execution, acknowledgment and recordation of a notice of withdrawal; provided that no vote has then been cast with respect to the Annexed Property to be withdrawn, and no Assessments have then commenced with respect to the Annexed Property to be withdrawn. The notice of withdrawal (a) shall be executed and acknowledged by the Owner of the Annexed Property; (b) shall, if the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant has the power to annex additional property to the Association Area; (c) shall contain an adequate legal description of the Annexed Property; (d) shall contain a reference to the Supplemental Declaration for the Annexed Property, which reference shall state the date thereof, the date of Recordation thereof and the book and page of the records in the offices of the Clerk and Recorder for Broomfield, where the Supplemental Declaration was recorded; and (e) shall contain a statement and declaration that the Annexed Property is withdrawn from the Association Area and from the effect of this Declaration and the Supplemental Declaration for the Annexed Property. The withdrawal shall be effective upon filing for record of the notice of withdrawal. Nothing herein shall be interpreted to prohibit later annexation of any Annexed Property so withdrawn.

Section 9.5 Consent of Owners/holders of Security Interest. The consent of Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the Real Property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 9.6 Recording of Amendments to the Declaration and the Map or Plat. The recording of amendments to the Declaration and the map or plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically: (i) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Unit; and (ii) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration plat or map. Reference to the Declaration plat or map in any instrument shall be deemed to include all Amendments to the Declaration, plat and map without specific reference thereto.

Section 9.7 Other Additions of Units to the Community. In addition to Declarant's rights under Section 9.1 above, additions of Units to the Community may be made by persons other than Declarant, upon approval of the Association pursuant to a majority vote of the Board. Such approval shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, recorded in the real property records of the appropriate county.

Section 9.8 Development of the Community – Supplemental Declarations. Before or after portions of the Real Property are conveyed by Declarant or a Builder to Owners other than Declarant or a Builder, a Supplemental Declaration for such portions may be recorded which may supplement the covenants, conditions and restrictions contained in this Declaration, as provided for above. Upon recordation of a Supplemental Declaration, the property covered thereby shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration.

(a) Supplemental Declarations must meet or include the following criteria:

(i) The Supplemental Declaration must be executed and acknowledged by the Owner of that portion of the Project Area covered by the Supplemental Declaration;

(ii) If the Real Property described in the Supplemental Declaration is not then owned by Declarant and provided that the Period of Declarant Control has not expired, the Supplemental Declaration must contain the executed and acknowledged written consent of Declarant;

(iii) The Supplemental Declaration must include a reference to this Declaration, stating the date of recordation and the book and page numbers or reception number for this Declaration;

(iv) The Supplemental Declaration must contain an adequate legal description of the property subject thereto;

(v) The Supplemental Declaration must include a statement that this Declaration shall apply to the added land set forth therein; and

(vi) The Supplemental Declaration must contain initial use designations, if any, of the Units.

(b) A deed by which Declarant conveys a parcel of property to another person may constitute a Supplemental Declaration if it meets the foregoing requirements.

(c) Supplemental Declarations may impose, on the portion of the Project Area affected thereby, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in this Declaration, taking into account the unique and particular aspects of the proposed development of the property covered thereby. A Supplemental Declaration shall create a Common Interest Community pursuant to the Act, if so required by the Act; and if so required by the Act, any such Supplemental Declaration shall provide for a Local Association within the applicable property, and for the right of the Local Association to assess such Owners.

Section 9.9 Declarant's Rights to Complete Development of Project Area. No provision of this Declaration shall be construed to prevent or limit Declarant's right, and Declarant expressly reserves the right, to complete the development of property within the



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boundaries of the Project Area and to construct or alter Improvements on any property owned by Declarant within the Project Area.

Section 9.10 Phasing of Development Rights. No assurances are made by the Declarant regarding the Development Rights and Special Declarant Rights reserved as to whether the Declarant will exercise its Development Rights and Special Declarant Rights or the order in which such portions, or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

Section 9.11 Rights Transferable. Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Broomfield. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 9.12 Interference with Special Declarant Rights. Neither any Builder, the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Development Right or Special Declarant Right without the prior written consent of the Declarant.

Section 9.13 Construction; Declarant's Easement. The Declarant and each Builder reserve the right to perform warranty work, and repairs and construction work on Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed without the consent or approval of the Board.

The Declarant and each Builder has an easement through each Unit and the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development Rights or Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities or metropolitan or special improvement districts, the State, riparian owners or upland owners to fulfill the plan of development.

Section 9.14 Declarant's Personal Property. The Declarant for itself and each Builder reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Common Elements that is owned by them and has not been represented as property of the Association. The Declarant for itself and each Builder reserves the right to remove from the property any and all goods and improvements owned by them and used in development, marketing and construction, whether or not they have become fixtures.

Section 9.15 Reciprocal Easements. If all or part of the Project Area is not submitted to this Declaration, or if property is withdrawn or de-annexed from the Community ("**Withdrawn Property**");

(a) The Owners of the Project Area and Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Community; and





(b) The Owners in the Community shall have whatever easements are necessary or desirable, if any, consistent with development and improvement of any Project Area or Withdrawn Property, for access, utility service, repair, maintenance and emergencies over and across the Project Area and Withdrawn Property.

Within a reasonable time after exercise of any such easement, Declarant shall prepare and record in the office of the Clerk and Recorder of Broomfield whatever documents are necessary to evidence such easements and shall amend this Declaration to include reference to the recorded easements. Such recorded easements shall specify that the Owners of the Project Area and the Withdrawn Property and the Owners in the Community shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easements. Preparation and recordation by Declarant of an easement pursuant to this Section shall exclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

#### ARTICLE 10 ARCHITECTURAL CONTROL

Section 10.1 Required Approval. The initial construction of a building or any other Improvements on a Unit must first be submitted to and approved in writing by the Architectural Control Committee, which Committee must insure that each submittal meets, at a minimum, any and all requirements of the Development Plan. During the Period of Declarant Control, the Architectural Control Committee shall perform all of the duties and functions provided under this Article 10. Once the Period of Declarant Control terminates, the Architectural Control Committee shall delegate all of its duties and functions provided under this Article 10 to the residential Local Association for all properties subject to a residential subdeclaration and shall delegate all of its duties and functions provided under this Article 10 to the commercial Local Association for all properties subject to a commercial subdeclaration.

In addition to the requirement stated above that all submittals meet any and all requirements of the Development Plan, except as set forth in Section 10.2 below, any and all changes to the exterior of any building (after initial installation or construction) or a Unit that meet any of the criteria listed below must first be submitted in writing to and approved in writing by the Architectural Control Committee:

- (a) the Improvement increases the gross interior square footage of a building;
- (b) the addition of any exterior decks, balconies or other additions more than 30 inches above the ground floor of a building;
- (c) the Improvement effects a substantial change or alteration to the architectural style and character of a building including, without limitation, to exterior appearance, finish material, color or texture, in the opinion of the Architectural Control Committee;
- (d) the addition of an accessory or additional structure to the Unit;

- (e) the Improvement results in a substantial change to the roof plane or lines of a building;
- (f) the demolition or destruction by voluntary action of any building, structure or other Improvement;
- (g) the installation or modification of any landscaping;
- (h) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, or change of drainage pattern;
- (i) changes in the exterior color or texture of the building; and
- (j) changes in zoning or use.

Section 10.2 Changes Not Requiring Approval. The following changes to the exterior of the Improvements or a Unit are not required to be approved by the Architectural Control Committee:

- (a) repainting the exterior of a building in the same color and texture; or
- (b) a deck or patio at ground level of the Improvements that is less than 30 inches above the ground floor of a building that does not encroach upon any setbacks or easements.

Section 10.3 Action of the Architectural Control Committee. The Architectural Control Committee may require that applications of Owners be accompanied by payment of a fee for processing of the application with required submittal items (which may include plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors showing exterior design, height, materials, colors, location of the proposed and existing Improvements (plotted horizontally and vertically)), as well as such other materials and information as may be required by the Architectural Control Committee, including, but not limited to, evidence of Governmental Approvals (as defined hereafter). The Architectural Control Committee may require the submission of additional plans, specifications or other information prior to approving or disapproving the change. The Architectural Control Committee may also require a construction compliance binder deposit in its sole discretion, depending on the scope of the submission. Until receipt by the Architectural Control Committee of all required materials in connection with the proposed improvement to the property, the Architectural Control Committee may postpone review of any materials submitted. Additionally, if the applicant Owner is in default hereof or is not current in the payment of any and all Assessments, any review shall be suspended until such default is cured and payment of any and all Assessments is current. The Architectural Control Committee shall exercise its reasonable judgment to the end that all renovations, remodels, additions and changes subject to regulation of this Declaration shall comply with the requirements of this Declaration, the Development Plan and any Design Criteria adopted as provided for in this Declaration. The Architectural Control Committee shall approve any proposed improvement to the Real Property only if it deems in its reasonable discretion that the change to the property meets the criteria set



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forth herein. Decisions of the Architectural Control Committee shall be conclusive and binding on all interested parties, subject to the right of an Owner to appeal to the Board, as provided for in this Declaration. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Units, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration and/or the Development Plan. Any denial shall be in writing and shall set forth the basis for the denial. The Architectural Control Committee may condition its approval of plans and specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The Architectural Control Committee may consider and review any and all aspects of construction, construction of other improvements and locations, quality and quantity of landscaping, and may disapprove aspects thereof which may, in the opinion of the Architectural Control Committee, adversely affect the living, work, or other environment or enjoyment of one or more Owners or of the general value of property within the Community. The Architectural Control Committee is also permitted to consider technological advances in design, materials and construction and such design, materials and construction may or may not be permitted in accordance with the opinion of the Architectural Control Committee.

Section 10.4 Establishment of the Architectural Control Committee. The Architectural Control Committee initially shall consist of up to five members. Declarant shall have the continuing right to appoint all members during the Architectural Control Committee Appointment Period. The Board shall have the right to appoint such members after the end of the Architectural Control Committee Appointment Period. The "**Architectural Control Committee Appointment Period**" shall mean the period of time commencing as of the date of recordation of this Declaration and continuing until the earliest to occur of the following events: (i) when all Units which may be created in the Community have been conveyed to persons other than Declarant and certificates of occupancy have been issued for the Improvements constructed thereon; (ii) 40 years after the date that this Declaration is recorded, or (iii) when, in its discretion, Declarant voluntarily relinquishes such right. Members of the Architectural Control Committee may, but shall not necessarily be, members of the Association. After the Architectural Control Committee Appointment Period, members of the Architectural Control Committee may be removed at any time by the Board, and shall serve for such term as may be designated by the Board, or until resignation or removal by the Board. During the Architectural Control Committee Appointment Period, Declarant shall give the Association notice of the appointment or removal of any member of the Architectural Control Committee. After the Architectural Control Committee Appointment Period, the Board may, at any time and from time to time change the authorized number of the members of the Architectural Control Committee, but the number of members of the Architectural Control Committee shall not be less than three. A majority of the Architectural Control Committee shall constitute a quorum of the Architectural Control Committee, and a majority of the Architectural Control Committee members present at any meeting where a quorum is present shall be required for Architectural Control Committee action. The Board may, from time to time, adopt, promulgate, amend or otherwise revise the Design Criteria, or any other standards, rules and regulations and procedures governing Architectural Control for the purposes of:

(a) Further enhancing, defining, or interpreting what items or improvements are covered by this Article 10; and

(b) Providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the Board deems to be proper, necessary or in the best interests of the Community; provided that neither the Board nor the Architectural Control Committee in its review or approval of any application, will be deemed to be giving any opinion, warranty or representation as to compliance with any of the foregoing.

Any guidelines, standards, rules and regulations, procedure or amendment thereto, shall apply to construction, additions, modifications, installations or items placed on a Unit occurring after the date such guidelines, standards, rules and regulations, procedures or amendments are published or otherwise made available to all Owners.

Section 10.5 Architectural Control by Local Associations or Subcommittees.

(a) The Architectural Control Committee shall have the right, at its sole option, to delegate its rights and obligations under this Article 10 to any subcommittee of the Architectural Control Committee or to any Local Association with respect to the Units over which that Local Association has jurisdiction. Any such delegation may be revoked at any time.

(b) Nothing in this Article 10 shall prohibit any Architectural Control committee established pursuant to a Sub-association Declaration from requiring its approval, in addition to that of the Architectural Control Committee, of any improvements or alterations installed or constructed on a Unit, and adopting design criteria that are different or more stringent than the Design Criteria adopted by the Architectural Control Committee.

Section 10.6 Design Criteria. The Architectural Control Committee may propose written design guidelines, criteria, rules, standards, and procedures to be approved by the Board (collectively, "**Design Criteria**") from time to time, which Design Criteria shall be deemed included in any Rules and Regulations adopted by the Association. The Design Criteria shall not be inconsistent with the provisions of this Declaration or the Development Plan, and if there are any inconsistencies, the provisions of this Declaration and the Development Plan shall control.

Section 10.7 Reply and Communication. The Architectural Control Committee shall reply in writing to all submittals of plans made in accordance with this Article, within 30 days after the completion of submittals or presentation of them to the Architectural Control Committee at one of its meetings, whichever occurs later, the Architectural Control Committee shall respond in writing in one of the following ways: (a) approval as submitted; (b) approval with conditions; (c) deferral of action pending receipt and review of further information required by the Architectural Control Committee; or (d) disapproval. If no action is taken, it shall be deemed that the Architectural Control Committee has deferred its action. Subject to the provisions of this Article 10, the decision of the Architectural Control Committee shall be final on all matters submitted to it pursuant to this Declaration. All communications and submittals shall be addressed to the Architectural Control Committee at such address as the chairman of the Architectural Control Committee may designate.



Section 10.8 Variances. The Architectural Control Committee may grant reasonable variances or adjustments from the Design Criteria or from any conditions and restrictions imposed by this Article in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the Design Criteria or such other conditions and restrictions. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Units or Common Elements, nor deviate substantially from the general intent and purpose of the Design Criteria or this Declaration. No variance or adjustment granted by the Architectural Control Committee shall be deemed to apply to any other building, Person, improvement or Unit, other than the applicant. Each variance or adjustment will be considered on a case-by-case basis and each Owner, by acceptance of title to a Unit, agrees and acknowledges that no variance or adjustment granted by the Architectural Control Committee shall be construed to establish precedent in favor of an Owner submitting a similar request for a variance or a adjustment.

Section 10.9 Appeal Rights of Owners. Subsequent to the Architectural Control Committee Appointment Period, if any application of an Owner is disapproved by the Architectural Control Committee, then the applicant shall have the right of appeal to the Board. In considering the appeal, the Board shall only overturn the Architectural Control Committee decision if the Board determines that the Architectural Control Committee abused its discretion or acted in an arbitrary or capricious manner. The decision of the Board shall be final.

Section 10.10 No Deemed Waivers. No action or failure to act by the Architectural Control Committee or by the Board, shall constitute a waiver or estoppel with respect to future action by the Architectural Control Committee or the Board, with respect to any improvement to property. Specifically, the approval by the Architectural Control Committee of any improvement to property shall not be deemed a waiver of any right or an estoppel to withholding approval or consent for any similar improvement or property or any similar proposals, plans, specifications or other materials submitted with respect to any other improvement to property.

Section 10.11 Limitation in Liability. The Architectural Control Committee and the members thereof, as well as any representative of the Architectural Control Committee designated to act on its behalf, shall not be liable in damages to any Person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under this Declaration. The Architectural Control Committee shall not be responsible for structural, engineering or any other defects in plans approved or for violations of any building or zoning code or other land use regulations.

Section 10.12 Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any Owner during reasonable business hours.

Section 10.13 Enforcement of this Article.

(a) Any improvement to a Unit made in violation of this Article or of the Design Criteria shall be deemed to be nonconforming. Should the Architectural Control Committee determine that any improvement has been done without approval or was not done in



substantial compliance with the description and materials furnished (regardless of how long ago the improvement was completed), and any conditions imposed, or was not completed with due diligence, the Architectural Control Committee, acting on behalf of the Association, shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance. Upon receipt of any such notice, the Owner of the Unit upon which such improvement is made shall, at such Owner's own cost and expense, remove such structure or improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming improvement. Should the Owner fail to take such action within the time specified in the notice of noncompliance, the Association shall have the right to record a copy of such notice of noncompliance in the office of the Clerk and Recorder for the county in which the Unit is located. Further, the Association shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as an Assessment. The provisions of this Section shall be in addition to all other legal and equitable remedies the Association shall have.

(b) In addition to the enforcement rights of the Association set forth above, the Architectural Control Committee shall have the right, but not the obligation, to institute, maintain and prosecute proceedings in law or equity against the person or persons violating or attempting to violate any of the terms and provisions of this Article 10. In any action instituted or maintained under this Article, the Architectural Control Committee, shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Architectural Control Committee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(c) Upon completion of the Improvements to the property, the Owner shall give written a notice of completion to the Architectural Control Committee. Until the date of receipt of a notice of completion, the Architectural Control Committee shall not be deemed to have notice of completion of such improvement to property.

(d) The Architectural Control Committee or its duly authorized representative shall have the right to inspect any improvement to property prior to or after completion; provided that the right of inspection shall terminate 60 days after the Architectural Control Committee receives a notice of completion from the Owner.

Section 10.14 Compensation of Members. The members of the Architectural Control Committee may, at the sole discretion of the Board, be entitled to reasonable compensation for services rendered, together with reimbursement for expenses incurred by them in performance of their duties. Any decision to provide such compensation may be determined and memorialized in writing by formal action of the Board.

Section 10.15 Indemnification. To the full extent permitted by law, each member of the Architectural Control Committee shall be and is hereby indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such member in any proceeding to which such member may be a party, or in which such member

may become involved, by reason of being or having been a member of the Architectural Control Committee, whether or not such member is a member of the Architectural Control Committee at the time such expenses are incurred. This indemnification shall not apply to cases where such member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In addition, in the event of a settlement, the indemnification shall apply only when the Association approves such settlement and reimbursement as being in the best interests of the Architectural Control Committee.

Section 10.16 Address. The address of the Architectural Control Committee shall be the address of the Association.

Section 10.17 Obtaining Governmental Approvals. Owner shall obtain, prior to commencement of construction of any improvements to property, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("**Governmental Approvals**") in order for Applicant to construct, operate and maintain the improvements to property. The Governmental Approvals shall be deemed to include, but not be limited to, building approvals by Broomfield.

Section 10.18 Committee Guidelines or Rules. The Architectural Control Committee may issue guidelines or rules relating to the procedures, materials to be submitted, design requirements or standards and additional factors which will be taken into consideration in connection with the approval of any proposed improvement. The guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances or for other reasons determined by the Architectural Control committee. The guidelines or rules may waive the requirement for approval of certain improvements or exempt certain improvements from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

## ARTICLE 11 GENERAL PROVISIONS

### Section 11.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce applicable covenants in this Declaration against another Owner. The Board may initiate a proceeding at law or in equity to enforce the provisions of this Declaration, to prevent a violation or to obtain damages (for damage to the Common Elements or otherwise) resulting from the violation, or may otherwise enforce the provisions of this Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:



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(i) imposing reasonable monetary fines (after notice and opportunity for a hearing before the Board, to the extent required by applicable law), which fines shall constitute a lien upon the violator's Unit;

(ii) suspending the right of an Owner to vote (after notice and an opportunity for a hearing before the Board, to the extent required by applicable law);

(iii) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any Assessment or other charge owed to the Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its expense, to remove any structure or Improvement on that Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition, and upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, and any such action shall not be deemed a trespass;

(vi) levying specific Assessments, including, but not limited to, a Reimbursement Assessment, to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

(vii) accelerating the due date of any Assessment that would otherwise have been payable in installments.

(c) In addition, the Association, acting through the Board, may take the following enforcement procedures to ensure compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of any parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) In addition to any other enforcement rights, if an Owner fails to properly perform its maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Reimbursement Assessment. If a Local Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs against the Local Association as a Reimbursement Assessment. The Association shall provide the Owner or Local Association, as applicable, with reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.



(e) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action. The amount of any such fees and court costs shall constitute a lien against the Owner's Unit that may be foreclosed in accordance with Article 6 above and shall be a Reimbursement Assessment against such Unit.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion. Such a decision shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 11.2 Joint Right to Enforce Junior or Subordinate Covenants. The Association, after first giving written notice to any governing Local Association or applicable or appropriate committee, if any, shall have the right to enforce, by any proceeding at law or in equity, all subordinate or junior restrictions, conditions, covenants, reservations, rules, regulations and architectural guidelines, now or hereafter imposed by the provisions of any subordinate or junior covenants, protective covenants, declaration, rules, regulations or guidelines on all or any portion of a Unit in this Community (including covenants for the payment of Assessments established in such subordinate or junior declaration if expressly permitted or delegated). Further, the Association shall be entitled to enjoin any violation thereof, to cause any such violation to be remedied, or to recover damages resulting from such violation or incurred to remedy such violation. In addition, violation of any such condition, covenant, restriction, reservation, rule, regulation or guideline shall give to the Association the right to enter upon the portion of the Unit wherein said violation or breach exists and to summarily abate and remove, at the expense of the violator, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the applicable provisions of such subordinate or junior governing documents. No such entry by the Association or its agents shall be deemed a trespass, and the Association and its agents shall not be subject to liability for such entry and any action taken to remedy or remove such a violation. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on the violator. Further, the Association shall have the right, power and authority to establish and enforce penalties or monetary charges for violations of any subordinate or junior declaration, rules, regulations and architectural guidelines, and such penalties and monetary fines shall be a binding personal obligation of any violators. In any legal or equitable proceeding for the enforcement of such provisions, whether an action for damage, declaratory relief or injunctive relief, or any other action, the party prevailing in such action shall be awarded to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees. The prevailing party shall be awarded to said attorneys' fees even though said proceeding may be settled prior to judgment. Failure by the Association to enforce any covenant or restriction contained in any subordinate or junior governing documents shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.3 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Declaration.

Section 11.4 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and nonexclusive.

Section 11.5 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration that can be given effect without the invalid provisions or applications.

Section 11.6 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the Real Property in perpetuity.

Section 11.7 Amendment of Declaration, Map or Plat by Declarant. Until the first Unit has been conveyed by a Builder or by Declarant to an Owner other than Declarant or a Builder, by deed recorded in the real property records of the appropriate county, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration, the Exhibits of this Declaration, or the map or the plat may be amended by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment. Thereafter, if Declarant shall determine that any amendments shall be necessary in order to make nonmaterial changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of 40 years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 11.8 Amendment of Declaration by Owners. Except as otherwise expressly provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, repealed, added to, or changed by the addition of new or different covenants, conditions or restrictions at any time and from time to time upon approval of:

- (a) Owners of Units to which more than 50% of the votes in the Association are allocated (or such higher percentage as may be required by the Act and:
  - (i) at least 51% of the votes from the Owners of the Residential Units; and
  - (ii) at least 51% of the votes from the Owners of the Commercial Units; and



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(iii) at least 51% of the votes from the Owners of any other class of Unit, as such classes may subsequently be established by Declarant, if any, and

(b) with the written consent of the Association.

An amendment or repeal shall be effective upon the recordation, in the real property records of all counties of which the Community is a part, of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 11.9 Amendment Required by Mortgage Agencies. Prior to 40 years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration that an Agency or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the real property records of all counties of which the Community is a part, of a certificate setting forth the amendment or repeal in full.

Section 11.10 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving Development Rights or Special Declarant Rights or for the benefit of Declarant, or the assignees, shall not be effective unless Declarant, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate upon the expiration of the Period of Declarant Control.

Section 11.11 No Liability for Condition of the Real Property/Nuisances/Hazards Associated with Adjacent Lands. By purchasing a Unit, each Owner hereby acknowledges that the Unit may be located adjacent to or in relatively close proximity to a golf course and other non-residential uses (hereafter collectively the "**Adjacent Properties**") and further the Unit may be built on land affected by amendment to the land or soil conditions (including expansive soils corrections) resulting from construction, engineering, grading, and soil preparation. Owners hereby recognize and assume the risks of owning property adjacent to or within relatively close proximity to the Adjacent Properties and the risks of the condition of the land and soils. Such risks include, without limitation: (i) expansive soils conditions and drainage issues on or under the Real Property and (ii) injury to person and property arising out of, or resulting from, the operation, maintenance and use of the Adjacent Properties, noise associated with the Adjacent Properties, errant golf balls and other golf related equipment, trespass, acts or omissions of persons using or otherwise on the golf course, and the existence of water hazards, ponds, and lakes on or near the golf course, noise, odors, and attractive nuisances to children (all of the above being collectively referred to as the "**Property Risks**"). Neither the Association, Declarant, nor their respective members, managers, officers, directors, employees, committees, independent contractors, agents, successors, and assigns shall be liable to any Owner, tenants, guests, invitees, servants, agents or employees for any personal injury or property damage: resulting from the Property Risks. By virtue of taking title to a Unit subject to this Declaration,

each Owner for itself and its heirs, personal representatives, executors, tenants, successors, assigns, invitees and licensees does hereby: (i) assume the risk of loss, injury or damage to property or persons resulting from the Property Risks; (ii) agree to obtain such policies of insurance as may be necessary to insure such Owner, its tenants, guests, invitees, servants, agents or employees from injury or damage to property or person resulting from the Property Risks; (iii) release, remise, hold harmless and discharge the Association and the Declarant, and their respective members, managers, officers, directors, employees, independent contractors, agents, successors, and assigns from any liability for any personal injury or property damage resulting from the Property Risks, including, without limitation, arising from the negligence of the Association's and Declarant's, agents, contractors, subcontractors, employees, officers, successors, assigns, guests, or invitees, and (iv) indemnify (including the payment of reasonable costs and attorneys' fees) the Association, Declarant, and their respective members, managers, officers, directors, employees, independent contractors, agents, successors, and assigns (the "**Benefitted Parties**") of and from any claims, actions, suits, demands and compensations, either at law or in equity, against the Benefitted Parties for or on account of any damage, loss, or injury either to person or property, or both, resulting directly or indirectly from the Property Risks.

Section 11.12 Right to Notice and Comment. Pursuant to the Act and under other circumstances as set forth in the Act or this Declaration, where the Act or this Declaration requires that an action be taken after "Notice and Comment," and at any other time the Board determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing.

Section 11.13 Validity of Amendments. As provided by the Act, any action to challenge the validity of an amendment of this Declaration must be brought within one year after the amendment is recorded in the real property records of all counties of which the Community is a part.

Section 11.14 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community, its physical condition, zoning, compliance with applicable laws, fitness for intended use, 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.

Section 11.15 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 11.16 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.17 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.18 Metropolitan District. The Metropolitan District has been formed to



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own, lease or to hold interests in, and to improve, certain real property, some of which may be located within the Property. To the extent reasonable and desirable, Declarant or the Association may, but shall not be obligated to, contract with the District for the provision of services either to or by the District for the benefit of the Property, and Declarant or the Owners Association may cooperate with the District on matters of common interest. Declarant or the Owners Association may agree with the District to treat property owned by the District as Common Elements, and in such event, Declarant or the Owners Association may maintain and operate such property as if it were Common Elements under this Declaration and assess the Owners for the costs thereof. Any such agreement shall be in writing and shall have a definite term. To the extent that such a conveyance may further the common interests and purposes of Declarant or the Owners Association and the District, Declarant or the Owners Association may lease or convey Common Elements or an interest in the Common Elements to the District, provided that such a conveyance shall provide for reversion of such property to Declarant or the Owners Association at such time as the District is dissolved or ceases to use such property for District purposes.

Section 11.19 Exclusive Use. Declarant has granted The Children's Hospital Association, Inc. the exclusive right to operate their property as a medical campus and agrees that no other land within the Real Property shall contain buildings solely devoted to medical uses and containing solely tenants engaged in medical uses.

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Exhibit A

(Legal description and illustration of Project Area for Palisade Park)

PALISADE PARK FILING NO. 1, FINAL PLAT, CITY AND  
COUNTY OF BROOMFIELD, STATE OF COLORADO,  
CONTAINING APPROXIMATELY 154.792 ACRES.



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**Exhibit B**

**(Legal Description of Real Property Initially Submitted to this Declaration)**

PALISADE PARK FILING NO. 1, FINAL PLAT, CITY AND  
COUNTY OF BROOMFIELD, STATE OF COLORADO,  
CONTAINING APPROXIMATELY 154.792 ACRES.