

**FINAL**

**AMENDED AND RESTATED**

**DECLARATION**

**OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**COURSESIDE HOMEOWNERS ASSOCIATION**

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF COURSESIDE HOMEOWNERS ASSOCIATION**

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AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
COURSESIDE HOMEOWNERS ASSOCIATION

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF COURSESIDE HOMEOWNERS ASSOCIATION (“Amended Declaration”) is made effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the Courseside Homeowners Association.

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Courseside Homeowners Association (“Original Declaration”) was recorded on December 14, 2006 at Reception No. 2006147549 in the office of the Clerk and Recorder of Jefferson County, Colorado; and

WHEREAS, the Original Declaration encumbers all of the lots, tracts and parcels of property in Eight Hundred Kendall Filing No. 2, a subdivision of Tract A, Block 1, Eight Hundred Kendall and being a part of the Southwest ¼ Section 1, Township 4 South, Range 69 West of the 6th Principal Meridian, City of Lakewood, County of Jefferson, State of Colorado as described in the final plat thereof recorded on December 17, 2004 at Reception No. F2145707 in the office of the Clerk and Recorder of Jefferson County, Colorado (hereafter the “Property”); and

WHEREAS, the Original Declaration created a common interest community in accordance with the Colorado Common Interest Ownership Act; and

WHEREAS, Article XII, Section 6 of the Original Declaration provides that the Original Declaration can be amended during the first twenty (20) year period by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; and

WHEREAS, Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated have voted or agreed to amend and restate the Original Declaration in the manner set forth herein, for purposes of clarifying unclear or ambiguous provisions, as necessary to comply with current Colorado law, and to implement best practices for the operation, management, and maintenance of the Community and the Lots.

NOW, THEREFORE, the Association, upon approval of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated declares that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which shall run with the above-described property and be binding on all parties having any right, title, or interest in the Property or any part thereof, and their heirs, personal representatives, successors, and assigns, and shall insure to the benefit of each owner thereof. This Amended Declaration shall supersede the Original Declaration, as previously amended from time to time, in its entirety.

**ARTICLE I.  
DEFINITIONS**

Section 1.01 "Act" means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et al., as amended.

Section 1.02 "Allocated Interests" means the Common Expense liability and votes in the Association allocated to each lot. The Common Expense liability for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is twenty-eight (28). The Owners of each Lot shall be allocated one vote in Association affairs.

Section 1.03 "Annual Assessment" means annual Assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with this Declaration.

Section 1.04 "Articles of Incorporation" means the Articles of Incorporation for the Association filed with Colorado Secretary of State, as amended from time to time.

Section 1.05 "Assessment" or "Assessments" means any Annual Assessment or Special Assessment, or any other fees, fines or charges made or assessed hereunder by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV.

Section 1.06 "Association" means CourseSide Homeowners Association, Inc., a unit owners association organized under section 38-33.3-301 of the Act.

Section 1.07 "Association Documents" means this Declaration, the Plat, the Articles of Incorporation, the Bylaws and the Rules, as they may be amended or supplemented from time to time.

Section 1.08 "Board of Directors" or "Board" means the body, elected pursuant to the Association's Bylaws to act on behalf of the Association.

Section 1.09 "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

Section 1.10 "Common Elements" means any property owned or leased by the Association other than a Lot, or parcels of land within the Property which is required to be maintained by the Association. The Common Elements are described on Exhibit A attached hereto and incorporated herein by this reference.

Section 1.11 "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

Section 1.12 "Community" means the real estate described in this Declaration, together

with improvements located thereon. The Community is a planned community under the Act.

Section 1.13 "Declaration" means this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Courseside Homeowners Association and any supplements and amendments to those instruments and also including, but not limited to, plats and maps.

Section 1.14 "Design Review Committee" or "Committee" means the committee appointed by the Board to review and approve or disapprove plans for Improvements, as more fully provided in this declaration.

Section 1.15 "Director" means a member of the Board of Directors.

Section 1.16 "Good Standing" means an Owner is no more than thirty (30) days late in the payment of any Assessments, and who has none of his, her or its membership privileges suspended.

Section 1.17 "Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including all modifications thereto (other than for purposes of maintaining or repairing such improvements, structures and appurtenances in the same manner as originally approved, or installed by the builder), including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball hoops, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

Section 1.18 "Lot" means each platted lot shown on the Plat, with the exception of the Common Elements and any publicly dedicated property. Each Lot shall constitute a "unit" under the Act.

Section 1.19 "Member" means each Owner of a Lot, collectively; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

Section 1.20 "Mortgage" means a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

Section 1.21 "Mortgagee" means the holder or beneficiary of a Mortgage. A first Mortgage is a Mortgage, the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 1.22 "Owner" means the Person who owns a Lot, but does not include a Mortgagee or any other Person having an interest in a Lot solely as security for an obligation.

Section 1.23 "Permittee" means any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors, of an Owner or invitees, guests or visitors of a tenant.

Section 1.24 "Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

Section 1.25 "Plat" means the subdivision plat for of the Community, recorded on December 17, 2004 at Reception No. F2145707 in the office of the Clerk and Recorder of Jefferson County, Colorado, as it may be amended and supplemented from time to time.

Section 1.26 "Rules" means rules, regulations, procedures, policies and guidelines, however denominated, adopted, amended or repealed by the Board from time to time, for the regulation and management of the Community, including the Common Elements and Lots.

## **ARTICLE II.**

### **MEMBERSHIP AND VOTING RIGHTS**

Section 2.01 Association. The Association has been formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have an Executive Board to manage its affairs; the Executive Board shall be elected by Owners acting in their capacity as Members of the Association. The Association is the entity responsible for management, maintenance, operation, and control of the Common Elements. The Association also has primary responsibility for enforcing the Association Documents, and to provide for the general recreation, health, safety and welfare of its residents.

Section 2.02 Executive Board. The affairs of the Association shall be managed by the Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association Articles of Incorporation and Bylaws. The Board 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 the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized executive committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

Section 2.03 Membership in the Association. Each Owner shall be a Member of the Association. There shall be one membership in the Association for each Lot. The Person(s) who constitute the Owner of a Lot shall automatically be the holder of the membership appurtenant to that Lot, and the membership appurtenant thereto shall automatically pass with fee simple title to the Lot. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former Owners entitled to distributors of proceeds under the Act or their heirs, personal representatives, successors or assigns.

Section 2.04 One Class of Membership; Voting. The Association shall have one class of

voting membership. The Owners of each Lot shall be entitled to one (1) vote for each Lot owned, except that no votes allocated to a Lot owned by the Association may be cast and no Owner shall be entitled to vote who is not in Good Standing. The total number of votes which may be cast in connection with any matter shall be equal to twenty-eight (28).

**ARTICLE III.**  
**ASSOCIATION POWERS AND RESPONSIBILITIES**

Section 3.01 Control of Association Property. The Association, through action of the Board, may acquire, hold, lease (as Lessor or Tenant), operate, and dispose of tangible and intangible personal property and real property, subject to the requirement that any conveyance of, or granting a security interest in, the Common Areas may only occur following approval of Owners to which sixty-seven percent (67%) of the votes in the Association are allocated. The Association shall be responsible for management, operation, and control of the Common Elements. No Owner or Permittee shall make any addition or other alteration to any portion of the Common Elements, no matter how minor, without the express prior written consent of the Board, which consent may be withheld in the Board's sole and absolute discretion. The Board shall have the power to adopt Rules regulating use and enjoyment of the Common Elements.

Section 3.02 Maintenance of Common Elements. The Association shall maintain, or cause to be maintained, the Common Elements, which shall include, but need not be limited to: (a) all portions of the Common Elements, including landscaping, structures, and other improvements; (b) landscaping within public rights-of-way or other publicly-owned property abutting public streets within the Community, and any drainage structure or facilities, to the extent such maintenance is required by the local governmental entity as a condition of the development of the Community or any part thereof, or as otherwise agreed by the Association and the local governmental entity;

Section 3.03 Compliance and Enforcement.

(a) The Association shall have the power to enforce the provisions of the Association Documents, and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and Permittee, including, without limitation, the following actions, following notice to the offending Owner and an opportunity for such Owner to be heard in accordance with a policy adopted by the Board, provided only a single notice and opportunity for hearing is required for continuing violations:

- (i) imposing reasonable monetary fines. Fines may be imposed within a graduated range. There is no limit on the aggregate amount of any fine for a continuing violation;
- (ii) suspending an Owner's right to vote, except that no notice or opportunity for hearing shall be required to suspend an Owner's right to vote if the Owner is not in Good Standing; and
- (iii) exercising self-help or taking action to abate any violation of the Association Documents occurring on a Lot in an emergency or non-emergency situation.

(b) In addition, without notice or an opportunity for a hearing being required, the Board or its designees may take the following enforcement actions to ensure compliance with the

Association Documents:

- (i) taking other action to abate a violation on the Common Elements or a violation on a Lot in an emergency situation;
- (ii) to record a notice of violation or noncompliance against the title to the Lot with the Clerk and Recorder of Jefferson County, Colorado; and
- (iii) bringing action at law or in equity to enjoin any violation or to recover monetary damages or both.

Section 3.04 Authority of Association and Board of Directors. The Association may exercise any right or privilege given to it expressly, or by reasonable implication, by the Association Documents, the Act or the Colorado Revised Nonprofit Corporation Act, or take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Association Documents or by law, the Board may act in all instances on behalf of the Association and exercise the Association's rights and powers without a vote of the membership. Without limiting the authority of the Board, the Board shall have the following duties and powers to act on behalf of the Association:

- (a) institute, defend, settle, or intervene on the Association's behalf or on behalf of two or more Owners, in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Elements, enforcement of the Association Documents, or any other civil claim or action;
- (b) maintain insurance as required in accordance with this Declaration;
- (c) prepare, and submit to the Owners, annual budgets for revenues, expenditures and reserves for the Association as elsewhere provided in this Declaration;
- (d) levy and collect Assessments as elsewhere provided in this Declaration;
- (e) keep and provide the Association's records in compliance with the Act;
- (f) adopt and amend Bylaws and Rules as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Lots or the Common Elements, and otherwise for the benefit of the Community and the Owners. Any such Rules shall be non-discriminatory and reasonable. The Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and the provisions of this Declaration, the provisions of this Declaration shall control;
- (g) enter into contracts and incur liabilities;
- (h) borrow money and assign its future income, including its right to receive Assessments upon approval of Owners to which at least sixty-seven percent (67%) of the votes are allocated, and further that Common Elements may be conveyed in fee or subjected to a security interest only if Owners to which at least sixty-seven percent (67%) of the votes are allocated agree to that action; and

(i) grant easements, leases, licenses and concessions through or over the Common Areas.

Section 3.05 Election of Directors and Officers. Directors' shall be elected in the manner set forth in the Bylaws, and for the terms set forth in the Bylaws. The Board shall elect the officers. Such Board members and officers shall take office upon election.

#### **ARTICLE IV.** **ASSOCIATION FINANCES**

Section 4.01 Creation of the Lien and Personal Obligation for Assessments. Each Owner, by acceptance of 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: Assessments and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such Assessments and other amounts to be established and collected as hereinafter provided. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without setoff or deduction. Owners of each Lot shall be jointly and severally liable to the Association for the payment of all Assessments, fees, charges and other amounts attributable to their Lot. Each Assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by such successors. The Association's lien on a Lot for Assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment lien.

Section 4.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Lots, to pay the Common Expenses, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to the Association Documents, or by law.

Section 4.03 Budget. The Board shall, in advance, prepare and adopt a proposed Common Expense budget at least sixty (60) days before expiration of each fiscal year based on estimated Common Expenses. Within ninety days (90) after adoption of any proposed budget for the Community, the Board shall mail, by ordinary first-class mail, or otherwise deliver a copy of the Association budget to all the Owners and shall set a date for a meeting of the owners to consider ratification of the budget within a reasonable period of time after mailing or other delivery of the summary. The proposed budget does not require approval of the Owners and is deemed approved by the Owners in the absence of a vote at the meeting by the Owners of Lots to which at least fifty-one percent (51%) of the votes in the Association are allocated, whether or not a quorum is present. In

the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners. The Board may revise the budget and adjust the Annual Assessment from time to time during the year, subject to the notice requirements set forth above.

Section 4.04 Rate of Assessment. Assessments shall be based on the approved budget and shall be apportioned among the Lots in accordance with their Allocated Interests. The Annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.

Section 4.05 Special Assessments. In addition to the Annual Assessments, the Board may at any time levy, in any fiscal year, with the approval of the votes of two-thirds (2/3) of the Association votes 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 reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any operating deficit incurred by the Association. Any such special Assessment shall be allocated to each Lot in accordance with the Allocated Interests set forth in this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.06 of this Article IV.

Section 4.06 Notice and Quorum for Any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.05 shall be sent to all Members not less than 30 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty-seven percent (67%) of all the Association votes shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the proceeding meeting. No such subsequent meeting shall be held more than 50 days following the preceding meeting.

Section 4.07 Lien for Assessments.

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

(b) Recording of this Declaration constitutes records notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board or authorized agent of the Association may prepare and record, in Jefferson County, Colorado, a

written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If the lien is filed, the costs and expenses thereof shall be added to the Assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

(c) A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments becomes due.

#### Section 4.08 Priority of Association Lien.

(a) A lien under this Article IV is prior to all other liens and encumbrances on a Lot except:

- (1) Liens and encumbrances recorded before the recordation of the Declaration;
- (2) A First Mortgage on the Lot which was recorded or perfected before the date on which the Assessment sought to be enforced became delinquent; and
- (3) Liens for real estate taxes and other governmental Assessments or charges against the Lot.

(b) A lien under this Section is also prior to the First Mortgages described in the proceeding subsection (a)(2) to the extent of an amount equal to the Annual Assessments based on a periodic budget adopted by the Association as provided above, which would have become due, in the absence of any acceleration, during the six (6) months Immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section or an action or a non-judicial foreclosure either to enforce or extinguish the lien.

(c) This Section does not affect the priority of mechanics' or material men's liens or the priority of liens for other Assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S. 1973, as amended, or to the provisions of Section 15-11-201. C.R.S. 1973, as amended.

Section 4.09 Receiver. In any action by an Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

Section 4.10 Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee 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 amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the written request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the owner or Mortgagee-or their designee delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the

issuance of such certificates.

Section 4.11 Effect of Non-Payment of Assessments or Other Amounts, Remedies of the Association. Any Assessment not paid within ten days (10) after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board, and the Board may charge a late charge thereon in such amount as may be set by the Board from time to time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, without limitation in a foreclosure action, such Judgment or decree shall include a reasonable attorneys' fee to be fixed by the court, together with the costs of the action, and may include interest and late charges, as above provided. No Owner may 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 Lot against which the Assessments are made. 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 4.12 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves and need not be paid to the Owners or credited to them to reduce their future Assessments.

Section 4.13 Working Capital Fund The Association shall require each Person who acquires title to a Lot to make a nonrefundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the Annual Assessment. Said contribution shall be collected and transferred to the Association at the time of conveyance of the Lot and shall be for the use and benefit of the Association including, without limitation to meet any expenditures of the Association or to deposit in the Association's reserve account. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessment as the same become due.

Section 4.14 Other charges. The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Board may determine in its discretion at any time for time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association records or documents or other documents; return check charges; charges for long distance telephone calls; transfer charges or fees upon transfer of Ownership of a Lot; charges for notices and demand letters; and other charges incurred by the Association for or 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 4.15 Assessments for Misconduct. If any common Expense is caused by the misconduct of any Owner, the Association may assess that Common Expense exclusively against such owner and his Lot.

## **ARTICLE V.**

## **DESIGN REVIEW COMMITTEE**

Section 5.01 Composition of Committee. The Design Review Committee shall consist of three (3) or more persons appointed by the Board. The Committee may, as provided herein, designate a representative to act for it. The power to appoint as provided herein, shall include without limitation the power to: constitute the initial membership of the committee; appoint the members to the committee upon the occurrence of any vacancy therein; remove any member of the committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for; such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time at the discretion of the Board.

Section 5.02 Review by Committee. No Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications, shall have been first submitted to and approved in writing by the Design Review Committee. The plans and specifications must show exterior design, height, materials, color, and location of the Improvements and type of landscaping, fencing, walls, windbreaks and grading plans, as well as such other materials and information as may be required by the Committee. The Design Review Committee shall exercise its reasonable judgment to the end that all Improvements conform with and harmonize with the existing surroundings, residences, landscaping and structures, and that such Improvements are consistent with the Design Guidelines referenced in Section 5.04. In its review of such plans, specifications and other materials and information, the Design Review Committee may require that the applicants reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the Assessment against the Lot for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of such Assessments, as more fully provided in this Declaration. Notwithstanding the foregoing provisions of this Section 5.02, Design Review Committee approval is not required before performing maintenance or repairs of existing Improvements in the same manner as originally approved by the Design Review Committee, or as installed by the builder.

Section 5.03 Procedures. The Design Review Committee shall decide each request for approval within thirty days (30) after the complete submission of all plans, specifications and other materials and information which the Committee may require in conjunction therewith, unless such time period is extended by mutual agreement of the Committee and the applicant. If the Design Review Committee fails to decide any request within thirty days (30) after the complete submission of the plans, specifications, materials and other information with respect thereto, then approval shall be deemed to have been approved.

Section 5.04 Design Guidelines. The Design Review Committee, with the advice of the Board, may, at any time and from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce, design guidelines for the Community to interpret and implement the provisions of this Article and the Declaration, including, without limitation, those relating to procedures, materials to be submitted, specifications of items, types or kinds of Improvements, and other matters. Any architectural or design guidelines so adopted by the Committee shall be consistent, and not in conflict, with this Article and the Declaration.

Section 5.05 Vote and Appeal. A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Design Review Committee decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Design Review Committee, upon a written request therefor submitted to the Design Review Committee within thirty days (30) after such decision by the Design Review Committee's representative. If the Design Review Committee decides a request for architectural approval (whether by original decision or on appeal) which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the Board, upon a written request therefore, submitted to the Board within thirty days (30) after such decision by the Design Review Committee.

Section 5.06 Prosecution of Work After Approval. After approval of any proposed Improvement, the work to complete the same shall be accomplished as promptly and diligently as possible and in complete conformity with the approval. Failure to complete the proposed Improvement within (1) year after the date of approval of the application therefor, or to complete the Improvement in accordance with the description and materials furnished to the Committee and the conditions imposed with such approval, shall constitute a violation of this Article.

Section 5.07 Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with this Article and any approval therefor granted by the Committee. However, unless the Committee 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 5.08 Records. The Design Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 5.09 Liability. Neither the Design Review Committee nor the Board, nor any members of either such group, nor any representative of the Committee appointed to act on its behalf, shall be liable in damages to any person submitting requests for approval or to any Owner 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.

Section 5.10 Variance. The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions Imposed by this Article or Article X hereof, 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 the other property or Improvements In the neighborhood and shall not militate against the general intent and purpose hereof.

Section 5.11 Waivers. The approval or consent of the Design Review Committee or any representative thereof, or the Board, 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 Committee or any representative thereof, or the Board, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

## **ARTICLE VI.** **INSURANCE**

Section 6.01 Insurance. The Association shall maintain the following types of insurance on the Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses.

(a) Property insurance for broad for covered causes of loss; except that the total amount of insurance must not be less than the full insurable replacement costs of all the insured property less applicable deductibles at the time the insurance is purchased and at such renewal date, exclusive of land, foundations, excavations and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, Insuring the Association in an amount not less than One Million Dollars (\$1,000,000 00) per occurrence, insuring the Board, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. Each Owner shall also be included as an additional insured person but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who controls or disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate Assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as It shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect Directors

and officers of the Association from personal liability in relation to their duties and responsibilities in acting as Directors and officers of behalf of the Association

Section 6.02 Insurance on the Structures on Lots. Each Owner shall be responsible for obtaining and maintaining appropriate property and liability insurance for such Lot and the Improvements located thereon, and any activities occurring on such Lot.

Section 6.03 General Provisions of Insurance Policies. 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 Mortgagee's clause in favor of each Mortgagee and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty days (30) prior written notice thereof is given to the insured and each Mortgagee, insurer or guarantor of a Mortgagee. 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 Mortgagees, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies 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.

Section 6.04 Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. Any loss or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association may be allocated and assessed to the Owners causing the loss as further provided in this Section 6.04, or may be borne by the Association, as determined by the Board in its discretion. After notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect the amount from said Owner(s) in the same manner as any Assessment.

Section 6.05 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Sections 1 or 2 of this Article 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 Owner or Mortgagee. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Mortgagees, as their interests may appear. Subject to the provisions of Section 1 of Article VIII of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Mortgagees 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 or restated or the Community is terminated.

Section 6.06 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any

Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any Assessment.

Section 6.07 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 Owner or Mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 6.08 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Owner or Mortgagee shall be furnished with a copy of such appraisal upon request.

Section 6.09 Notice of Cancellation. If the insurance described in Sections 1 or 2 of this Article is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

## **ARTICLE VII. DAMAGE OR DESTRUCTION**

Section 7.01 Damage or Destruction.

(a) Any portion of the Community for which property insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(b) The Community is terminated;

(c) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

(d) Eighty percent (80%) of the Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild.

(e) 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 a Common Expense. If the all of the Common Elements that are damaged or destroyed are not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders. as their interests may appear, in proportion to their Allocated Interests for Common Expenses.

Section 7.02 Lots. Any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner thereof. "Repaired and reconstructed," as used in this Section 2, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction. However if a residence located on a Lot shall be destroyed or so damaged that the residence is no longer habitable, then the Owner of such Lot shall, within a reasonable time not, to exceed 180 days after the event resulting in such damage or destruction, commence and diligently pursue repair or reconstruction of the residence. If the Owner of a Lot does not commence repair or reconstruction within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Design Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Article IX, Section 2 hereof; enter upon the Lot and complete such repair or reconstruction.

## **ARTICLE VIII.** **EXTERIOR MAINTENANCE**

### Section 8.01 General.

(a) Maintenance, repair and replacement of all Common Elements, improvements located thereon, and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. The Association shall be responsible for maintenance, repair and necessary replacement of water and sewer mains located in the Common Elements. Further, the Association may provide such other maintenance, repair and replacement as the Board deems appropriate from time to time, including without limitation publicly dedicated property and Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance and repair provided for in this subsection (a) shall, subject to Section 8.04 of this Article, be collected by the Association as Assessments and paid as Common Expenses.

(b) Except as otherwise provided herein, the Association shall, at such times and according to such schedule as determined by the Board, provide maintenance on the landscaping on each Lot, to include mowing, trimming and watering of turf grass, pulling or otherwise killing weeds from mulch or rock areas, and pruning of shrubs; provided, however, that the Association shall have no responsibility for maintenance of any Improvements to the landscaping on an Owner's Lot which were installed by such Owner, nor will the Association be responsible for removal or replacement of dead trees, shrubs or turf grass. The Association will also be responsible for annual

start up and shut down of the irrigation system on each Lot. In addition, the Association shall provide trash removal from each Lot, except that the Association may require individual Owners to be responsible for removal of trash or items not accepted by the Association's contracted trash removal company without additional charge, such as, but not limited to, oversize items or hazardous materials.

(c) The Association shall provide for snow removal from roads, driveways, sidewalks to the front door of each residence, and from front porches of each residence, as and when the Board determines that such snow removal is appropriate and at such depths as determined by the Board. Snow removal desired or required by an Owner at depths less than the amounts determined by the Board to be the Association's responsibility shall be the responsibility of the Owner, including as necessary to meet City of Lakewood requirements.

(d) The Owner of each Lot is responsible for maintaining and keeping the Lot in a clean and slightly condition. Except as provided above, the maintenance, repair and replacement of each Lot and the Improvements located thereon shall be the responsibility of the Owner of such Lot, including, without limitation, removal of dead trees, shrubs and turf grass, and, subject to Design Review Committee approval, replacement or planting of new trees and shrubs. Owners shall also be responsible for maintenance and repairs to the irrigation system on their own Lot. Owners shall be responsible for maintenance, repair and necessary replacement of water and sewer lines, including connections, from the residence located on their respective Lots to the point where such lines connect to the water and sewer mains located in the Common Elements.

Section 8.02 Association's Right to Repair, Maintain and Restore. In the event any Owner shall fail to perform maintenance, repair and or reconstruction obligations in a manner reasonably satisfactory to the Board, the Association may, if said failure continues for a thirty day (30) period after written notice to said Owner by the Board, enter upon said Lot subsequent to the expiration of said thirty day (30) time period to perform any or all of such maintenance, repair or restoration. The cost of such maintenance, repair and/or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to Assessments as provided in Article IV hereof, including, without limitation, interest, late charges and lien rights.

Section 8.03 Access Easement. Each Owner shall afford to the Association and the other Owners, and the then agents or employees, access through such Owner's Lot reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or Improvements maintained, repaired or replaced by the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Owner responsible for the damage, or expense to avoid damage (or the Association if it is responsible) is liable for the cost of prompt repair. Further, each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or replacement as provided in this Article. The rights and easements granted in this section may be exercised only during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible.

Section 8.04 Owner's Negligence/Misconduct. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of or within any property for which the Association has an obligation to maintain, repair or replace, any Lot, or any Improvements located thereon, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, 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 costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall be added to the Assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article IV of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's tenant, family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

## **ARTICLE IX.** **RESTRICTIONS**

Section 9.01 General Plan. It is the intention of the Association to impose and maintain a general plan for the improvement, development, use and occupancy of the Lots, and to maintain the attractiveness, aesthetics and value of Lots in the Community.

Section 9.02 Restrictions Imposed. This Community is subject to the recorded easements, licenses and other matters of record in the office of the Clerk and Recorder of Jefferson County, Colorado. All of the Lots shall also be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

Section 9.03 Residential Use. Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may use his Lot for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof, the amount of traffic or the number of persons in the Community is not increased as a result of such usage; and no unreasonable inconvenience to other residents of the Lots is created thereby.

Section 9.04 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals, but not including chickens, ducks, geese or other poultry, or pigs or other livestock, and not including bees), so long as such pets are not kept for any commercial purpose and are not kept in such manner as to create a nuisance to any resident of the Lots, and are kept in compliance with City of Lakewood requirements (including without limitation the "leash law" and

restrictions against barking dogs and noisy animals). The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action(s) as it may deem appropriate to correct the same, including but not limited to revoking the Owner's privilege to keep pets at all An Owner's privilege to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article IV hereof.

Section 9.05 Temporary Structures, Unsightly Conditions. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Owner or a Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 9.06 Miscellaneous Improvements.

(a) Except as required by the Act with respect to political signs, without prior approval of the Design Review Committee, no advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House" or "For Rent" sign of not more than five (5) square feet.

(b) No wood piles or storage areas shall be located on any Lot as to be visible from a street or from the ground level of any other Lot.

(c) Except with respect to renewable energy efficiency devices and renewable energy generation devices required to be allowed by the Act and Colorado law, no types of refrigerating, cooling or heating apparatus shall be permitted on a roof and no such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Design Review Committee. Except as may otherwise be permitted by the Design Review Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish exceeding one meter in diameter, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view; provided, however; that the requirements of this subsection shall not apply to those antenna which are specifically required to be allowed by regulations promulgated under the Telecommunications Act of 1996, as amended from time to time. As to antenna which are specifically covered by the Telecommunications Act of 1996, as amended, the Association shall be empowered to adopt rules and regulations governing the types of antenna that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, nondiscriminatory restrictions relating to appearance, safety, location and maintenance.

(d) No fences shall be constructed, installed erected or maintained on any Lot except

wrought iron, without the prior written approval of the Design Review Committee, and except such fences as were heretofore constructed or installed in the development of, or construction of Improvements in the Community, including, without limitation perimeter fencing around part of the Community.

(e) No chain-linked (or other) dog runs, service yards, compost bins or yards, shall be constructed, installed, erected or maintained on any Lot except those with the prior written approval of the Design Review Committee.

(f) Appropriate limitations on holiday decorations may be adopted through Rules and are subject to prior approval of the Design Review Committee, but in no event shall any exterior holiday decorations and/or lighting utilized as a seasonal display remain more than thirty (30) days following the expiration of the holiday.

#### Section 9.07 Vehicular Parking. Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (rated as larger than 3/4 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored in the Community unless such parking or storage is entirely within the garage area of any Lot except that 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 for the maintenance of any portion of the Community or any Improvements located thereon.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently licensed and registered; 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, with prior written notification to the Association, shall not be deemed to be abandoned.

(c) In the event the Association shall determine that a vehicle is parked or stored in violation of subsections (a) or (b) of this Section, then a written notice describing said vehicle shall be personally delivered to the owner thereof or affixed to the owner’s door (if such owner can be reasonably ascertained) or shall 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 in its discretion from time to time, the Board shall have the right to remove the vehicle at the sole expense of the owner thereof. 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 completely enclosed structures which screen the sight and sound of the activity from the private drives, street and from adjoining property. The foregoing restriction shall not be deemed to prevent on a Lot, washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

(d) Notwithstanding the foregoing provisions of this Section 9.07, the Association may not prohibit the parking of a motor vehicle by the occupant of a residence on a street, driveway, or guest parking area in the Community if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met: (i) the vehicle has a gross vehicle weight rating of ten thousand pounds or less; (ii) the occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services; (iii) the vehicle bears an official emblem or other visible designation of the emergency service provider; and (iv) parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants to use streets, driveways, and guest parking spaces within the community.

Section 9.08 Nuisances. No nuisance shall be permitted in the Community or any portion thereof; nor any use, activity or practice that interferes with the peaceful enjoyment or possession and proper use of the Community or any portion thereof. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no unlawful use shall be permitted or made of the Community or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed. Notwithstanding any contrary provision of this Declaration, marijuana may not be grown, kept, maintained, or used, in a manner that constitutes a nuisance to any other Owner or Permittee or for commercial purposes; and no Owner or Permittee may engage in the sale or dispensing of marijuana from within the Community.

Section 9.09 No Hazardous Activities. No activities shall be conducted on any Lot or within Improvements constructed on any Lot that 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 Lot and no open fires shall be lighted or permitted on any Lot except in a contained fireplace or barbecue unit while attended and in use.

Section 9.10 No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others.

Section 9.11 Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

Section 9.12 Rules and Regulations. Rules and regulations concerning and governing the Lots, Common Elements, Limited Common Elements and/or this Community may be adopted,

amended or repealed from time to time by the Board, and the Board may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations

Section 9.13 Lots to be Maintained. Each Lot shall at all times be kept in a clean and sightly condition. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction of any Improvements on the Lot.

Section 9.14 Leases. The term “lease,” as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof. Any Owner shall have the right to lease his Lot, or any portion thereof, under the following conditions:

(a) All leases shall be in writing, and notice of the lease which includes the name of the tenant(s) and the duration of the lease, shall be delivered to the Board or the Association's managing agent, if any; and

(b) 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 provisions of the Association Documents, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease, and a violation of this Declaration by the Owner.

(c) All leases shall be for a term of no less than 6 months.

Section 9.15 Maintenance of Grade and Drainage. Each Owner shall maintain the grading upon his Lot, and the Association shall maintain the grading on the Common Elements, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. Each Owner and the Association agree, for themselves and their successors and assigns, that they will not in any way interfere with the established drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. In the event that it is necessary or desirable to change the established drainage over any Lot or the Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Design Review Committee for Its review and approval, in accordance with the provisions of Article V of this Declaration, and any such change shall also be made in accordance with all laws, regulations and resolutions of the City of Lakewood. For purposes of this Section, “established drainage” is defined as the drainage that exists at the time final grading of a Unit is completed.

Section 9.16 Use of Common Elements. An easement is hereby granted to the Association through the Common Elements as may be reasonably necessary for the purpose of discharging any of Association’s obligations. Subject to the immediately preceding sentence:

(a) No use shall be made of the Common Elements that will in any manner violate the statutes, rules, or regulations of any governmental authority having Jurisdiction over the Common Elements.

(b) No Owner shall engage in any activity which will temporarily or permanently deny

free access to any part of the Common Elements to all Members, nor shall any Owner place any structure whatsoever upon the Common Elements.

(c) The use of the Common Elements shall be subject to such Rules as may be adopted from time to time by the Board.

(d) No use shall ever be made of the Common Elements that will deny ingress and egress to those Owners having access to their Lots only over Common Elements, and the right of ingress and egress to said Lots is hereby expressly granted

Section 9.17 Easement for Encroachments. To the extent that Improvements on any Lot encroaches on the Common Elements or Improvements located on the Common Elements encroach on a Lot, and any such encroachment was unintentional, a valid easement for the encroachment exists.

Section 9.18 Easement for Driveway Encroachments. To the extent that any side entry driveway encroaches upon any adjacent Lot, a valid easement for such encroachment exists.

Section 9.19 Utilities Easement. There is hereby created a blanket easement upon, across, over and under the Common Elements for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Association shall have the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

## **ARTICLE X.**

### **PROPERTY RIGHTS IN THE COMMON ELEMENTS**

Section 10.01 Owners' Easements of Enjoyment. Subject to the provisions of Section 10.02 of this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to their Lots and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 10.02 Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; provided, however,

that the Association may not subject any portion of the Common Elements to a security interest unless such is approved by Members casting at least eighty percent (80%) of the votes in the Association; or

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

(c) The right of the Association to promulgate and publish Rules with which each Owner shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking and Improvements; and

(d) The right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against the Owner's Lot remains unpaid and, for a period not to exceed sixty days (60), for any infraction of the Association Documents; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such dedication or transfer shall be effective unless first approved by the Owners entitled to cast at least eighty percent (80%) of the votes in the Association, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Owner at least thirty days (30) in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection (e); and

(f) The right of the Association, through its Board, 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, their family members, guests and invitees, for any purpose(s) the Board may deem to be useful, beneficial or otherwise appropriate; and

(g) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements; and

(h) The right of the Association, through its Board in its discretion from time to time, to assign, terminate or cancel the assignment thereof, or reassign, one or more parking spaces in the Common Elements, for the use of any Owner(s), their family members, or tenant(s).

Section 10.03 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 10.04 Payment of Taxes or Insurance by First Mortgage Holders. First Mortgagees shall have the right, jointly or singly, to pay taxes or other charges or Assessments which are in default and which may, or have, become a lien against the Common Elements and may pay overdue premiums on property insurance policies or secure new property insurance coverage on the lapse of a policy for the Common Elements, and any First Mortgages making any such payments shall be

owed immediate reimbursement therefore from the Association.

**ARTICLE XI.**  
**GENERAL PROVISIONS**

Section 11.01 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Association Documents, as supplemented and amended, may be by the Association or any Owner in any proceeding at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. In any action instituted under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter. All remedies set forth in the Association Documents shall be cumulative of any remedies available at law or in equity. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (a) the Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction, or rule.

Section 11.02 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, 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 11.03 Conflict of Provisions. In case of any conflict between this Declaration and

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

Section 11.04 Conflict with Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms.)

Section 11.05 Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land in perpetuity unless the Community is terminated as provided for under the Act. Except as otherwise provided in this Declaration, this Declaration may be amended by the affirmative vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated,

(b) Every amendment to the Declaration must be recorded in Jefferson County, Colorado, and is effective only upon recordation.

(c) No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

(d) Amendments to the Declaration that are required by this Declaration to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 11.06 Registration of Mailing Address. Unless otherwise required by applicable law or this Declaration, any requirement to deliver any notice, statement, demand, document or record to an Owner shall be deemed satisfied by sending the same to an Owner by electronic delivery if the Owner has provided an electronic mail or delivery address to the Association. Otherwise, an Owner, shall register his mailing address with the Association, and any notice, statement, demand, document or record intended to be delivered upon an Owner must be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address unless. However, if any Owner fails to notify the Association of a registered address, then any notice, statement, demand, document or record may be delivered or sent to such Owner at the address of such Owner's Lot.

Section 11.07 Limitation on Liability. The Association, the Board, the Design Review Committee, and any member, Director, officer, committee member, agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice

Section 11.08 Disclaimer Regarding Safety. THE ASSOCIATION HEREBY DISCLAIMS 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 IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS 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.

IN WITNESS WHEREOF, the Association has executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Courseside Homeowners Association this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the undersigned certifies that the above and foregoing Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Courseside Homeowners Association was approved by vote or agreement of the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Courseside Homeowners Association, a  
Colorado nonprofit corporation

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

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF                            )

The foregoing instrument was acknowledged by me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[SEAL]

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

EXHIBIT A

COMMON ELEMENTS

Tracts A, B, D, E, F, G and H, and Kendall Circle and Kendall Way  
as depicted and described on the plat of  
Eight Hundred Kendall, Filing No. 2  
City of Lakewood, County of Jefferson, State of Colorado