

**AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PINNACLE CONDOMINIUMS**



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CONDOMINIUM DECLARATION
OF
PINNACLE

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Exhibits:

- Exhibit A** - Community
- Exhibit B** - Allocated Interests and Undivided Interests
- Exhibit C** - Certain Title Exceptions
- Exhibit D** - Part of Annexable Area
- Exhibit E** - Outlot A

**AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PINNACLE CONDOMINIUMS**

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION OF PINNACLE, is made and entered into by BOULDER CREEK PINNACLE LLC, a Colorado limited liability company ("Declarant," as hereinafter more fully defined).

WITNESSETH:

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

WHEREAS, Declarant desires to subject and place upon the Community certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein for the purpose of furthering a plan for the Improvement, sale and condominium ownership of the Community; and

WHEREAS, Declarant executed and caused to be Recorded the Condominium Declaration for Pinnacle Condominiums, recorded January 3, 2014, under Reception No. 03360525, of the Records of the Office of the Clerk and Recorder of Boulder County, Colorado, and the Amended and Restated Condominium Declaration for Pinnacle Condominiums, recorded March 20, 2014, under Reception No. 03371198, of the Records of the Office of the Clerk and Recorder of Boulder County, Colorado (collectively, the "Original Declaration"); and

WHEREAS, Declarant is the owner of all of the property described on Exhibit A and the owner of all of the Annexable Property; and

WHEREAS, Declarant has not conveyed any Units to any Person; and

WHEREAS, Declarant desires to amend and restate the Original Declaration as set forth herein; and

WHEREAS, this Declaration is intended to supersede the Original Declaration in its entirety.

NOW, THEREFORE, Declarant hereby declares that all of the property described on the attached Exhibit A, as supplemented and amended (including by all annexations to this Declaration), shall be held, sold, and conveyed subject to CCIOA, and subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth in this Declaration.

ARTICLE 1. DEFINITIONS

Section 1.1. Agencies.

"Agencies" means the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development, including the Federal Housing Administration ("FHA"), the Veterans Administration ("VA") or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 1.2. Allocated Interests.

"Allocated Interests" means the Assessment liability and votes in the Association allocated to each Unit, and also the undivided interest in the Common Elements appurtenant to each Unit, as provided on Exhibit B attached hereto and incorporated herein by this reference. The Allocated Interest of each Unit shall

be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units within the Community at such time. The Allocated Interest of each Unit which is included in the property described on the attached Exhibit A will become a "Unit" under this Declaration upon Recording of a Condominium Map that includes such Unit. However, the Allocated Interest for each Unit is subject to change as provided in this Declaration, including a decrease in the Allocated Interests of each Unit upon the annexation of additional property to this Community.

Section 1.3. Annexable Area.

"Annexable Area" means the property described on Exhibit E attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant may elect. Unless and until the Annexable Area, or any portion thereof, is annexed to this Declaration, and not withdrawn, such property shall not be subject to this Declaration or any provision hereof, except the right of annexation by the Declarant that is provided for in Section 1.4 of this Declaration.

Section 1.4. Assessment.

"Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Section 4.1 and Section 4.8 through Section 4.17, inclusive, of this Declaration, "Assessment" means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other amounts which are provided for in this Declaration.

Section 1.5. Association.

"Association" means Pinnacle Condominium Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Association is a community association as provided in CCIOA.

Section 1.6. Board of Directors or Board.

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and Bylaws of the Association to act on behalf of the Association.

Section 1.7. CCIOA.

"CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, as amended. Any reference to CCIOA or any provision in CCIOA shall, unless the context requires otherwise, refer to CCIOA or the provision of CCIOA as amended from time to time.

Section 1.8. Common Elements.

"Common Elements" means the totality of:

1.8.1. The real property, other than Outlot A, which is part of the Community; and

1.8.2. The Condominium Buildings (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, flues, roofs, and the mechanical installations of the Condominium Building consisting of the equipment and materials making up any services such as power, light, gas, hot and cold water, heating, air conditioning, exterior lighting and furnaces, including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith), except for the Individual Air Spaces; and

1.8.3. Any sidewalks, walkways, paths, parking areas, landscaping, irrigation systems, and gardens, if any, now or hereafter located in the Community; and

1.8.4. All apparatus, installations and equipment of the Condominium Buildings that exist for the common use of one, some or all of the Owners; and

1.8.5. In general, all other parts of the Community including, without limitation, the Common Elements depicted on the Condominium Map and any items designated as Common

Elements in other provisions of this Declaration, including General Common Elements and Limited Common Elements, and all other parts of the Community necessary or convenient to its existence, maintenance or safety, or normally in common use.

Section 1.9. Community.

"Community" means the real property and Improvements described on the attached Exhibit A, as supplemented and amended (including by all annexations to this Declaration). The Community is a condominium under CCIOA. The name of the Community is Pinnacle Condominiums.

Section 1.10. Condominium Building.

"Condominium Building" means any building (including all fixtures and Improvements therein contained) located in the Community and within which one or more Individual Air Spaces are located.

Section 1.11. Condominium Map.

"Condominium Map" means the condominium map(s) of the Community and Improvements thereon that are subject to this Declaration, and each of which is designated Pinnacle Condominiums, Recorded or to be Recorded. More than one Condominium Map or supplement thereto may be Recorded and, if so, then the term "Condominium Map" collectively means all of such condominium maps and supplements thereto. The Condominium Map shall depict all or a portion of the Community in three dimensions, and shall be executed by a Person who is authorized by CCIOA to execute a declaration relating to this Community. Further, the Condominium Map shall include a certificate executed by a licensed or registered engineer, land surveyor, or architect, stating that all Improvements shown on the Condominium Map have been substantially completed, all structural components of all buildings that contain or comprise any Units are substantially completed, and stating that the Condominium Map contains all the information required by CCIOA Section 38-33.3-209.

Section 1.12. Declarant.

"Declarant" means Boulder Creek Pinnacle LLC, a Colorado limited liability company, and any other Person(s) acting in concert to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

Section 1.13. Declaration.

"Declaration" means this Amended and Restated Condominium Declaration of Pinnacle Condominiums, and any other Recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including the Condominium Map(s).

Section 1.14. Development Rights.

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

- 1.14.1. add real estate to this Community;
- 1.14.2. create or construct Units and/or Common Elements;
- 1.14.3. withdraw property from the Community; and
- 1.14.4. subdivide any Unit(s) and/or convert any Unit(s) to Common Elements.

The Declarant's right to exercise Development Rights shall terminate upon automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights).

Section 1.15. Exterior Improvements.

"Exterior Improvements" means all structures now or hereafter located in the Community, exterior Improvements to any such structures, and any other exterior Improvements made to a Unit or the Common Elements, and any appurtenances thereto or components thereof, of every type or kind, including all landscaping features.

Section 1.16. Extraordinary Action.

"Extraordinary Action" means any one or more of the following:

(1) Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);

(2) Determining not to require professional management if that management has been required by the Governing Documents, a majority of eligible Security Interest Holders or a majority vote of the Members;

(3) Expanding the Association to include land not previously described as additional land which increases the overall land area of the Community or number of Units by more than ten percent (10%);

(4) Abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of Common Elements (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended Common Elements use; (ii) dedicating Common Elements as required by a public authority; (iii) limited boundary line adjustments made in accordance with the provisions of this Declaration or (iv) transferring Common Elements pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association);

(5) Using insurance proceeds for purposes other than construction or repair of insured Improvements; or

(6) Making capital expenditures (other than for repair or replacement of existing Improvements) during any period of 12 consecutive months costing more than twenty percent (20%) of the annual operating budget.

Section 1.17. First Security Interest.

"First Security Interest" means a Security Interest (as hereinafter defined) that has priority of record over all other Recorded liens except those liens made superior by statute (such as general ad valorem tax liens and governmental or quasi-governmental special assessments).

Section 1.18. General Common Elements.

"General Common Elements" means all of the Common Elements except the Limited Common Elements.

Section 1.19. Governing Documents.

"Governing Documents" means this Declaration, the Association Articles of Incorporation, the Association Bylaws, and any rules and regulations, policies and procedures, design guidelines, and other documents, of the Association or the Board of Directors, as well as all supplements, amendments and clarifications.

Section 1.20. Individual Air Space.

"Individual Air Space" means the air space contained within the enclosed rooms occupying part of a floor or floors in a Condominium Building, and bounded by the unfinished interior surfaces of the perimeter

walls (or the adjoining walls, if two or more Individual Air Spaces adjoin each other), unfinished interior surfaces of floors (or the lowermost floors, if it is an Individual Air Space containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, if it is an Individual Air Space containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of a Condominium Building, and which is separately identified on the Condominium Map; provided that if the adjoining wall, ceiling or floor between any two or more Individual Air Spaces is completely or partially removed so as to provide free access between such Individual Air Spaces, the area of each Individual Air Space shall be determined as if such wall, ceiling or floor were in existence, and each such Individual Air Space shall continue to be a separate Unit for purposes of this Declaration.

Section 1.21. *Limited Common Elements.*

"Limited Common Elements" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Units; provided that such use is expressly subject to the terms and provisions of this Declaration. Without limiting the foregoing, the Limited Common Elements shall include: the utility, heating, air conditioning and domestic hot water equipment, audio, visual or telecommunication lines, cables and appurtenances, if any, associated with or providing service to a Unit, including each air conditioning compressor that provides service to one (1) Unit; porches, balconies, patios and decks, if any, as well as any fences and railings surrounding the same, attached or appurtenant to any Unit, as designated on the Condominium Map; and any areas or Improvements, if any, designated as Limited Common Elements on the Condominium Map. The Limited Common Elements shall be used in connection with the applicable Individual Air Space(s) to the exclusion of the use thereof by the other Owners, except by invitation and except as otherwise provided in this Declaration. No reference to any Limited Common Elements need be made in any instrument of conveyance, encumbrance or other instrument (except on the Condominium Map, as noted above). The Limited Common Elements allocated to Units may not be reallocated without the consent of the Owners whose Units are affected and any Security Interest Holders of any such Units. Further, any reallocation of Limited Common Elements between or among Units must be done in compliance with CCIOA.

Section 1.22. *Material Amendment.*

"Material Amendment" means an amendment to this Declaration that adds, deletes or modifies any provision regarding any of the following:

- (1) Assessment basis or Assessment liens;
- (2) Any method of imposing or determining any Assessments or other charges to be levied against Unit Owners;
- (3) Reserves for maintenance, repair or replacement of Common Elements;
- (4) Maintenance obligations;
- (5) Allocation of rights to use Common Elements;
- (6) Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of Improvements on Units;
- (7) Reduction of insurance requirements;
- (8) Restoration or repair of Common Elements;

- (9) The addition, annexation or withdrawal of land to or from the Community;
- (10) Voting rights;
- (11) Restrictions affecting leasing or sale of a Unit; or
- (12) Any provision which is for the express benefit of Security Interest Holders.

Section 1.23. Member.

"Member" means the Owners, collectively, of each Unit and, following termination of the Community, all former Owners entitled to distributions of proceeds under CCIOA, their heirs, personal representatives, successors and assigns. The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Each Unit shall each have one (1) membership and there is only one (1) Member per Unit, even if multiple Owners own such Unit.

Section 1.24. Outlot A.

"Outlot A" means the real property and Improvements described on the attached Exhibit D. The Association shall own the Community Property for the benefit of the Owners. Outlot A is not part of the Common Elements in the Community.

Section 1.25. Owner.

"Owner" means each fee simple title holder of a Unit, including the Declarant or other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation. There may be more than one (1) Owner of a Unit.

Section 1.26. Permittees.

"Permittees" means any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors, of an Owner.

Section 1.27. Period of Declarant Control.

"Period of Declarant Control" means a length of time that terminates no later than the earlier of: sixty (60) days after conveyance of seventy-five percent (75%) of the Units that May Be Created to Owners other than a Declarant; two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or two (2) years after the right to add new Units to the Declaration was last exercised.

Section 1.28. Person.

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

Section 1.29. Records.

"Records" means the official real property records of Boulder County, Colorado; "to Record" or "to be Recorded," means to file for recording in the Records; and "of Record" and "Recorded" means having been recorded in the Records.

Section 1.30. Security Interest.

"Security Interest" means an interest in real estate or personal property in the Community, or any portion thereof, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an

ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.12 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration (General Provisions of Insurance Policies), "Security Interest" shall also mean and refer to any executory land sales contract wherein the administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether such contract is Recorded or not, and whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Boulder County, Colorado, show the administrator as having the record title to the Unit.

Section 1.31. Security Interest Holder.

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.12 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration (General Provisions of Insurance Policies), the administrator of Veterans Affairs, an officer of the United States of America, and his assigns under any executory land sales contract wherein the said administrator is identified as the seller, whether such contract is Recorded or not, whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Boulder County, Colorado, show the said administrator as having the record title to the Unit), or any successor to the interest of any such Person under such Security Interest.

Section 1.32. Special Declarant Rights.

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Rights; to maintain sales offices, construction offices, management offices, signs advertising the Community, and models; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any member of the Board of Directors during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to all or any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time, and no assurances are made as to the boundaries or order of exercise of any such Special Declarant Rights. Such rights shall terminate automatically either seven (7) years after the date of Recording of this Declaration or at such time as Declarant no longer owns any portion of the property described on the attached Exhibits A and D, whichever occurs earlier.

Section 1.33. Unbuilt Units.

"Unbuilt Units" means those Units (as hereinafter defined), owned by an Owner other than Declarant, for which a Certificate of Occupancy, or its equivalent, has not been issued by the applicable governmental authority. "Unbuilt Units" includes those Units which have been destroyed (for example, by fire). However, the "Unbuilt Units" that are referenced in the preceding sentences shall each cease to be an "Unbuilt Unit" when a Certificate of Occupancy, or its equivalent, has been issued on such Unit by the applicable governmental authority.

Section 1.34. Unit.

"Unit" means an Individual Air Space, together with all fixtures and Improvements therein contained and together with the undivided interest in the Common Elements appurtenant to the Individual Air Space (which shall be the Allocated Interest of such Unit). The Units that are to initially be subject to this

Declaration are listed on the attached Exhibit B. However, a Unit shall become a "Unit" under this Declaration only at such time as a Condominium Map is Recorded with respect to such Unit.

Section 1.35. Units that May Be Created.

"Units that May Be Created" means FORTY-FOUR (44) Units, which shall be the maximum number of Units that may be subject to this Declaration, including those Units that may be included if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Units that May Be Created is not a representation or a guarantee as to the actual number of Units that will ultimately be included in or constructed as part of the Community.

ARTICLE 2. MEMBERSHIP AND VOTING RIGHTS

Section 2.1. Membership.

Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Each Unit shall have one (1) membership and there is only one (1) Member per Unit, even if multiple Owners own the Unit.

Section 2.2. Voting Rights.

2.2.1. Each Member shall be entitled to one (1) vote for each Unit owned, except that no votes allocated to a Unit owned by the Association may be cast. The maximum number of votes that may be cast in connection with any matter shall be equal to the total number of Units then existing within the Association.

2.2.2. The Association shall have the right to suspend the voting rights of a Member for any period during which any Assessment against such Member's Unit or any other amounts due from such Member to the Association remains unpaid and, for such period(s) as may be determined by the Board of Directors at any time(s), from time to time, for any infraction of the Governing Documents.

Section 2.3. Material Amendments; Extraordinary Actions.

2.3.1. With respect to any meeting of Members to approve a Material Amendment or Extraordinary Action: (i) at least 25 days' advance notice to all Members is required (at least 7 days' notice is required in the case of a meeting for other purposes); (ii) the notice shall state the purpose of the meeting and contains a summary of any Material Amendment or Extraordinary Action proposed; (iii) the notice shall contain a copy of the proxy that can be cast in lieu of attendance at the meeting; and (iv) the quorum for such a meeting shall be twenty percent (20%) percent of the total number of votes needed to approve the Material Amendment or Extraordinary Action.

2.3.2. Any Material Amendment which changes the rights of any specific class of Members must also be approved by Members entitled to cast at least sixty-seven percent (67%) of the Allocated Interests of all Members of such class present, in person or by proxy, and voting at any meeting of the Association held on the approval of such Material Amendment.

2.3.3. The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the Allocated Interests of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Members other than the Declarant:

- (1) Termination of the Declaration or other termination of the Community;
- (2) Dissolution of the Association except pursuant to a consolidation or merger; and
- (3) Conveyance of all Common Elements.

2.3.4. During the Period of Declarant Control, all Material Amendments and Extraordinary Actions must have the approval of VA, if VA has guaranteed any loans secured by Units in the Community, by FHA, if FHA has guaranteed any loans secured by Units in the Community, or by HUD, if HUD has guaranteed any loans secured by Units in the Community.

ARTICLE 3. ASSOCIATION

Section 3.1. *Association.*

The Association has been or will be formed as a Colorado non-profit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights created by law, as well as those set forth in this Declaration and in its Articles of Incorporation and Bylaws.

Section 3.2. *Board of Directors.*

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

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

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

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

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that May Be Created to Owners other than the Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that May Be Created to Owners other than the Declarant, not less than one-third (1/3) of the directors must be elected by the Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board.

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

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

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

After termination of the Period of Declarant Control, the Members shall elect the Board of Directors. The Board of Directors shall elect the officers. Such directors and officers shall take office upon election.

Section 3.7. Removal and Replacement of Directors; Vacancies.

3.7.1. Any vacancies in the Board of Directors occurring before the first election of a majority of Directors by the Members shall be filled as follows: (i) a Director who was appointed by Declarant shall be appointed by Declarant, and (ii) a Director elected by the Members pursuant to Section 3.4 shall be elected by a vote of the Members at a special meeting called for such purpose; provided, however, that a Director elected or appointed pursuant to this Section shall be elected or appointed only to fill the remainder of the term of the Director creating the vacancy. At the first annual meeting of the Members after termination of the Period of Declarant Control, a majority of the Board of Directors (for example, two (2) Directors of a three (3) Director Board) shall each be elected for a term of (2) years. The balance of the Directors (for example, one (1) Director of a three (3) Director Board) shall be elected for a term of one (1) year. Then, at each annual meeting thereafter the Members shall elect the same number of Directors as there are Directors whose terms expire at the time of such election, to each serve for a term of two (2) years.

3.7.2. Notwithstanding any provision in this Declaration to the contrary, the Members other than Declarant shall be entitled to remove any member of the Board of Directors; except a Director appointed by Declarant, by the affirmative vote of Owners of sixty-seven percent (67%) of the Units not including Declarant.

Section 3.8. Budget and Audit or Review.

3.8.1. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

3.8.2. At the election of the Board of Directors or as required pursuant to Subsections 3.8.2.1 or 3.8.2.2 below, the Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified Person selected by the Board of Directors. Such Person need not be a certified public accountant except in the case of an audit. A Person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

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

(i) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

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

3.8.2.2. A review shall be required only when requested by the Owners of at least one-third (1/3) of the Units represented by the Association.

3.8.2.3. Copies of an audit or review under this Subsection 3.7.2 shall be made available upon request to any Owner beginning no later than thirty (30) days after its completion.

3.8.3. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under this Section 3.7 of this Declaration, this Section 3.7 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

Section 3.9. *Rules and Regulations and Policies and Procedures.*

The Association shall adopt policies consistent with and as required by CCIOA, as the same may be amended from time to time. Additional rules and regulations and policies and procedures concerning and governing the Units, Common Elements, and/or the Community, may be adopted, amended, repealed and/or enforced by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures; provided that, notwithstanding the foregoing, until automatic termination of the Special Declarant Rights as provided in Section 1.32 hereof (Special Declarant Rights), each adoption, amendment and repeal of the rules and regulations or policies and procedures requires the prior, written approval of the Declarant. Such rules and regulations and policies and procedures include all documents of the Association, regardless of the names (or lack thereof). The rules and regulations and policies and procedures may include: procedural requirements; interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications; and covenants, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, including vehicles and animals. Such rules and regulations and policies and procedures may be different for different types or prices of Units, different construction, and/or different Persons. However, no rules and regulations or policies and procedures that are adopted shall be contrary to this Declaration.

Section 3.10. *Association Cooperation and/or Delegation.*

The Association shall have the right and authority to cooperate with, and/or delegate to, any community, condominium, master or homeowners association(s), any metropolitan or other district(s), and/or any other Person(s), in carrying out this Declaration in order to increase consistency or coordination, reduce costs, or as may otherwise be determined by the Board of Directors.

Section 3.11. *Management Agreements and Other Contracts.*

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

Section 3.12. *Merger.*

The Declarant hereby reserves the right to merge the Association with one or more other homeowners, condominium or master associations, all without the approval of any Member or any other Person. This right shall terminate upon automatic termination of the Special Declarant Rights as provided in Section 1.32 hereof (Special Declarant Rights).

Section 3.13. *Compliance with Maintenance Manuals.*

Notwithstanding anything to the contrary, the Board of Directors, acting on behalf of the Association, shall comply with all maintenance manuals, if any, given by the Declarant to the Board of Directors or the Association, regarding maintenance, repair and/or replacement of any portion of the

Community and/or any Improvements therein. Further, the Board of Directors shall cooperate, at no cost or expense to the Association, with all inspections that may be undertaken by, or at the request of, the Declarant, on or with respect to the Community and Improvements therein.

Section 3.14. *Notice of Meetings and Other Matters of the Association.*

Notices of any meetings, newsletters and other correspondence or documents concerning the Association shall be sent to the Declarant at the same time that such notices, newsletters, and other correspondence or documents are sent to the Members. However, the foregoing shall expire upon automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights).

Section 3.15. *Authenticated Electronic Representation.*

Notwithstanding anything to the contrary contained in the Governing Documents, to the extent not prohibited by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

ARTICLE 4. ASSESSMENTS

Section 4.1. *Personal Obligation for Assessments.*

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

Section 4.2. *Purpose of Assessments.*

The Assessments levied by the Association may be used to promote the recreation, health, and welfare of the occupants of the Units, to pay Association expenditures, and for all of those purposes and activities which may be required of the Association or the Board of Directors, or which the Association or the Board of Directors may be empowered to pursue, pursuant to any of the Governing Documents or law.

Section 4.3. *Initial Annual Assessment.*

Until the effective date of an Association budget (proposed by the Board of Directors and not vetoed by the Owners), as provided herein, the amount of the annual Assessment against each Unit shall not exceed TWO HUNDRED TWENTY-FIVE and no/100 Dollars (\$225.00) per Unit per month, exclusive of any amounts due to any other association, any district, and/or any other Person. However, the rate of the Association Assessments against the Unbuilt Units shall be less than that against the other Units, as provided in Subsection 4.4.2 hereof.

Section 4.4. *Rate of Assessments.*

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association, and shall be set against each Unit, other than Unbuilt Units, in accordance with the Allocated Interests. The Association's annual Assessment and special Assessment against Unbuilt Units shall be set as provided in Subsection 4.4.2 of this Declaration.

4.4.2. Notwithstanding the foregoing, the amount of the annual and special Association Assessments against Unbuilt Units shall be set at a lower rate than the rate of annual Association Assessments and special Association Assessments against other Units, because Unbuilt Units receive and benefit from fewer services funded by such Association Assessments than do the other Units. Based on the preceding sentence, Unbuilt Units shall pay annual and special Association Assessments at the rate of fifty percent (50%) of any annual or special Association Assessments charged to Units that are not Unbuilt Units.

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

Section 4.5. *Date of Commencement of Annual Assessments.*

Annual Assessments shall commence at such time as the Board of Directors may determine. After an Association annual budget has been proposed by the Board of Directors and approved by the Owners as provided in Section 3.7, the amount of the annual Assessment per Unit (except as to Unbuilt Units) shall be set in the amount(s) provided in the Association budget for such Assessment. Annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors may determine; provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year.

Section 4.6. *Special Assessments.*

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of sixty-seven percent (67%) of the votes of a quorum of the Association cast by Members voting in person or by proxy at a meeting duly called for this purpose, a special Assessment, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed improvements, or for the funding of any expense or deficit incurred by the Association. Any such special Assessment shall be set against each Unit in accordance with the Allocated Interests set forth in this Declaration, except that the special Assessments against the Unbuilt Units shall be set in accordance with Subsection 4.4.2 of this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.7 hereof.

Section 4.7. *Notice and Quorum for Any Special Assessments.*

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 hereof shall be sent to all Members not less than twenty-five (25) nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.8. Assessments/Charges for Services to Less than All of the Units.

The Association may provide services to less than all of the Units. If such services are not funded by the Association's annual or special Assessments, then the Owner(s) of the applicable Unit(s) shall promptly, after demand, pay to the Association the anticipated costs, fees and expenses for such services and/or reimburse the Association for the incurred costs, fees and expenses.

Section 4.9. Association Funding By Declarant; Loans by Declarant.

The Declarant may, but shall not be required to, cover Association costs, fees, and other amounts that are not the obligation of Declarant under this Declaration or CCIOA, by payment of any amount(s), which shall constitute loans from the Declarant to the Association, with such loan(s) to be repaid by the Association to the Declarant, without interest, as may be determined by the Declarant; provided, however, that any such loans which have not been repaid to the Declarant shall constitute advances against amounts then or thereafter due to the Association from the Declarant. If the Declarant elects to loan any amounts as provided in this Section, Declarant shall not, under any circumstances, be obligated to continue loans, payment or funding of any amount(s) in the future.

Declarant shall be obligated to fund any deficits in the Association's annual budget during the Period of Declarant Control. This obligation shall be a lien on any property owned by Declarant in the Community.

Section 4.10. Lien.

4.10.1. The Association has a statutory lien pursuant to CCIOA on a Unit for any Assessment levied against that Unit and/or the Owner(s) thereof. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as Assessments under this Article. The amount of the lien shall include all those items set forth in this Section, and in the definition of Assessments, from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installments.

4.10.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Unit is located, 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 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. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

Section 4.11. Priority of Association Lien.

4.11.1. A lien under this Article is prior to all other liens and encumbrances on a Unit except:

4.11.1.1. Liens and encumbrances recorded before the recordation of the Declaration;

4.11.1.2. A First Security Interest on the Unit which was recorded before the date on which the Assessment due to the Association became delinquent; and

4.11.1.3. Liens for real estate taxes and other governmental assessments or charges against the Unit.

4.11.2. A lien under this Section is also prior to the First Security Interest described in the preceding Subsection 4.11.1.2 to the extent, if any, provided in CCIOA.

4.11.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts due the Association.

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

Section 4.12. *Certificate of Status of Assessments.*

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments, if any, currently levied against such Owner's Unit. The statement shall be furnished within such times as required by law, and is binding on the Association, the Board of Directors, and every Owner. The Association or its agent shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.13. *Application of Payments; Effect of Non-Payment; Association Remedies.*

4.13.1. Payments received by the Association from or for Owners, shall be applied as determined by the Board of Directors.

4.13.2. Any Assessment or other amounts not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at any lesser rate, if any lesser rate is set by the Board of Directors, and the Board may charge a periodic late charge in such amount(s) and for such period(s) as may be set by the Board. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Unit. The Association shall be entitled to recover, in addition to any other relief obtained, whether or not the Association commences formal legal proceedings, the Association's reasonable costs and attorney's fees, interest and late charges, as provided in this Declaration or other Governing Documents. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.14. *Surplus Funds.*

Any surplus funds of the Association remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be retained by the Association (unless the Board of Directors in any specific case(s) decides otherwise), and such surplus funds are not required to be paid to the Owners or credited to them.

Section 4.15. *Working Capital Fund.*

The Association or Declarant shall require the first Owner (other than Declarant) of any Unit who purchases that Unit from Declarant to make a non-refundable contribution to the Association as working capital in an amount equal to two (2) times the then current monthly installment of the annual Assessment set against such Unit at the time of closing (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Declaration (Date of Commencement of Annual Assessments)). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall be for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase additional equipment, property or services. Such contribution to the

working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due.

Section 4.16. Other Charges.

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such amount(s) as the Board of Directors may determine, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned check charges; charges for telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

Section 4.17. Charges for Misconduct.

If any Association expense is caused by the misconduct of any Owner or his Permittees, as determined by the Board of Directors, the Association may assess that Association expense exclusively against such Owner and such Owner's Unit.

ARTICLE 5. ARCHITECTURAL REVIEW

Section 5.1. No Changes in General Common Elements.

Other than as to the Declarant, the Association (following termination of the Period of Declarant Control) or any Owner (but only as provided in ARTICLE 10 of this Declaration), no Improvements shall be constructed, erected, placed, altered, planted, applied or installed on any General Common Elements.

Section 5.2. Review by Board for Certain Changes.

5.2.1. Except as provided in Section 5.11 (Variance) and Section 5.13 of this Declaration (Declarant's Exemption), no Exterior Improvements shall be constructed, erected, placed, altered, planted, applied or installed on any Limited Common Elements unless complete plans and specifications therefor shall have been first submitted to and approved in writing by the Board of Directors; such plans and specifications shall include such information and materials as may be required by the Board. Further, no Improvements shall be constructed, erected, placed, altered, planted, applied or installed in or on any portion of any Individual Air Space which is visible from outside of such Individual Air Space, unless complete plans and specifications therefor, including such information and materials as may be required by the Board, shall have been first submitted to and approved in writing by the Board of Directors. The Board of Directors shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, landscaping and structures, and do not affect the structural integrity of any Unit or other Improvements. In its review of such plans, specifications and other materials and information, the Board may require that the applicant(s) reimburse the Board for the actual expenses incurred by the Board in the review and approval process. Such amounts, if any, shall be subject to the rights and remedies in ARTICLE 4 of this Declaration that are applicable to Assessments.

5.2.2. The Board of Directors may appoint one or more representatives to act on its behalf. If the Board does so, then the actions of such representatives shall be the actions of the Board, subject to the right of appeal as provided below. However, if such representatives are appointed by the Board, then the Board shall have full power over such representatives, including the power to withdraw from such representatives any or all of such representatives' authority to act on behalf of the Board and the power to at any time remove or replace any or all of such representatives.

5.2.3. Notwithstanding the foregoing and notwithstanding anything to the contrary in this Declaration, until automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights), the Declarant reserves the right to control the

architectural approval process and decisions which might otherwise be made by the Board of Directors regarding matters that are provided for in this Article or elsewhere in this Declaration concerning architectural approval. For example, during the period from cessation of the Declarant's appointment of a majority of the Board of Directors until automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights), decisions on requests for architectural approval shall be made by the Declarant rather than by the Board of Directors (such that the "Declarant" shall be substituted for the "Board" or "Board of Directors," as applicable).

5.2.4. Notwithstanding the foregoing, nothing in this Section is intended to prohibit any Improvement that would otherwise be allowed by CCIOA Sections 38-33.3-106.5, 106.7 and 106.8, provided that the Association shall have the right to architectural approval of all Improvements to the extent permitted by CCIOA.

Section 5.3. *Additional Approvals of Improvements Required.*

In addition to the required approvals by the Board of Directors, as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all entities with jurisdiction thereover, including governmental entities, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permits by the City of Longmont, Colorado, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

Section 5.4. *Procedures.*

The Board of Directors shall decide all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the Board may require in conjunction therewith. If the Board fails to approve or disapprove any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, then the application shall be deemed to have been disapproved.

Section 5.5. *Vote and Appeal.*

A majority vote of the Board is required to decide a request for approval pursuant to this Article, unless the Board of Directors has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Board decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Board upon a request therefor submitted to the Board within ten (10) days after such decision by the Board's representative.

Section 5.6. *Prosecution of Work After Approval.*

After approval of any proposed Improvement by the Board, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application therefor (which length of time may be extended by the Board, in writing), or to complete the Improvement in accordance with the description and materials furnished to the Board and the conditions imposed with such approval, shall constitute a violation of this Article.

Section 5.7. *Inspection of Work.*

The Board of Directors or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article. However, unless the Board expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with the approval therefor, no such

conformance shall be implied from inspection of the Improvement either during the work or after completion thereof.

Section 5.8. *Correction of Noncompliance.*

If the Board of Directors determines that a noncompliance exists, the applicant who sought the Board's approval of the same shall remedy or remove (and return the subject property or structure to its original condition) the same within a period of not more than forty-five (45) days from the date the applicant receives a notice of noncompliance from the Board or its agent. If the applicant does not comply with the Board of Directors' ruling within such period, the Board may, at its option, record a notice of noncompliance against the property on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the applicant shall reimburse the Association, on demand, for all costs and expenses incurred with respect thereto; provided that the Association also has whatever other remedies may be available at law or in equity.

Section 5.9. *Written Records.*

The Board of Directors shall, for such period of time as may be determined by the Board, maintain written records of all applications submitted to it and all actions taken by it thereon and, subject to the Bylaws of the Association, such written records shall be available to Members for inspection at reasonable hours of the business day.

Section 5.10. *Liability.*

Neither the Board of Directors, nor any members thereof, nor any representative of the Board appointed to act on its behalf, shall be liable in damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder. In reviewing any matter, the Board of Directors shall not be responsible for the safety, whether structural or otherwise, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an Improvement by the Board of Directors shall not be deemed an approval of any such matters. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Board of Directors.

Section 5.11. *Variance.*

The Board of Directors may grant reasonable variances or adjustments from any conditions or restrictions imposed by this ARTICLE 5 or ARTICLE 10 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to any other property or Improvements in the Community and shall not militate against the general intent and purpose hereof.

Section 5.12. *Waivers, No Precedent.*

The approval or consent of the Board of Directors, or any representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Board or any representative thereof as to any other application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

Section 5.13. *Declarant's Exemption.*

Notwithstanding anything to the contrary, until automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights), the Declarant shall be exempt from the provisions of this Article.

ARTICLE 6. INSURANCE

Section 6.1. *Insurance.*

The Association shall maintain property insurance, and commercial general liability insurance, in connection with the Common Elements. The Association shall also maintain fidelity coverage, personal liability insurance to protect directors and officers of the Association from personal liability in acting as directors and/or officers of the Association, and workers' compensation insurance, as well as such insurance as may be required by applicable law and applicable regulation, including CCIOA. In addition, the Association may maintain insurance against such other risks, and on such other property, as the Board of Directors may elect.

Section 6.2. *General Provisions of Insurance Policies.*

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest on the Unit insured by such insurance policy. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or Permittee. Further, all policies of insurance carried by the Association shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association. All hazard and flood insurance policies which include any Units must have a standard mortgagee clause and provide for notice to the Security Interest Holder at least thirty (30) days before lapse, material modification or cancellation of the policy.

Section 6.3. *Deductibles.*

The Association may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, may be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, and/or may be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association, all at the election of the Board of Directors; provided that, until automatic termination of the Special Declarant Rights as provided in Section 1.32 hereof (Special Declarant Rights), a deductible, or any portion thereof, may not be apportioned to the Declarant without the prior, written approval of the Declarant. Subject to the foregoing regarding the Declarant: after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners; and, upon said determination by the Association, any such loss, or any portion thereof, may be assessed to the Owner(s) in question and the Association may collect such amount(s) from said Owner(s) in the same manner as any Assessment.

Section 6.4. *Payment of Insurance Proceeds.*

Any loss covered by an insurance policy described in Section 6.1 of this Declaration (Insurance) must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the

Association, Owners and Security Interest Holders as their interests may appear. Subject to Section 7.1 of this Declaration (Damage or Destruction), the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired, restored or replaced and any budget or reserve deficit has been funded, or unless the Community is terminated.

Section 6.5. *Acceptable Insurance Companies.*

Each insurance policy purchased by the Association must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the insurance company's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 6.6. *Insurance to be Maintained by Owners.*

Any insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings and personal property, as well as on other items of personal property and fixtures belonging to an Owner, insurance coverage on interior surface finishes (unless and to the extent the same are insured by the Association), title insurance, public liability insurance coverage on each Individual Air Space, and all other insurance, shall be the responsibility of the Owner of such Individual Air Space.

ARTICLE 7. DAMAGE OR DESTRUCTION

Section 7.1. *Damage or Destruction.*

7.1.1. Any portion of the Community, covered by a policy of insurance that is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association, except as otherwise provided in CCIOA.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units. If the Members vote not to rebuild any Unit (with the written consent of the Owner of such Unit), that Unit's Allocated Interests are automatically reallocated upon the vote, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

Section 7.2. *Use or Distribution of Insurance Proceeds.*

In the event of damage or destruction to all or a portion of the Common Elements, due to fire or other casualty or disaster, the insurance proceeds, if sufficient to repair or replace the damaged areas, shall be applied by the Association to such repair and/or replacement. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and/or replace the damaged or destroyed area(s), the Association shall levy a special Assessment in the aggregate amount of such insufficiency pursuant to Section 4.6 of this Declaration (Special Assessments), but without approval of the Members, and shall proceed to make such repairs or replacements. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any Security Interest Holders of their respective Units. The Assessment provided

for herein shall be a debt of each Owner and a lien on such Owner's Unit and the Improvements thereon, and may be enforced and collected in the same manner as any Assessment provided for in this Declaration.

Section 7.3. *Damage or Destruction of Units.*

If an Individual Air Space shall be destroyed or damaged by fire or other casualty or disaster, then the Owner thereof shall, within a reasonable time thereafter, not to exceed one hundred twenty (120) days after repair or replacement of the Common Elements, including the walls and roof of the Unit, commence and diligently pursue repair and replacement of the Individual Air Space, using any available personal insurance proceeds and personal funds of such Owner.

ARTICLE 8. MAINTENANCE

Section 8.1. *Maintenance and Maintenance Duties.*

Subject to the rights, and obligations, requirements and limitations, of Owners as set forth in this Declaration:

8.1.1. Except as provided in this Declaration, the Association shall be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements (excluding the Limited Common Elements, as provided below), Outlot A, and any other real or personal property owned by the Association, including facilities, furnishings and equipment related thereto, and the Association shall keep the same (except Limited Common Elements, as provided below) in clean, attractive and sanitary condition and order. Without limiting the generality of the foregoing, the Association shall periodically refinish the exterior doors of Units and maintain, repair and/or replace the roofs, gutters, downspouts, decking and balcony material, concrete and exteriors of the Condominium Buildings. Further, the Association shall pay for master-metered water, sewer, gas, and other master-metered utilities and services or facilities in the Community. However, the Association shall not be responsible for the maintenance, repair and/or replacement of exterior doors (except refinishing), window glass, screens, foundations, light bulbs, electrical fixtures, or electrical facilities (such as electric eyes), or Limited Common Elements (including air conditioning compressors that are Limited Common Elements). Finally, the Association may, but shall not have a duty to, provide such other maintenance, repair and replacement as the Board of Directors may determine. The costs, expenses, fees, and other amounts to be expended for the maintenance, repair and replacement that is provided for in this Subsection shall, subject to Section 8.4 of this Declaration (Acts or Omissions), be collected by the Association as Assessments and paid as Association expenses.

8.1.2. The Association shall be exclusively responsible for the management, control, maintenance, repair, replacement and improvement of Outlot A. The Association shall have the right and authority to enter into agreements with third parties, including but not limited to The Pinnacle at Ute Creek Homeowners Association, Inc., for the maintenance, repair, replacement, irrigation, utilities and landscaping of Outlot A and Improvements, utility facilities and other real property, personal property and/or fixtures related or appurtenant to Outlot A. Finally, the Association may, but shall not have a duty to, provide such other maintenance, repair and replacement of Outlot A as the Board of Directors may determine. The costs, expenses, fees, and other amounts to be expended for the maintenance, repair and replacement that is provided for in this Subsection shall, subject to Section 8.4 of this Declaration (Acts or Omissions), be collected by the Association as Assessments and paid as Association expenses.

8.1.3. The extent, degree and timing of snow removal, and of maintenance, repair, replacement and all other matters, that are performed or to be performed by the Association, shall be determined by the Board of Directors. In no event shall the Association, or the Board, be responsible for removal of ice, or repair of damage, or injuries, caused by ice.

8.1.4. Subject to Section 8.4 (Acts or Omissions) and Section 9.2 (Access Basement) of this Declaration, the Owner of each Unit shall be solely responsible for maintaining, repairing and replacing such Owner's Unit, the Improvements therein, and the Limited Common Elements appurtenant to such Unit. The foregoing shall include, without limitation, prompt removal by Owners of ice and snow from their decks and patios, and disposition of such ice and snow in a manner that does not cause danger to other Persons or property. Further, each Owner shall be responsible for exclusive maintenance of all windows, window screens and doors to the Unit (except refinishing of exterior doors), all light bulbs, all electrical fixtures, all electrical facilities, and the air conditioning compressor(s) and associated equipment appurtenant to such Owner's Unit. Each Owner shall keep the Limited Common Elements, or portions thereof, appurtenant to such Owner's Unit, in a clean, sanitary and attractive condition and order, and in good repair.

Section 8.2. *Changed or Added Improvements.*

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

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

In the event any Owner shall fail to perform his maintenance, repair and/or replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a twenty (20) day period after written notice to said Owner by the Board, enter upon said Unit subsequent to the expiration of said twenty (20) day time period to perform any or all of such maintenance, repair or replacement. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair and/or replacement shall be the personal obligation of the Owner of the Unit(s) on which such work is performed, and shall be subject to all of the terms and provisions applicable to Assessments as provided in ARTICLE 4 of this Declaration (Assessments), including, without limitation, interest, late charges and lien rights.

Section 8.4. *Acts or Omissions.*

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

ARTICLE 9. EASEMENTS

Section 9.1. *Other Easements.*

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

Section 9.2. Access Easement.

Each Owner hereby grants: to the Association, its agents, employees and contractors, a right and easement on, over, across and through such Owner's Unit for maintenance, repair and replacement as provided in this Declaration, including as provided in ARTICLE 8 of this Declaration (Maintenance); to utility companies, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of utility lines, meters and their appurtenances; and to the Association for and incidental to enforcement of any term or provision of any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Unit, the Person responsible for the damage or expense to avoid damage is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, repair and/or replacement; and except that in emergency situations entry upon a Unit may be made at any time provided that the Owner(s) or occupant(s) of each affected Unit shall be notified of emergency entry as early as is reasonably possible.

Section 9.3. Easement for Encroachments.

To the extent that any Improvement on a Unit or on the Common Elements encroaches on any other Unit or Common Elements, a valid easement for the encroachment exists.

Section 9.4. Emergency Easement.

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Units, the Common Elements, and any other portions of the Community in the proper performance of their duties.

ARTICLE 10. RESTRICTIONS

Section 10.1. General Plan; Restrictions Imposed.

The Community is subject to the recorded easements, licenses and other matters listed on Exhibit C attached hereto and incorporated herein by this reference, but the Community is subject to such documents only as and to the extent provided in such documents. In addition, all of the Community shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration, as well as those which burden the Community, or any portion thereof. All applicable laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed; however, the Association shall have no duty or obligation to enforce such laws, ordinances and regulations.

Section 10.2. Compliance with Law.

All Owners, all Permittees, and all other Persons, shall comply with all applicable statutes, ordinances, laws, regulations, rules and requirements, of all governmental and quasi-governmental entities, agencies and authorities.

Section 10.3. Residential Use; Certain Permitted Business Activities.

Subject to Section 16.5 of this Declaration (Declarant's Use), Units shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their residences provided that all of the following conditions are satisfactory to the Board:

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

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

10.3.3. The business does not result in an undue volume of traffic or parking within the Community;

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

10.3.5. The business conforms to all Association and Board rules and regulations and policies and procedures.

Section 10.4. Exterior Changes.

Except as provided in Section 5.1 of this Declaration, no exterior additions to, alterations or decoration, of any General Common Elements shall be commenced, erected, placed, constructed, installed or maintained. Except as provided in Section 5.2 of this Declaration, no exterior additions to, alterations or decoration of, any Limited Common Elements shall be commenced, erected, placed, constructed, installed or maintained without the prior written approval of the Board of Directors. Notwithstanding the foregoing, nothing in this Section shall be deemed to prohibit any improvement permitted by CCIOA Sections 38-33.3-106.5, 106.7 or 106.8, provided that the Association shall have the right to architectural approval of any such improvement to the extent not inconsistent with CCIOA Sections 38-33.3-106.5, 106.7 or 106.8.

Section 10.5. Interior Changes.

Except as provided in Section 5.2 of this Declaration, nothing in this Declaration shall be construed to require any Owner to obtain approvals to make non-structural changes to the interior of such Owner's Individual Air Space. If two or more Individual Air Spaces are owned by the same Owner, such Owner may remove all or part of the non-structural interior walls, floors and/or ceilings separating such Individual Air Spaces so as to allow free access between such Individual Air Spaces. Notwithstanding the removal of all or part of any such interior walls, floors and/or ceilings that would otherwise separate and delineate the boundaries of one or more Individual Air Spaces, unless this Declaration and the Condominium Map are amended, each Individual Air Space shown on the Condominium Map and described on the attached Exhibit B shall continue to be a separate Unit for all purposes of this Declaration. For example, unless this Declaration and the Condominium Map are amended, the number of Units in the Community shall not be affected by the removal of such a wall(s), floor(s) and/or ceiling(s), nor shall the Allocated Interests be affected. Notwithstanding the foregoing, nothing in this Section shall be deemed to prohibit any improvement permitted by CCIOA Sections 38-33.3-106.5, 106.7 or 106.8, provided that the Association shall have the right to architectural approval of any such improvement to the extent not inconsistent with CCIOA Sections 38-33.3-106.5, 106.7 or 106.8.

Section 10.6. Household Pets.

No animals, livestock, horses, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Community; provided, however, that the occupants of each Unit may keep a reasonable number of bona fide household pets, including dogs, cats and/or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such manner as to be unreasonable or create a nuisance to any resident of the Units. The Board of Directors shall have, and is hereby given, the right and authority to: set a maximum number of household pets; set a size and/or poundage limit on pets; regulate the type(s) and/or breed(s) of pets that are permitted to be kept, including, the right to prohibit certain type(s) and/or breed(s) of pets; determine that any dog(s), cat(s) or other pet(s) are being kept for a commercial purpose; determine that any dog(s), cat(s) or other pet(s) are being kept in such number or in such manner as to be unreasonable or create a nuisance; determine that the conduct, behavior, nature, actions, noise or odor of any dog(s), cat(s) or other pet(s) creates a nuisance; determine that any Person is in violation of the leash laws of the applicable jurisdiction or other applicable

governmental laws, ordinances, or other provisions; and/or determine that a Person is otherwise in violation of this Section. If the Board decides any of the foregoing, then the Board may take such action(s) as it determines. An occupant's right to keep pets shall be coupled with the responsibility of the Owner of the applicable Unit to pay for all damage caused by such pets, as well as all costs incurred by the Association as a result of such pets, and all such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

Section 10.7. Signs.

Except as otherwise permitted by CCIOA, no advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit without the prior, written approval of the Board of Directors, except for the following: (i) a name plate of the occupant and a street number; (ii) a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet in the aggregate, in a window(s) of the Unit; (iii) two (2) security system signs no larger than one hundred (100) square inches each in a window(s) of the Unit; or (iv) such other sign(s) as are approved in writing by the Board or are otherwise expressly permitted by applicable law. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with the sale, rental or use of one or more Units, shall be permissible. Notwithstanding the foregoing, nothing in this Section shall be deemed to prohibit any signs permitted by CCIOA Section 38-33.3-106.5, provided that the Association shall have the right to reasonable restrictions on the size, characteristics and location of any signs to the extent not inconsistent with CCIOA Section 38-33.3-106.5.

Section 10.8. Antenna and Satellite Dishes.

Small satellite dishes are permitted in the Community if they comply with the Telecommunications Act of 1996 and applicable regulations, as amended from time to time, but such satellite dishes must have the prior, written approval of the Board of Directors as to location and other matters, and such satellite dishes are subject to those rules and/or regulations that may be imposed, from time to time, by the Board of Directors. Further, exterior radio antenna, television antenna, any other antenna, satellite dish, or audio or visual reception device of any type may, without approval, be erected or installed by the Declarant during its development, sales or construction. Except as provided in the prior two (2) sentences, no exterior radio antenna, television antenna, other antenna, satellite dish, or audio or visual reception device of any type, shall be placed, erected or maintained in the Community except inside a Unit.

Section 10.9. Nuisances.

No nuisance shall be permitted in the Community nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs, any occupant of the Community or which interferes with the peaceful enjoyment, possession and/or use of any Unit, or any portion thereof. Without limiting the generality of the foregoing, violation of any of the provisions of the Governing Documents shall constitute a "nuisance," as shall smoke and odors from cigarettes, cigars, and pipes. As used herein, the term "nuisance" shall not include any activities of Declarant which are incidental to the development, construction, and sales or leasing activities. No noxious or offensive activity shall be carried on, nor shall anything be done or placed in the Community which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others, and no unsightly conditions, structures, facilities, equipment or objects shall be so located as to be visible from a street, alley or any Unit.

Section 10.10. Vehicular Parking, Storage and Repairs.

10.10.1. No house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding, except as hereinafter provided, pickup trucks that are 1 ton capacity or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Unit unless such parking or storage is entirely within the garage area of any Unit or will be suitably screened from view in accordance with the requirements, and prior written approval of, the Board of Directors. A "commercial

vehicle" means a vehicle that meets any of the following: is used to transport cargo or passengers for profit or hire, or may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle; or is any vehicle registered with the State Motor Vehicles Department as a commercial vehicle; or is any vehicle that is larger than 1 ton capacity. However, any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon. "Recreational vehicle" includes motor homes, pick-up trucks with camper shells, trailers, self-contained recreational vehicles, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation. Notwithstanding the foregoing, nothing in this Section shall be deemed to prohibit parking of vehicles permitted by CCIOA Section 38-33.3-106.5, provided that the Association shall have the right to reasonable restrictions on the locations of any such parking to the extent not inconsistent with CCIOA Section 38-33.3-106.5.

10.10.2. No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community, except in the garage of a Unit. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for such period as may be determined by the Board or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

10.10.3. In the event the Association determines that a vehicle is parked or stored in violation of Subsections 10.10.1. or 10.10.2 hereof, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Board of Directors, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

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

10.10.5. This Section 10.10 shall be construed and applied in accordance with all applicable laws, including CCIOA.

Section 10.11. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted within any Unit or the Community, which are 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 permitted on any Unit, except in a contained barbecue unit while attended and in use for cooking purposes, or within a fireplace and/or fire pit, or except such campfires or picnic fires on property which may be designated for such use by the Association. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

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

No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Unit which is unreasonably loud or annoying; and no odor shall be permitted from any Unit which is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted in any portion of the Community that may be seen, heard or smelled from any portion of the Community.

Section 10.13. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside a Unit, nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any other portion of the Community. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or other trash receptacles shall be maintained in an exposed or unsightly manner.

Section 10.14. *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, or any portion thereof, including month-to-month rentals and subleases. Any Owner has the right to lease his Unit, or any portion thereof, under the following conditions:

10.14.1. All leases shall be in writing; and

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

ARTICLE 11. PROPERTY RIGHTS IN THE COMMON ELEMENTS

Section 11.1. *Owners' Easements.*

Subject to this Declaration, every Owner shall have a non-exclusive right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to such Owner's Unit, plus a right and easement of ingress and egress over, across and upon the General Common Elements and those Limited Common Elements appurtenant to such Owner's Unit, for the purpose of getting to and from his Unit and public ways, for both pedestrian and vehicular travel, and to use the Common Elements and all other real estate that must become Common Elements, if any, for all other purposes. Such rights and easements shall be appurtenant to and pass with the transfer of title to every Unit.

Subject to this Declaration, every Owner shall have a non-exclusive right and easement of enjoyment in and to Outlot A to use Outlot A consistent with its character as an open space landscaped parcel. No Person other than the Association shall install, erect or maintain, or permit the installation, erection or maintenance of, any Improvements, on, in or under Outlot A.

Section 11.2. *Extent of Owners' Easements.*

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules or regulations of any governmental authority with jurisdiction over the Common Elements; Outlot A may not be used in any manner which violates the statutes, rules or regulations of any governmental authority with jurisdiction over Outlot A; and no Owner (other than Declarant) may place any structure on the Common Elements or Outlot A. In addition, such rights and easements are subject to any Special Declarant Rights, and each of the following rights of the Association, which may be exercised by the Board of Directors:

11.2.1. To borrow money and to mortgage the Common Elements, subject to approval by Owners, Security Interest Holders and Agencies as may be provided for elsewhere in this Declaration; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with CCIOA; and

11.2.2. To enact, re-enact, issue, promulgate, amend, repeal and publish standards, guidelines, rules and regulations, or policies and procedures governing the use of the Common Elements and the conduct of Owners and Permittees thereon;

11.2.3. To charge reasonable admission or other fees for special or extraordinary uses of the Common Elements;

11.2.4. To suspend the rights of a Member and the Member's Permittees, to use recreational facilities or other Common Elements (but only to the extent that access and utility service are not impaired), for a period not to exceed 60 days unless such rights are suspended for failure to pay Assessments, in which case such rights may be suspended until the Assessments are fully paid;

11.2.5. To dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding the foregoing, the granting of permits, licenses and easements for utilities, roads or for other purposes shall not be deemed a transfer within the meaning of this Subsection;

11.2.6. To grant easements across any areas in the Common Elements for any purpose not inconsistent with the Owner's rights of use and enjoyments of those areas;

11.2.7. To transfer, subject to and only in a manner consistent with local zoning and subdivision ordinances, part of the Common Elements for purposes of adjusting lot lines provided that the transfer does not reduce the total open space area below zoning requirements, does not materially affect the development plan on file with an Agency, and all Units previously adjacent to Common Elements remain so located, unless the Owners of the Units approve the boundary line adjustment; and

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

11.2.9. To close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

Section 11.3. Use by Declarant.

An easement is hereby granted to the Declarant on, over, across and through the Common Elements and Outlot A as may be reasonably necessary for the purpose of discharging any of Declarant's rights or obligations or exercising any Special Declarant Rights or other rights of the Declarant, and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements through the Common Elements or Outlot A.

Section 11.4. Limited Common Elements.

Subject to the terms and provisions of this Declaration, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit, and such right shall be exclusive except as to those other Owners, if any, with a right to use such Limited Common Elements.

Section 11.5. *New Additions to Common Elements.*

Declarant and the Association shall have the right to construct new additions to the Common Elements. Ownership of any such additions to the Common Elements shall be apportioned among all Units in proportion to the respective undivided interest in the Common Elements appurtenant thereto, subject to the right of Declarant to designate any General Common Elements as Limited Common Elements. The Assessment liability for any such additions to the Common Elements shall be apportioned among all Units as provided in ARTICLE 4 of this Declaration (Assessments). The construction of new additions to the Common Elements shall not affect an Owner by way of modification of such Owner's voting power in the Association.

Section 11.6. *Use of Common Elements and Outlot A.*

Subject to the provisions of this Declaration, there shall be no obstruction of the Common Elements or Outlot A, and nothing shall anything be kept or stored on any part of the Common Elements or Outlot A. Other than those Improvements erected or installed by Declarant in its completion of the Community, nothing shall be altered on, constructed in or removed from the Common Elements or Outlot A except as provided in this Declaration.

ARTICLE 12. CONVEYANCE, OWNERSHIP AND TAXATION OF UNITS

Section 12.1. *Contracts Entered into Prior to Recording of Condominium Map and Declaration.*

A contract or other agreement for the sale of a Unit entered into prior to the Recording of the applicable Condominium Map and/or this Declaration, may legally describe such Unit in the manner set forth in Section 12.2 of this Declaration (Contracts Entered into Subsequent to Recording of Condominium Map and Declaration), and may indicate that the applicable Condominium Map and/or this Declaration are to be Recorded. Upon Recording of the applicable Condominium Map and this Declaration, such description shall be conclusively presumed to describe the corresponding Unit shown on the applicable Condominium Map, and such Unit shall be subject in all respects to this Declaration.

Section 12.2. *Contracts Entered into Subsequent to Recording of Condominium Map and Declaration.*

Subsequent to the Recording of the Condominium Map and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit may legally describe that Unit as follows:

Unit _____, Pinnacle Condominiums, according to the Condominium Map thereof, recorded on _____, 20__, at Reception No. _____, in the records of the office of the Clerk and Recorder of Boulder County, Colorado, and as defined and described in the Amended and Restated Condominium Declaration of Pinnacle Condominiums, recorded on _____, 20__, at Reception No. _____ in said records, also known as _____.

Section 12.3. *Legal Effect of Description.*

Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit which legally describes said Unit substantially in the manner set forth in Section 12.2 of this Declaration (Contracts Entered into Subsequent to Recording of the applicable Condominium Map and this Declaration), shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit, including the undivided interest in the Common Elements appurtenant thereto and all other appurtenant properties and property rights, and to incorporate all of the rights, limitations and burdens incident to ownership of a Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from each

Unit and the use of all the General Common Elements, as well as all of the Limited Common Elements appurtenant to said Unit, all as more fully provided in this Declaration.

Section 12.4. Taxation.

Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with CCIQA. For the purpose of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in the Common Elements appurtenant to the Unit in question. The Association shall furnish to the Tax Assessor of Boulder County, Colorado, and to all other appropriate Persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest, or in any way affect, the title to any other Unit.

Section 12.5. Inseparability.

Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

Section 12.6. Non-Partitionability.

The Common Elements shall be owned in common by all of the Owners and shall remain undivided and not subject to partition, such that any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. By the acceptance of a deed or other instrument of conveyance or assignment, each Owner specifically waives such Owner's right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs, expenses and all damages that the Association incurs in connection therewith.

ARTICLE 13. MECHANIC'S LIENS

Section 13.1. Mechanic's Liens.

No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, such Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall defend, indemnify and hold harmless each of the other Owners and the Association from and against any liability, loss, damage, cost or expense arising from any claim against the Association, any other Owner, any other Owner's Unit or the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit.

Section 13.2. Enforcement by the Association.

At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 13.1 of this Declaration (Mechanic's Liens) by collecting from the Owner of the Unit on which the labor was performed and/or materials furnished, the amount necessary to fully release such claim and/or discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental

thereto, and obtain a discharge of such lien. In the event that the Owner of the Unit on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section and such amount to be indemnified shall be and constitute an additional Assessment for collection by the Association subject to all of the provisions of ARTICLE 4 of this Declaration (Assessments).

ARTICLE 14. SECURITY INTERESTS

Section 14.1. *Limitation on Actions of the Association.*

Notwithstanding any provisions of this Declaration to the contrary, the Association shall not, except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Elements, unless it has obtained the prior written approval of the Owners (other than the Declarant) casting at least sixty-seven percent (67%) of the Association votes or of those Security Interest Holders holding at least sixty-seven percent (67%) of the Security Interests (based upon one vote for each Security Interest owned):

- 14.1.1. by act or omission seek to abandon or terminate the Community;
- 14.1.2. change the pro rata interest or obligations of any Unit in order to levy Assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Unit in the Common Elements (however, this requirement will be deemed waived to the extent necessary to allow phasing or add-ons in accordance with this Declaration);
- 14.1.3. partition or subdivide any Unit;
- 14.1.4. approve any Material Amendment; or
- 14.1.5. take any Extraordinary Action.

Section 14.2. *Approval by Security Interest Holders of First Security Interests.*

14.2.1. Notwithstanding anything to the contrary contained in this Declaration, any Material Amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the Association votes and by Security Interest Holders who represent at least sixty-seven percent (67%) of the Units that are subject to such Security Interests (and who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders).

14.2.2. Security Interest Holders and Agencies shall receive notice of all proposed amendments to this Declaration.

14.2.3. During the Period of Declarant Control: (i) Declarant must provide a copy of all amendments to the Agencies; and (ii) the Association may not make any Material Amendments or take any Extraordinary Actions without the approval of any Agencies.

14.2.4. Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs or for other reasons shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the Association votes and by Security Interest Holders who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders and who represent at least sixty-seven percent (67%) of the Units that are subject to such Security Interests.

14.2.5. The implied approval of any Security Interest Holder shall be assumed if such Security Interest Holder fails to submit a response to any written proposal for an amendment within

sixty (60) days after such Security Interest Holder receives proper notice of the proposal delivered by certified or registered mail, return receipt requested.

Section 14.3. Notice of Action.

Upon written request to the Association, identifying the name and address of the Security Interest Holder or Agency insuring or guaranteeing the Security Interest, and the residence address of the Unit which is subject to such First Security Interest, each Security Interest Holder, or any Agency insuring or guaranteeing a Security Interest, shall be entitled to:

14.3.1. Timely written notice of:

14.3.1.1. any condemnation loss or casualty loss that affects either a material portion of the Community or any Unit subject to a Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor of a Security Interest;

14.3.1.2. any default in the performance of any obligation under the Governing Documents by the Owner of a Unit subject to a Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor and not cured within sixty (60) days, including but not limited to a delinquency in the payment of Assessments;

14.3.1.3. a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

14.3.1.4. any proposed action that requires the consent of a specified percentage of Security Interest Holders of Security Interests as provided in this Article.

14.3.1.5. of all Material Amendments;

14.3.1.6. of any Extraordinary Actions;

14.3.1.7. of any property loss, condemnation or eminent domain proceeding affecting the Common Elements resulting in losses greater than ten percent (10%) of the annual budget or any Unit insured by the Association in which the Security Holder has an interest.

14.3.1.8. of any proposal to terminate this Declaration or to dissolve the Association at least thirty (30) days before any action is taken;

14.3.2. The right to inspect Association Governing Documents and records on the same terms as the Members;

14.3.3. The right of a majority of the eligible Security Interest Holders to demand professional management; and

14.3.4. The right of a majority of the eligible Security Interest Holders to demand an audit of the Association's financial records.

Section 14.4. No Priority Over Rights of Security Interest Holders of First Security Interests.

No provision of the Governing Documents (except Section 4.11 of this Declaration, which is also provided for in CCIOA) gives an Owner or any other party priority over any rights of the Security Interest Holder pursuant to its Security Interest in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or Common Elements.

ARTICLE 15. DISPUTE RESOLUTION

Section 15.1. *Intent and Applicability of Article and Statutes of Limitation.*

15.1.1. Each Person agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Person covenants and agrees to submit all Claims (as defined below) to final, binding arbitration, and not to a court of law.

15.1.2. By acceptance of a deed for a Unit, each Owner agrees to abide by the provisions of this Article.

15.1.3. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 15.2. *Definition of "Claim" Under this Article.*

For purposes of this Article, "Claim" means, except as excluded by the terms of this Article, any claim, grievance or dispute between one Person and another, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to (a) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Person under any of the Governing Documents; (b) the design or construction of Improvements; (c) any statements, representations, promises, warranties, or other communications made by or on behalf of any Person.

Section 15.3. *Exclusions from "Claim".*

Unless specifically exempted by this Article, all Claims shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all parties thereto otherwise agree in writing, "Claim" does not include any of the following, and the same shall not be subject to the provisions of this Article:

15.3.1. Any action by the Association to enforce any provision of ARTICLE 4 of this Declaration (Assessments); or

15.3.2. Any action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief), and such other ancillary relief as the Association or court may determine, in order to enforce any of the provisions of ARTICLE 10 of this Declaration (Restrictions) or of ARTICLE 5 of this Declaration (Design Review); or

15.3.3. Any action in which any indispensable party is a Person who is not subject to this Declaration, unless such Person agrees in writing to be subject to this Article.

Section 15.4. *Final, Binding Arbitration.*

15.4.1. Final, binding arbitration of each Claim shall be done, as expeditiously as possible, under the auspices of the Judicial Arbitrator Group, Inc. ("JAG") or, if JAG is not then in existence or if no arbitrator from JAG can or will serve, an arbitrator who is a retired judge or an attorney licensed to practice law in Colorado, appointed pursuant to the provisions of the Colorado Uniform Arbitration Act.

15.4.2. Any question about whether a matter is a "Claim," and/or whether such matter is covered by this Article, and/or whether any Person is an indispensable party, shall be determined by the arbitrator. If a party contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in such contests, including those incurred in trial or on appeal, to the non-contesting party.

15.4.3. The arbitrator shall apply the substantive law of Colorado, the Colorado Rules of Civil Procedure and the Colorado Rules of Evidence then in effect, and may award injunctive relief or any other remedy available in Colorado, but shall not have the power to award punitive damages, attorney fees, expert fees, and/or costs. Rather, all such costs and fees are the responsibility of each

party. Any judgment upon the award rendered by an arbitrator may be entered in and enforced by any court of competent jurisdiction.

15.4.4. The fees and costs of the arbitration, including the arbitrator(s) and their consultants, shall be borne equally by the parties to the arbitration.

15.4.5. Except as may be required by law or for confirmation of an arbitration award, neither a party nor an arbitrator may disclose the existence of an arbitration or any matters regarding an arbitration, including contents or result, without the prior, written, discretionary consent of all parties to such arbitration.

Section 15.5. Required Disclosure.

A Person who is or was a party to the arbitration of a Claim that includes or included their home, shall, upon sale, conveyance, transfer, finance and/or re-finance of such home, fully disclose such Claim to their purchaser, transferee and/or lender, as applicable.

Section 15.6. Liability for Certain Failures of Association.

No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation, arbitration, or other dispute resolution, if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent.

ARTICLE 16. GENERAL PROVISIONS

Section 16.1. Enforcement; Fines.

This Section 16.1 is subject to ARTICLE 15 of this Declaration (Dispute Resolution).

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

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

Section 16.2. Severability.

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, including any provision(s) of ARTICLE 15 of this Declaration (Dispute Resolution), by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 16.3. Conflict of Provisions.

In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, and any Governing Document, this Declaration shall control. In case of any conflict between the Articles of Incorporation or the Bylaws of the Association, and any Governing Document, the Articles of Incorporation shall control. In case of any conflict between the Bylaws of the Association and any Governing Document other than this Declaration or the Articles of Incorporation of the Association, the Bylaws shall control.

Section 16.4. Annexation.

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

16.4.2. Until automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights), the Declarant may annex to this Declaration the Annexable Area, or any portion(s) thereof, without consent of any other Owners, Security Interest Holders, or any other Person; however, such annexation is subject to a determination by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed and if HUD or VA require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each such annexation shall be effected, if at all, by Recording one or more Annexations of Additional Land, which document:

16.4.2.1. shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

16.4.2.2. shall identify the owner(s) of the Units thereby created, if any;

16.4.2.3. shall assign an identifying number to each new Unit, if any;

16.4.2.4. shall describe any Common Elements within the property being annexed;

16.4.2.5. shall, if the annexed property includes one (1) or more Units, reallocate the Allocated Interests among all Units; and

16.4.2.6. may include such other provisions as determined by the Declarant. Other provisions that may be included in an Annexation of Additional Land include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in this Subsection may be amended with the consent of the Owners of sixty-seven percent (67%) of the Units to which such other provisions apply.

16.4.3. Each Person who acquires any property within the Annexable Area after the date of Recording hereof, will have agreed pursuant to applicable documents that, effective not later than immediately prior to acquisition of title to such property by such Person, such property will be

governed by this Declaration. The Declarant, therefore, reserves the right (but not the obligation), until automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights), to annex, or affirm annexation of, such property to the Declaration without further authorization from the Person who acquired such property, even if such annexation or affirmation occurs subsequent to conveyance of such property by Declarant.

16.4.4. Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration including, but not limited to (as to Units), those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to the annexed property immediately upon the effective date of the annexing document (which shall constitute the date of Recording thereof unless otherwise stated in such document). Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

16.4.5. The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration, shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with this Declaration and CCIOA. However, the Declarant's right to withdraw any property from this Declaration shall terminate upon automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights).

Section 16.5. Declarant's Use.

Notwithstanding anything to the contrary, it shall be expressly permissible for the Declarant, its employees, agents, and contractors, to perform all activities, and to maintain upon the Units, the Common Elements, and/or any publicly dedicated property, such facilities as the Declarant determines, including maintaining signs, maintenance offices, sales offices, model units and construction offices and trailers, in such numbers, of such sizes, and at such locations as the Declarant determines, and for access to, from, and incidental to such uses. Nothing contained in this Declaration shall limit the rights of the Declarant to conduct all construction, promotion, sales, and marketing activities as the Declarant determines, and to use the easements provided in this Declaration for those and other purposes. Further, nothing contained in this Declaration shall limit the rights of the Declarant or require the Declarant to obtain any approvals:

16.5.1. To excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Exterior Improvements or other Improvements;

16.5.2. To use any Improvements on any property as sales offices, management offices, model units and/or construction offices; and/or

16.5.3. To require the Declarant to seek or obtain any approvals for any activity.

The rights provided for in this Section shall terminate upon automatic termination of the Special Declarant Rights, as provided in Section 1.32 hereof (Special Declarant Rights).

Section 16.6. Duration, Revocation, and Amendment.

16.6.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of Recording of this Declaration. Except as otherwise provided in this Declaration (including Subsections 16.6.3 and 16.6.4 below), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests and consent of Security Interest Holders, if required by another provision of this Declaration. Further, each amendment of this Declaration enacted by the Members shall be applicable only to disputes, issues, circumstances, events, claims or causes of action that arose out of circumstances or events that occurred after the date of Recording of such amendment in all Counties in which any portion of the Community is located; and no such amendment shall be applied

retroactively to any earlier occurring disputes, issues, events, circumstances, actions, claims or causes of action.

16.6.2. Any Material Amendment must be approved in accordance with ARTICLE 14. Any Material Amendment that changes the rights of any specific class of Members must also be approved by Members holding at least sixty-seven percent (67%) of the Allocated Interests within that class of membership.

16.6.3. Notwithstanding anything to the contrary, this Declaration, the Articles of Incorporation and/or Bylaws of the Association may be amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical or technical errors. Such right of amendment shall terminate upon automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights).

16.6.4. Notwithstanding anything to the contrary, this Declaration, the Articles of Incorporation and/or Bylaws of the Association may be amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or any recognized secondary mortgage markets. Such right of amendment shall terminate upon automatic termination of the Special Declarant Rights as provided in Section 1.32 of this Declaration (Special Declarant Rights).

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

Section 16.7. *Termination of Declaration.*

The termination of this Declaration is an Extraordinary Action. This Declaration may only be terminated pursuant to an agreement executed pursuant to and in compliance with CCIOA Section 218, following the vote of Members as required for an Extraordinary Action and notice and approval of Security Interest Holders as provided in ARTICLE 14.

Section 16.8. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and all statements, notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the Period of Declarant Control shall be sent by U.S. mail, postage prepaid, to 841 Front Street, Louisville, Colorado 80027, unless such address is changed by the Association during the Period of Declarant Control; subsequent to termination of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

Section 16.9. *HUD or VA Approval.*

During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA guarantees one or more First

Security Interests, and HUD or VA require their approval of the action: annexation of additional real property (if the Declarant desires to obtain VA or HUD approval of the property that is being annexed); amendment of this Declaration, except as provided in Subsections 16.6.3 and 16.6.4 hereof; termination of this Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.12 of this Declaration (Merger).

Section 16.10. *Limitation on Liability.*

Neither the Association, the Board of Directors, or any officer, director, member, partner, agent or employee of any of the same, shall be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 16.14 of this Declaration (Waiver) shall apply to this Section.

Section 16.11. *No Representations or Warranties.*

No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association, the Board of Directors, or any officer, director, member, partner, agent or employee of any of the same, in connection with any portion of the Community or any Improvement, or any nearby or adjacent property or their physical condition, use, zoning, compliance with applicable laws, fitness for intended use, view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 16.14 of this Declaration (Waiver) shall apply to this Section.

Section 16.12. *Disclaimer Regarding Safety.*

EACH OWNER, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS, RULES AND REGULATIONS OR POLICIES AND PROCEDURES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 16.14 OF THIS DECLARATION (WAIVER) SHALL APPLY TO THIS SECTION.

Section 16.13. *Development Within and Surrounding the Community.*

Each Owner acknowledges that development within and surrounding the Community may continue for an indefinite period, and that plans for the density, type and location of Exterior Improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Community, views of or from the Community or the Units, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other matters. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Unit, each Owner accepts title to such Unit subject to the foregoing, and waives and releases all claim against the Association, the Board of Directors, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 16.14 (Waiver) shall apply to this Section.

Section 16.14. *Waiver.*

By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Board of Directors, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims,

liabilities, costs, expenses, and damages, arising directly or indirectly from any hazard, disclosure or risk set forth in this Declaration, including, those contained in Section 16.10, Section 16.11, Section 16.12 and Section 16.13.

Section 16.15. *Headings.*

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

Section 16.16. *Gender.*

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

Section 16.17. *Use of "Include," "Includes" and "Including".*

All uses in the Governing Documents of the words "include," "includes" and "including" shall be deemed to include the words "without limitation" immediately thereafter.

Section 16.18. *Action.*

Any action that has been or may be taken by the Declarant, the Association, the Board, the DRC, any Member, any director, any committee, or any other Person, may be taken "at any time, from time to time". Each provision that authorizes, directs or permits action shall be deemed to include such language.

Section 16.19. *Sole Discretion.*

To the extent not inconsistent with CCIOA, all actions which are taken by the Declarant, the Association, the Board, the DRC, any Member, any director, any committee, or any other Person, shall be deemed to be taken "in the sole discretion" of each of such parties.

Section 16.20. *Run with Land; Binding upon Successors.*

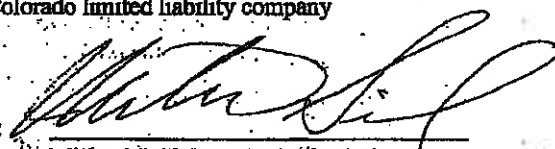
The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Community and all real property and Improvements which are now or hereafter a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall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

[The remainder of this page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 31st day of March, 2014.

DECLARANT:

BOULDER CREEK PINNACLE LLC,
a Colorado limited liability company

By: 
Michael J. Sinkey, Authorized Signer

STATE OF COLORADO)
)ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 31st day of March, 2014, by Michael J. Sinkey as authorized signer of Boulder Creek Pinnacle LLC, a Colorado limited liability company, on behalf of such limited liability company.

Witness my hand and official seal.

(S.E.A.L.)
ANTONETTE DIGENNARO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084024039
MY COMMISSION EXPIRES JULY 14, 2016



Notary Public
My commission expires: 7/14/16

EXHIBIT A
TO
AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PINNACLE
(Community)

Lot 5, Block 1, as per the final Plat of Spring Valley Phase 8, Parcel P, recorded on May 7, 2002 and as recorded in Plan File P-56 P-3 #24, 25, 26 at Reception No. 2285376, in the office of Clerk and Recorder of Boulder County, Colorado as amended and supplemented.

EXHIBIT B
TO
AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PINNACLE

(Allocated Interests and Undivided Interests)

<u>Unit</u>	<u>Allocated Interests and Undivided Interest in the Common Elements Appurtenant to the Unit*</u>
2120 Calais Dr., Unit A, Longmont, CO 80504	1/2
2120 Calais Dr., Unit B, Longmont, CO 80504	1/2

* The Allocated Interest, and undivided interest in the Common Elements, that are allocated or appurtenant to each Unit, are subject to change as more fully provided in the Declaration.

EXHIBIT C
TO
AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PINNACLE

(Certain Title Exceptions)

Except where stated to the contrary, the following items are recorded in the office of the Clerk and Recorder of Boulder County, Colorado:

1. Unrecorded taxes and assessments for the year of recording of this Declaration, and for all subsequent years, not yet due or payable.

2. Terms, conditions, provisions, agreements and obligations contained in the Agreement in Furtherance of Annexation for Spring Valley Annexation as set forth below:

Recording Date: January 11, 1995
Recording No.: Reception No. 1491719

3. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: September 12, 1995
Recording No.: Reception No. 1546932

4. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat of Spring Valley Phase 8 Parcel P set forth below:

Recording Date: May 7, 2002
Recording No: Reception No. 2285376

5. Terms, conditions, provisions, agreements and obligations contained in the Memorandum of Agreement for Public Improvements as set forth below:

Recording Date: October 8, 2002
Recording No.: Reception No. 2340347; re-recorded November 18, 2002 as Reception No. 2358457

6. Terms, conditions, provisions, agreements and obligations contained in the Memorandum of Agreement for Public Improvements as set forth below:

Recording Date: October 15, 2002
Recording No.: Reception No. 2343947

7. Terms, conditions, provisions, agreements and obligations contained in the Notice of Final Development Plan Approval as set forth below:

Recording Date: October 29, 2002
Recording No.: Reception No. 2349930

8. Terms, conditions, provisions, agreements and obligations contained in the Storm Channel Maintenance Agreement as set forth below:

Recording Date: September 19, 2003
Recording No.: Reception No. 2504735

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, and terms, conditions and provisions of the agreement as set forth in Easement Agreement shown below:

Granted to: Pinnacle at Ute Creek Homeowners Association
Purpose: construct, maintain, replace and remove fence facilities
Recording Date: March 19, 2004
Recording No: Reception No. 2567792

10. A deed of trust to secure an indebtedness in the amount shown below:

Amount: \$945,000.00
Trustor/Grantor Boulder Creek Pinnacle LLC, a Colorado limited liability company
Trustee: Public Trustee of Boulder County
Beneficiary: Mile High Banks
Recording Date: October 3, 2012
Recording No: Reception No. 3256571

11. Assignment of Rents recorded October 3, 2012 as Reception No. 3256572 in connection with the above Deed of Trust.

12. Terms, conditions, provisions, agreements and obligations contained in the Construction Declaration Pinnacle Ute Creek Lots as set forth below:

Recording Date: October 8, 2012
Recording No.: Reception No. 3257681

EXHIBIT D
TO
AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PINNACLE

(Part of Annexable Area)

Lot 1, Lots 6-9 inclusive, and Lots 22-37 inclusive, Block 1, as per the Final Plat of SPRING VALLEY PHASE 8, PARCEL P, recorded on May 7, 2002, and as recorded in Plan File P-56 F-3 #24, 25, 26, at Reception No. 2285376, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended and supplemented, EXCEPTING AND EXCLUDING the property described on Exhibit A attached to this Declaration and except any publicly dedicated property,
County of Boulder,
State of Colorado;

and

Outlot A, Final Plat of SPRING VALLEY PHASE 8, PARCEL P, recorded on May 7, 2002, and as recorded in Plan File P-56 F-3 #24, 25, 26, at Reception No. 2285376, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended and supplemented,
County of Boulder,
State of Colorado.

EXHIBIT E
TO
AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PINNACLE

(Outlot A Legal Description)

Outlot A, Final Plat of SPRING VALLEY PHASE 8, PARCEL P, recorded on May 7, 2002, and as recorded in Plan File P-56 F-3 #24, 25, 26, at Reception No. 2285376, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended and supplemented,
County of Boulder,
State of Colorado.