

COMMON INTEREST COMMUNITY DECLARATION OF

COPPER HILL

A PLANNED COMMUNITY

MERIT DEVELOPMENT GROUP, LLC, a Colorado limited liability company (“Declarant”), being the owner of the following-described real property located in the County of Boulder, State of Colorado:

***LOTS 1 THROUGH 9, INCLUSIVE,
BLOCK 1,
AND
OUTLOT D,
GATEWAY, RECORDED MARCH 20, 1987 AT RECEPTION NO. 1686245,
COUNTY OF BOULDER,
STATE OF COLORADO***

including all appurtenant easements as listed in Section 10.1 below,

does hereby submit such real property and all improvements thereon to the provisions of the Colorado Common Interest Ownership Act, C.R.S., §§ 38-33.3-101 *et seq.*, for the purpose of creating COPPER HILL, a planned community, and making the improvements shown on the Plat, and does hereby DECLARE that such property and all improvements thereon shall be held and conveyed subject to the following terms, covenants, restrictions, and conditions:

**ARTICLE 1
DEFINITIONS**

1.1 Act. The Act is the Colorado Common Interest Ownership Act, C.R.S., § 38-33.3-101 *et seq.*, Colorado Revised Statutes, as it may be amended from time to time.

1.2 Allocated Interests. The Allocated Interests are the Common Expense liability and votes in the Association allocated to Units in the Common Interest Community. The Allocated Interests are described in Article 7 of this Declaration.

1.3 ARC or Architectural Review Committee. The committee of the Association created pursuant to Article 8 of this Declaration.

1.4 Association. The Association is The Copper Hill Homeowners Association, Inc., a Colorado non-profit corporation. It is hereby designated as the Association of Unit Owners pursuant to C.R.S., § 38-33.3-301. The Association shall have the following powers:

(a) to operate the Common Interest Community in accordance with the Act and this Declaration;

(b) to promote the health, safety, welfare and common benefit of the owners and residents of the Common Interest Community; and

(c) to do any and all permitted acts and to have and exercise any and all powers, rights, and privileges that are granted to an Association of Unit Owners under the laws of the State of Colorado, this Declaration, the Bylaws, the Rules, and any other governing documents of the Common Interest Community and the Association.

1.5 RESERVED FOR FUTURE USE.

1.6 Bylaws. The Bylaws are the Bylaws of the Association, as they may be amended from time to time.

1.7 Common Elements. The Common Elements are all the real estate of the Common Interest Community other than a Unit, as further provided herein, including, but not limited to, perimeter fences, drainage facilities, and appurtenant easements, all of which shall be owned by the Association.

1.8 Common Expenses. The Common Expenses are the expenses or financial liabilities for the operation of the Common Interest Community. Common Expense Assessments are the funds required to be paid by each Unit Owner in payment of such Owner's Common Expense liability. These expenses include:

(a) expenses of administration, maintenance, construction, improvement, repair, or replacement of the Common Elements;

(b) expenses of utilities not separately metered and billed directly to the Unit Owners;

(c) expenses declared to be Common Expenses by the Documents or by the Act;

(d) expenses agreed upon as Common Expenses by the Association, including, but not limited to, any expenses for landscaping of a Unit or enforcement of maintenance guidelines for the landscaping of a Unit; and

(e) reasonable reserves established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

In addition, the costs and expenses imposed on the Association, benefiting fewer than all the Units, shall be a Common Expense but, except as otherwise stated herein, assessed exclusively against those Units benefited.

1.9 Common Interest Community. The Common Interest Community is the real property described in the first paragraph of, and subject to, this Declaration.

1.10 Declarant. The Declarant is Merit Development Group, LLC, a Colorado limited liability company, or its successor, as defined in C.R.S., § 38-33.3-103(12).

1.11 Declaration. The Declaration is this document, including any amendments.

1.12 Development Rights. Development Rights are the rights reserved by the Declarant under Article 6 of this Declaration.

1.13 Director. A Director is a member of the Executive Board.

1.14 Documents. The Documents are this Declaration and the Plat recorded and filed pursuant to the provisions of the Act, the Articles of Incorporation of the Association, the Bylaws, and the Rules, as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.15 Eligible Insurer. An Eligible Insurer is an insurer or guarantor of a first Security Interest in a Unit. An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first Security Interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article 14.

1.16 Eligible Mortgagee. The Eligible Mortgagee is the holder of a first Security Interest in a Unit when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Unit. The notice must include the Unit number and address of the Unit on which it has a security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article 14.

1.17 Executive Board. The Executive Board is the board of directors of the Association.

1.18 Improvements. Improvements are any construction, structure, equipment, fixture, or facilities existing, or to be constructed on, the Property that is included in the Common Interest Community, including, but not limited to, Residences, buildings, trees, and shrubbery planted by the Owner, the Declarant, or the Association, paving, utility wires, pipes, and light poles.

1.19 Lot. If used herein, and as used on the Plat, the term “Lot” shall mean Unit and be synonymous with the term “Unit” as the same is used in the Act. It is Declarant's intent that the Unit numbers assigned on the Plat correspond to the Lot numbers assigned on the Subdivision Plat (*i.e.*, Lot 1 as shown on the Subdivision Plat is the same as Unit 1 on the Plat being recorded in conjunction with this Declaration). Notwithstanding anything contained herein to the contrary, Lot 2 on the Plat shall not conform to Lot 2 on the

Subdivision Plat due to the designation on the Plat of Lot 2A as a Unit and Lot 2B as a Common Element.

1.20 Majority or Majority of Unit Owners. The Majority or Majority of Unit Owners means the Owners of more than fifty percent (50%) of the votes in the Association.

1.21 Manager. A Manager is a person, firm, or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

1.22 Member. As used herein, the term “Member” is synonymous with the term “Director.”

1.23 Notice and Comment. Notice and Comment is the right of a Unit Owner to receive notice of an action proposed to be taken by, or on behalf of, the Association and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 20.1 of this Declaration.

1.24 Notice and Hearing. Notice and Hearing is the right of a Unit Owner to receive notice of an action proposed to be taken by, or on behalf of, the Association and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 20.2 of this Declaration.

1.25 RESERVED FOR FUTURE USE

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1.27 Person. A Person is an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency, or other legal or commercial entity authorized by law to hold title to real property in Colorado.

1.28 Plat. Plat means that certain document entitled “Common Interest Community Plat of Copper Hill, a Planned Community,” to be recorded in the Records, as distinguished from the Subdivision Plat, as hereafter defined.

1.29 Property. Property is the land and all Improvements, easements, rights, and appurtenances that have been submitted to the provisions of the Act by this Declaration, as described in the first paragraph hereof.

1.30 Records. The Records are the real estate records in the Office of the Clerk and Recorder of Boulder County, Colorado.

1.31 Residence. A Residence shall be a building for single-family living, constructed on a Unit including an enclosed garage attached thereto, or connected thereto, or a detached garage with an office above, as the case may be, and the appurtenant private drive.

1.32 RESERVED FOR FUTURE USE.

1.33 Rules. The Rules are the regulations for the use of Common Elements and for the conduct of persons within the Common Interest Community, as may be adopted by the Executive Board from time to time pursuant to this Declaration.

1.34 Security Interest. A Security Interest is an interest in and encumbrance upon real estate or personal property, created by contract or conveyance, that secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, installment land contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien intended as security for an obligation. A nonconsensual lien does not create a Security Interest.

1.35 Special Declarant Rights. Special Declarant Rights are the rights reserved for the benefit of the Declarant under Article 6 of this Declaration.

1.36 Subdivision Plat. The Subdivision Plat is that certain document entitled Final Plat of Gateway, recorded in the Records on March 20, 1987 at Reception no. 1686245.

1.37 RESERVED FOR FUTURE USE.

1.38 Trustee. The Trustee is the entity that may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board acting by majority vote.

1.39 Unit. A Unit is a physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are defined on the Plat and described in Section 4.2 of this Declaration.

1.40 Unit Owner or Owner. The Unit Owner or Owner is the Declarant or any other Person who owns a Unit. Unit Owner does not include a Person having only a Security Interest or any other interest in a Unit solely as security for an obligation. The Declarant is the initial owner of each and every Unit created and defined by this Declaration and the Plat.

ARTICLE 2

NAME AND TYPE OF COMMON INTEREST COMMUNITY AND ASSOCIATION

2.1 Name and Type of Common Interest Community. The name of the Common Interest Community is Copper Hill. Copper Hill is a planned community.

2.2 Association. The name of the Association is The Copper Hill Homeowners Association, Inc., a Colorado non-profit corporation.

ARTICLE 3 DESCRIPTION OF LAND

The entire Common Interest Community is situated in the County of Boulder, State of Colorado, and is located on the Property.

ARTICLE 4 UNIT AND BOUNDARY DESCRIPTIONS

4.1 Maximum Number of Units. The Common Interest Community initially contains nine (9) Units. Nothing contained in this Section shall prohibit the Owner of two or more adjacent Units from combining them or portions thereof so that the resulting number of Units is equal to or less than nine (9).

4.2 Boundaries. Vertical boundaries of each Unit created by the Declaration are shown on the Plat, and each Unit is identified with its identifying number. The Units are not defined by horizontal boundaries.

4.3 Description of a Unit. Every deed, lease, mortgage, will, or other instrument shall legally describe a Unit by its identifying Unit number together with a reference to the Plat and this Declaration, in the following form:

Lot _____, Copper Hill, a planned community, as shown and described on the Common Interest Community Plat of Copper Hill, a Planned Community filed on _____, 2008, at Reception No. _____, in accordance with and subject to the Common Interest Community Declaration of Copper Hill, a Planned Community, recorded _____, 2008, at Reception No. _____ of the records in the Office of the Clerk and Recorder of the County of Boulder, State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit but also any easements appurtenant to such Unit. The reference to the Plat and Declaration in any instrument shall be deemed to include any and all supplements or amendments to the Plat and/or Declaration, without specific reference thereto.

ARTICLE 5 MAINTENANCE OF THE PROPERTY

5.1 Individual Units. It shall be the duty and obligation of each Unit Owner, at such Unit Owner's expense, to beautify and keep neat, attractive, sightly, and in good order such Owner's Residence and the exterior portions of the Unit, and to maintain, repair, and replace

the same to the extent such duties are not the responsibility of the Association. If the Owner does not discharge this obligation, then, following Notice and Hearing, the Association may arrange to have the work done and assess the Owner for the cost of such work plus twenty-five percent (25%) of such cost for inspection, administrative costs, and overhead of the Association and other incidental expenses.

5.2 Duties of Association. The Association shall maintain, repair, replace, beautify and keep neat, attractive, sightly, free from snow and in good order, to the extent that such functions are not expected to be performed by Boulder County or any other political subdivision thereof or of the State of Colorado, all of the Common Elements. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of this Section 5.2. If such expense is attributable to a Unit Owner, such expense will be assessed following Notice and Hearing.

5.3 Right of Access. Any person authorized by the Executive Board shall have the right of access to all portions of the Property outside the Residence constructed on a Unit for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Common Interest Community as set forth herein, including but not limited to the right to perform emergency maintenance on the landscaped areas of a Unit inside or outside of any landscape easement areas for which the Association has a right of access, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Unit Owner. An "emergency" under this Section 5.3 shall be defined as any situation where the Unit Owner has failed to maintain the Unit in accordance with the architectural standards of the Property following five (5) days written notice from the Executive Board that such Property is not in compliance with said architectural standards in the sole discretion of the Executive Board. In case of an emergency, no request or notice is required, and the right of entry shall be immediate whether or not the Unit Owner is present at the time.

5.4 Repairs Resulting From Negligence. Each Unit Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by such Owner's failure properly to maintain, repair, or make replacements to the Owner's Unit. If such expense is caused by misconduct, it will be assessed following Notice and Hearing. The Association will be responsible for damage to Units that is caused by the Association intentionally, negligently, or by the Association's failure to maintain, repair, or make replacements to the Common Elements.

ARTICLE 6

DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

6.1 Reservation of Development Rights. The Declarant reserves the following Development Rights:

(a) the right by amendment to this Declaration or the Plat to create Common Elements in the locations identified on the Plat;

(b) the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across any portion of the Property for the purpose of furnishing utility, drainage, and other services to the Residences or any Unit and Improvements;

(c) the right to withdraw and grant easements and licenses to public and quasi-public utility companies or districts and to convey Improvements within the Common Elements in the Common Interest Community for the purposes mentioned above; and

(d) the right to combine two or more Units or divide one Unit for the purpose of combining portions of said divided Unit with adjoining Units, thereby in both cases reducing the total number of Units.

6.2. Limitations on Development Rights. The Development Rights reserved in Section 6.1 are limited as follows:

(a) the Development Rights may be exercised at any time, but not more than five (5) years after the recording of the initial Declaration;

(b) all Units and Common Elements created pursuant to the Development Rights will be restricted to use in the same manner and to the same extent as the Common Elements created under this Declaration, as initially recorded; and

(c) no Development Rights may be exercised unless approved pursuant to Section 14.5 of this Declaration.

6.3 Phasing of Development Rights. No assurances are made by the Declarant as to whether the Declarant will exercise its Development Rights or the order in which such Development Rights will be exercised. The exercise of Development Rights as to some portions of the Property will not obligate the Declarant to exercise them as to other portions.

6.4 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

(a) to complete any Improvements indicated on the Plat;

(b) to exercise a Development Right reserved in the Declaration;

(c) to maintain sales offices, management offices, signs advertising the Common Interest Community, and models;

(d) to use easements through the Common Elements and Units for the purpose of making Improvements within the Common Interest Community; and

(e) to appoint or remove an officer of the Association or an Executive Board member during a period of Declarant control, subject to the provisions of Section 6.9 of this Declaration.

6.5 Models, Sales Offices, and Management Offices. As long as the Declarant is a Unit Owner, the Declarant, its duly authorized agents, representatives, and employees, may construct on any Unit owned by Declarant or on any portion of the Common Elements up to a maximum of one (1) model Residence and up to a maximum of one (1) sales office or management office. In addition, during periods of construction, Declarant may maintain a construction trailer on each Unit on which Declarant is constructing a Residence or, at Declarant's option, on a nearby Unit owned by Declarant.

6.6 Construction; Declarant's Easement. The Declarant reserves the right to perform warranty work, repairs, and construction work in Units and Common Elements, to store materials in secure areas, and to control, and have the right of access to, work and repairs until completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to utility providers, special districts, the City of Louisville, Boulder County, or the State of Colorado.

6.7 Signs and Marketing. The Declarant reserves the right to post and maintain signs and displays on any Unit owned by Declarant and in the Common Elements in order to promote sales of Units. Declarant also reserves the right to conduct general sales activities in a manner that will not unreasonably disturb the rights of Unit Owners.

6.8 Declarant's Property. The Declarant reserves the right to remove and retain all its property and equipment used in the sales, management, construction, and maintenance of the Property, whether or not they have become fixtures.

6.9 Declarant Control of the Association.

(a) Subject to Subsection (b) below, there shall be a period of Declarant control of the Association, during which a Declarant, or Persons designated by the Declarant, may appoint and remove the officers of the Association and Members of the Executive Board. The period of Declarant control shall terminate no later than the earlier of:

(i) Sixty (60) days after conveyance to Unit Owners other than a Declarant of seventy-five percent (75%) of the Units that may be created in the Common Interest Community; or

(ii) two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business. A Declarant may voluntarily surrender the right to appoint and remove officers of the Association and Members of the Executive Board before termination of the period described above. In that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than sixty (60) days after conveyance to Unit Owners other than a Declarant of twenty-five percent (25%) of the Units that may be created, at least one Member and not less than twenty-five percent (25%) of the Members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance to Unit Owners other than a Declarant of fifty percent (50%) of the Units that may be created, not less than thirty-three and one-third percent (33 1/3%) percent of the Members of the Executive Board must be elected by Unit Owners other than the Declarant.

(c) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three (3) Members, at least a majority of whom shall be Unit Owners. If any Unit is owned by a partnership, limited liability company, corporation, or similar entity, any officer, partner, manager, member, or employee of that Unit Owner shall be eligible to serve as a Member of the Executive Board and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. The Executive Board shall elect the officers. The Executive Board Members and officers shall take office upon election.

(d) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under C.R.S., § 38-33.3-308, the Unit Owners, by a vote of sixty-seven percent (67%) of all Unit Owners present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a Member of the Executive Board, with or without cause, other than a Member appointed by the Declarant.

6.10 Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: as long as the Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Units or Common Elements; (c) owns any Unit; (d) owns any Security Interest in any Unit; or (e) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

6.11 Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

6.12 Rights of Lenders to Declarant. Additional limitations on the right of the Declarant to exercise Development Rights may be found in Article 14 of the Declaration.

ARTICLE 7 ALLOCATED INTERESTS

The interest allocated to each Unit has been calculated by the following formula:

7.1 Liability for the Common Expenses. The percentage of liability for Common Expenses allocated to each Unit is based on one share for each Unit compared with the total shares allocated to all the Units in the Common Interest Community (*i.e.*, at the present, 1/9th);, subject to the Declarant's right to combine Units and reduce the total number of Units; provided, however, that if an Owner combines two or more Units as provided herein with the intent of creating one Unit therefrom, such resulting Unit shall continue to be allocated the full percentage originally allocated to the Units so combined. If a Unit is subdivided by the Owner and added to other Units as provided herein, the interest of such subdivided Unit shall be added proportionally to the Units receiving all or a portion of such subdivided Unit. Nothing contained in this Section shall prohibit certain Common Expenses from being apportioned to particular Units under Article 5 or Article 14 of this Declaration.

7.2 Votes. The Unit Owner of each Unit in the Common Interest Community, including the Declarant as to any Unit owned by the Declarant, shall have one vote in the affairs of the Association. If the Declarant exercises the Declarant's right to combine Units, the resulting Unit or Units shall each have one vote (*i.e.*, thereby resulting in fewer total votes). If an Owner combines two or more Units as provided herein with the intent of creating one Unit therefrom, such resulting Unit shall continue to have the total number of votes originally allocated to the Units so combined. However, if a Unit is subdivided by the Owner and added to other Units as provided herein, the vote of such subdivided Unit shall be eliminated (thereby reducing the total votes). Any specified percentage, portion, or fraction of Unit Owners, unless otherwise stated in the Documents, means the specified percentage, portion, or fraction of all of the votes as allocated herein.

ARTICLE 8 ARCHITECTURAL REVIEW COMMITTEE

8.1 Creation of Committee. There is hereby created a standing committee of the Association to be known as the Architectural Review Committee or ARC, to be composed of not more

than four (4) individuals. Members of the ARC shall be appointed by the Executive Board to hold office at the will of the Executive Board.

8.2 Purpose of ARC. The purpose of the ARC is to maintain the superior beauty and quality of the Improvements constructed on the Property and the harmony thereof with the surroundings, and to evaluate the use and suitability of the proposed Improvements and the effect of the same on any adjacent or neighboring properties.

8.3 Approval of Improvements. Except for initial Improvements constructed by Declarant and Improvements made at any time by the Association, all plans and specifications in connection with (a) exterior remodeling, rebuilding, refurbishing, or alteration of a Residence, including, without limitation, the exterior appearance, landscaping, color or texture, and patio covers or awnings; or (b) any Improvements or alterations to the Unit other than to the Residence, including, but not limited to, landscaping not initially provided by Declarant, the roof, patio covers, awnings, sculpture or art work, driveway, sidewalk, fence, outside deck, grading, excavation, and filling or similar disturbance of the surface of the land, all of which shall require the prior written approval of the ARC.

8.4 Owner to Submit Plans. Before any construction work begins, the Owner of the Unit shall be responsible for submitting to the ARC complete plans, specifications, and color/material/texture samples for the scheduled work and the qualifications of the parties to be performing the scheduled work.

8.5 Action by ARC. The ARC's approval or disapproval as required by this Declaration shall be in writing. In the event the ARC fails to give its written approval or disapproval within thirty (30) days after complete submission of the required plans and specifications, the submitted plans and specifications shall be deemed approved by the ARC.

8.6 Construction of Improvements after Approval by ARC. Following approval of proposed Improvements by the ARC, the Unit Owner shall cause the approved Improvements to be made to the Unit in a timely fashion.

8.7 Guidelines, Standards, and Procedures. The ARC shall adopt guidelines, standards, and procedures for its day-to-day operations and the performance of its duties under this Declaration, which guidelines, standards, and procedures shall be consistently applied for all matters coming before the ARC.

8.8 Compensation of Members of ARC. The members of the ARC may receive reasonable compensation for services performed, together with reimbursement for actual and reasonable expenses incurred by them in the performance of their duties.

8.9 Non-Liability of ARC Members. None of the ARC, any member thereof, or the Executive Board shall be liable to any Owner or to any other person for any loss, damage, or injury arising out of, or in any way connected with, the performance of the ARC's duties

under this Declaration. By granting its approval of proposed Improvements, the ARC will not be deemed to have approved or to have made any representation as to the safety, structural soundness, or compliance with local building codes or other governmental laws or regulations concerning the proposed Improvements.

ARTICLE 9 RESTRICTIONS ON USE, ALIENATION, AND OCCUPANCY

9.1 Improvements to Units. Subject to the Special Declarant Rights reserved under Article 6, the following restrictions on construction of Improvements apply to all Units:

(a) Zoning. Zoning laws, ordinances, resolutions, rules, and regulations are considered to be a part hereof, and no provision of this Declaration shall be valid or be interpreted to violate any present or future zoning laws, ordinances, resolutions, rules, or regulations.

(b) Garage and Private Drive. A garage shall be required, either detached or attached, and shall be of a size at least large enough to enclose two (2) passenger automobiles. No attached or detached unenclosed carport will be permitted.

(c) Fences. All fences, besides those described on the Plat, are discouraged, except in the case of electric underground fences designed to keep a pet confined within a certain area, subject to prior approval of the ARC.

(d) Wells and Mineral Excavation. No portion of the Property, including, without limitation, any area within a Unit, shall be used to explore for or to remove any water, soil, hydrocarbons, or other minerals of any kind.

(e) Maintaining of Drainage. There shall be no interference with the established drainage pattern as planned by Declarant for the entire Property.

9.2 Use Restrictions. Subject to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements:

(a) Single-Family Residence. Each Unit is restricted to use as a single family Residence and accessory uses as permitted herein. A single-family Residence is defined as a single housekeeping unit, operating on a nonprofit, noncommercial basis with a common kitchen and dining area. No room or rooms in any Residence or parts thereof may be rented or leased, and no paying guests shall be quartered in any Residence. Nothing contained in this Section, however, shall be construed as preventing the renting or leasing of a Unit in its entirety to a single family, in which event a copy of the written lease shall be delivered to the Association.

(b) No Commercial Pursuits. Except for those activities conducted as a part of the marketing and development program of the Declarant, no industry, business, trade, commercial activities, or home professional pursuits shall be conducted, maintained, or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel, or motel purposes.

(c) Compliance with Laws. No immoral, improper, offensive, or unlawful use may be made of the Property, and Unit Owners shall comply with, and conform to, all applicable laws, ordinances, rules, and regulations of the United States, the State of Colorado, the County of Boulder, and the City of Louisville. The violating Unit Owner shall hold harmless the Association and other Unit Owners from all fines, penalties, costs, and prosecutions for any violation or noncompliance.

(d) Offensive Activities. No noxious, offensive, dangerous, or unsafe activity shall be carried on upon any portion of the Property, nor shall anything be done, either willfully or negligently or placed thereon, that is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to other Unit Owners or occupants.

(e) Annoying Sounds or Odors. No sound or odor, including those caused by house pets, shall be emitted from any portion of the Property that is noxious or offensive to or would interfere with the rights, comforts, or convenience of other Unit Owners or occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any Unit except with the prior written approval of the ARC.

(f) No Hazardous Activities. There shall be no activity or Improvement on any portion of the Property that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property, and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

(g) No Unsightliness. All unsightly structures, facilities, equipment, objects, and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment except when in actual use.

(h) Storage of Vehicles. Other than short-term guests or agents of Owner whose vehicles may be parked for no more than seventy-two (72) hours, and subject to the public-policy-based permissions contained in C.R.S., § 38-33.3-106.5, no vehicles shall be regularly kept on the Unit in any area other than in the garage. Garages are restricted to occupancy by the Owner of the Unit for storage and for parking spaces for vehicles. Garage doors shall remain closed when not in use for ingress or egress of vehicles. No boat, camper (on or off supporting vehicles), trailer, tractor, truck, towed trailer unit, motorcycle, disabled, junked, or abandoned vehicle, motor home, mobile home, recreational vehicle, or any other vehicle, the

primary purpose of which is for recreational, sporting, or commercial use, shall be parked or stored in, on, or about any Unit or street within the Property except within the attached garage. Declarant, the Association, and the ARC shall have the right to enter unenclosed portions of the Unit to remove and store, at the Owner's expense, vehicles in violation of this Section. The Owner shall be entitled to Notice and Hearing prior to such action.

(i) Vehicle Repairs. No maintenance, service, repair, dismantling, or repainting of any type of vehicle, boat, machine, or device may be carried on, except within a completely enclosed structure that screens the sight and sound of the activity from the street and from other Units.

(j) Pets. Pets may not be kept for any commercial purposes. Every household pet shall be controlled by its Owner and shall not be allowed off the Owner's Unit except when properly leashed and accompanied by the pet's Owner or his representative. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet. Any approved pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three days' written notice from the Executive Board following Notice and Hearing. Each Owner shall hold the Association harmless from any claim resulting from any action of such Owner's pets. Seeing-eye, hearing-ear, and assistance dogs will be permitted for those persons holding certificates of necessity.

(k) Access to Common Elements. No Owner shall place any structure whatsoever upon, or permit any structure to intrude upon or overhang, the Common Elements, and no Owner shall engage in any activity that would temporarily or permanently deny free access to any part of the Common Elements by all Owners. No use shall ever be made of the Common Elements that would deny ingress or egress by any Owner to such Owner's Unit.

(l) Prohibition Against Discrimination. Anything to the contrary herein notwithstanding, these covenants shall be construed as omitting restrictions, if any, based on race, color, national origin, creed, sex, marital status, ancestry, familial status, or disability.

(m) Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Unit except within an enclosed structure or area appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up.

(n) No Temporary Structures or Building Materials. Except during construction, as set forth above, no tent, shack, temporary structure, or temporary building or building materials shall be placed, stored, or maintained upon the Unit.

(o) Compliance with Insurance Requirements. Nothing shall be done or kept on the Property that could result in a material increase in the rates of insurance or would result in the cancellation of insurance maintained by the Association without the prior approval of the Association.

(p) Further Subdivision of Units. The Owner of a Unit shall not further subdivide that Unit; provided, however, that nothing in this subsection shall prohibit Declarant or an Owner from subdividing a Unit for the sole purpose of annexing all subdivided portions of such Unit to other adjacent Units.

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

(r) Restrictions on Signs and Advertising. Subject to the public-policy-based permissions contained in C.R.S., § 38-33.3-106.5, no sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view except for a name plate or sign not exceeding eighteen (18) square inches in area on the main door to each Unit and except signs as may be approved in writing by the Association or the ARC. A sign advertising a Unit for sale or for lease may be placed on such Unit; provided, however, that standards relating to dimensions, color, style, and location of such signs shall be determined from time to time by the ARC.

9.3 RESERVED FOR FUTURE USE.

9.4 Restrictions on Alienation. The following restrictions on alienation apply to all Units and to the Common Elements:

(a) No Time-Sharing Plan. A Unit may not be conveyed pursuant to a time-sharing plan.

(b) Leases. A Unit may not be leased or rented for a term of less than sixty (60) days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association. All leases of a Unit shall include a provision that the tenant will recognize and attorn to the Association as landlord solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant; provided the Association gives the Owner of such leased Unit notice of the Association's intent to so enforce and a reasonable opportunity to cure the violation directly prior to the commencement of an enforcement action.

(c) Summary Process. The Association will have the right and power to exercise the landlord's rights of summary process against any tenant of a Unit Owner who violates the

Rules; provided the landlord has received Notice and Hearing and is given a reasonable opportunity to cure the violation following the hearing.

ARTICLE 10 EASEMENTS AND LICENSES

10.1 Existing Easements. All easements or licenses to which the Common Interest Community is presently subject are shown on the Plat.

10.2 Granting of Future Easements. The Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

10.3 Owner's Easement Across Common Elements. Every Owner shall have an unrestricted right and easement for ingress to, and egress from, such Owner's Unit over and across the Common Elements, which easement shall be appurtenant to and shall pass with the title to every Unit, subject to the right of the Declarant and/or the Association to dedicate or transfer all or 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 Association. No such dedication or transfer by the Association shall be effective unless an instrument signed by sixty-seven percent (67%) of the Unit Owners agreeing to such dedication or transfer has been recorded in the Records.

10.4 Easements Reserved and Restrictions on Drainage Easements. Easements and rights of way are reserved on, over, and under the Common Elements and the Units as shown on the Plat, for construction, maintenance, repair, replacement, and reconstruction of poles, wires, pipes and conduits for lighting, heating, air conditioning, electricity, gas, telephone, drainage and any other public or quasi-public utility service purposes, for sewer and pipes of various kinds, and for any other necessary maintenance or repair.

10.5 Easement for Emergency Access. There is hereby created a right of access across all portions of the Property for the passage of emergency vehicles and police, fire, and other emergency service workers.

10.6 Recorded Easements. The recording data for recorded easements for the Project are as follows:

10.6.1 An easement for communication facilities and incidental purposes granted to The Mountain States Telephone and Telegraph Company by the instrument recorded February 21, 1989 on Film 1567 at Reception no. 00968331.

10.6.2. An easement for utilities and incidental purposes granted to Public Service Co. of Colorado by the instrument recorded May 8, 2001 at Reception No. 2159082.

10.6.3. An easement for landscaping and incidental purposes granted to The Copper Hill Homeowners Association, Inc. by the instrument recorded _____, 2008 at Reception No. _____.

ARTICLE 11 AMENDMENTS TO DECLARATION

11.1 In General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and C.R.S., § 38-33.3-107, or by certain Unit Owners under C.R.S., § 38-33.3-218, and except as limited by Section 11.4 and Article 14 of this Declaration, this Declaration and the Plat may be amended only by vote or agreement of at least sixty-seven percent (67%) of the Unit Owners. The procedure for amendment must follow the procedures of C.R.S., § 38-33.3-217.

11.2 Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

11.3 Recordation of Amendments. Each amendment to the Declaration must be recorded in the Records, and the amendment is effective only upon recording.

11.4 Unanimous Consent. Except to the extent expressly permitted or required by other provisions of the Act or this Declaration, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted except by unanimous consent of the Unit Owners.

11.5 Execution of Amendments. An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

11.6 Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

11.7 Consent of Holders of Security Interests. Amendments to the Declaration are subject to the consent requirements of Article 14.

**ARTICLE 12
AMENDMENTS TO BYLAWS**

The Bylaws may be amended only by the vote of sixty-seven percent (67%) of the Members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.

**ARTICLE 13
TERMINATION**

Termination of the Common Interest Community may be accomplished only in accordance with C.R.S., § 38-33.3-218.

**ARTICLE 14
MORTGAGEE PROTECTION**

14.1 Introduction. This Article establishes certain standards and covenants that are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, not a substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

14.2 Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean that the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them that specified percentage of votes as compared to the total votes allocated to all Units in the Association then subject to Security Interests held by all Eligible Mortgagees.

14.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(a) any condemnation loss or any casualty loss that affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured, or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

(b) any delinquency in the payment of Common Expense Assessments owed by a Unit Owner that remains uncured for a period of sixty (60) days and whose Unit is subject to a first Security Interest held, insured, or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action that would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 14.4 of the Declaration; and

(e) any judgment rendered against the Association.

14.4 Consent and Notice Required.

(a) Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Section may be effective without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section 14.3 above, without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and without approval by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). A change to any of the following would be considered material:

- (i) voting rights;
- (ii) assessments, assessment liens, or priority of assessment liens;
- (iii) reserves for maintenance, repair, and replacement of Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) expansion or contraction of the Common Interest Community or the addition, annexation, or withdrawal of property to or from the Common Interest Community;
- (vi) insurance or fidelity bonds;
- (vii) leasing of Units;
- (viii) imposition of any additional restrictions on the Unit Owners' right to sell or transfer their Units;
- (ix) restoration or repair of the project after hazard damage or partial condemnation in a manner other than that specified in the Documents;
- (x) termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and
- (xi) any provision that expressly benefits mortgage holders, insurers, or guarantors.

(b) Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights, without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section 14.3 above, and approval of at least fifty-one percent (51%) (or the indicated percentage, if higher) of the Eligible Mortgagees:

(i) the conveying or encumbering of the Common Elements or any portion of the Common Elements, for which an eighty percent (80%) Eligible Mortgagee approval is required (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause);

(ii) the termination of the Common Interest Community for reasons other than substantial destruction or condemnation, for which a sixty-seven percent (67%) Eligible Mortgagee approval is required;

(iii) the granting of any easements, permits, leases, licenses, or concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community);

(iv) the restoration or repair of the Property after hazard damage or a partial condemnation in a manner other than specified in the Instruments;

(v) the merger of the Common Interest Community with any other common interest community;

(vi) the assignment of the future income of the Association, including its right to receive Common Expense Assessments; and

(vii) any action taken not to repair or replace the Property in the event of substantial destruction of any part of a Unit or the Common Elements.

(c) The Association may not change the period for collection of regularly budgeted Common Expense Assessments to other than monthly collection without the consent of all Eligible Mortgagees.

(d) The failure of an Eligible Mortgagee or Eligible Insurer to respond within thirty (30) days to any written request for approval of an addition or amendment to the Document wherever Eligible Mortgagee or Eligible Insurer approval is required, when such request is delivered by certified or registered mail, return receipt requested, shall constitute an implied approval of the addition or amendment.

14.5 Development Rights. No Development Rights may be exercised, voluntarily abandoned, or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

14.6 Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules, books, records, and financial statements. The Association shall permit any Eligible Mortgagee or Eligible Insurer, or other first mortgagee of Units, to inspect the books and records of the Association during normal business hours.

14.7 Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer who submits a written request with a copy of an annual financial statement. It shall be provided within ninety (90) days following the end of each fiscal year of the Association. This financial statement shall be audited by an independent certified public accountant if:

(a) the Common Interest Community has annual revenues or expenses of at least two hundred fifty thousand dollars (\$250,000.00); and

(b) any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

14.8 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means at law or in equity.

14.9 Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Unit Owner may attend.

14.10 Appointment of Trustee. In the event of damage or destruction under Article 19 or condemnation of all or a portion of the Common Interest Community, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section 1.38 of this Declaration. Proceeds will then be distributed according to law. Unless otherwise required, the Members of the Executive Board, acting by majority vote, may act as Trustee.

ARTICLE 15

ASSESSMENT AND COLLECTION OF COMMON EXPENSES

15.1 Apportionment of Common Expenses. Except as provided in Section 15.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interests in the Common Expenses, *i.e.*, initially one-ninth (1/9th) per Unit., subject to the Declarant's right to combine Units, thereby reducing the total number of Units and reallocating the percentage interests in the Common Expenses. This shall include, but not be limited to, Common Expenses for reasonable maintenance and replacement of the Common Elements, notwithstanding the fact that such maintenance and replacement could be viewed as benefiting one particular Unit over another.

15.2 Common Expenses Attributable to Fewer than all Units.

(a) Any Common Expense for services approved by the Executive Board and provided by the Association to an individual Unit, or some Units but fewer than all the Units, at the request of the particular Unit Owner or Owners shall be assessed against the requesting Unit(s).

(b) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered in proportion to their Common Expense liabilities.

(c) If a Common Expense is incurred by the action or inaction of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.

(d) Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense Assessments.

15.3 Lien.

(a) The Association is hereby granted, and shall have, a lien on a Unit for a Common Expense Assessment levied against the Unit or fines imposed against its Unit Owner. Fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If a Common Expense 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) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first Security Interest on the Unit recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described C.R.S. §§ 38-33.3-316(2)(a) to the extent that the Common Expense Assessments (not including fees, charges, late charges, attorneys' fees, fines, and interest pursuant to C.R.S. §§ 38-33.3-302(1)(j), (1)(k), and (1)(l), § 38-33.3-313(6), and § 38-33.3-315(2)) are based on the periodic budget adopted by the Association pursuant to Section 15.4 of this Article and would have become due in the absence of 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 of an action or a non-judicial foreclosure either to enforce or extinguish either the Association's lien or a Security Interest described in C.R.S. §§ 38-33.3-316(2). C.R.S. §§ 38-33.3-316(2) does not affect the priority of mechanic's or materialmen's liens or

the priority of a lien for other assessments made by the Association. By purchasing a Unit, an Owner waives all federal and state homestead and other exemptions with respect to the lien for Common Expense Assessments.

(c) Recording of the Declaration in the Records constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment under this Section is not required.

(d) A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Common Expense Assessment becomes due, except that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party, which shall be additional Common Expense Assessments.

(g) A judgment or decree in an action brought under this Section is enforceable by execution under Colorado law.

(h) The Association's lien must be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

(i) In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Unit who shall collect all sums due from that Unit Owner or a tenant of the Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments based on a periodic budget adopted by the Association pursuant to Section 15.4 of this Declaration.

(j) If a holder of a first Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against that Unit which became due before the sale, other than the assessments that are prior to that Security Interest under Subsection (b) of this Section of the Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

(k) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

15.4 Budget Adoption and Ratification. Within ninety (90) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to each Unit Owner and shall set a date for a meeting of the Unit Owners to consider ratification of the budget. The meeting shall be not less than ten (10) nor more than fifty (50) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners rejects the budget, the budget is ratified whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a new budget proposed by the Executive Board.

15.5 Ratification of Nonbudgeted Common Expense Assessments. If the Executive Board votes to levy Common Expense Assessments not included in the current budget in an amount greater than fifteen percent (15%) of the current annual operating budget, other than a Common Expense Assessment enumerated in Section 15.2 of this Declaration, or a Common Expense Assessment for the working capital fund described in Section 15.12 below, or a Common Expense Assessment for the Reserve Fund described in Section 15.13 below, the Executive Board shall submit this Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 15.4.

15.6 Certificate of Payment of Common Expense Assessments. The Association, upon written request, shall furnish a Unit Owner with a written statement setting out the amount of unpaid Common Expense Assessments against the Unit. The statement must be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board, and each Unit Owner. A reasonable fee, established by the Executive Board, may be charged for such statement.

15.7 Monthly Payment of Common Expenses. All Common Expenses assessed under Sections 15.1 and 15.2 of this Declaration shall be due and payable monthly unless otherwise determined by the Executive Board.

15.8 Acceleration of Common Expense Assessments. In the event of default in which any Unit Owner does not make the payment of any Common Expense Assessment levied against his Unit within ten (10) days of the date due, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable.

15.9 Commencement of Common Expense Assessments. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. Common Expense Assessments shall be levied against and payable by the Owners of all Units, including Units still owned by Declarant.

15.10 No Waiver of Liability for Common Expenses. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made.

15.11 Personal Liability of Unit Owners. The Unit Owner of a Unit, at the time a Common Expense Assessment or portion of the assessment is due and payable, is personally liable for the Common Expense Assessment. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Unit unless the successor agrees to assume the obligation.

15.12 Reserve for Working Capital Fund. The Association shall maintain a reserve fund to meet unforeseen expenditures and/or to purchase any additional equipment or services (the "Working Capital Fund"). The Working Capital Fund shall be held by the Association in a segregated fund, without interest. The Working Capital Fund shall be established and initially funded by the Declarant depositing in cash with the Association a sum equal to two months' estimated regular Common Expense Assessment per Unit upon the earlier of: (a) the time of sale of each Unit by the Declarant; (b) the date a Unit is first occupied by a tenant of Declarant; or (c) the date of termination of Declarant control of the Association under Section 8.9 above. Any amounts paid into the Working Capital Fund shall not be considered as advance payments of regular Common Expense Assessments. To the extent the Working Capital Fund has been established prior to the date of termination of Declarant control of the Association, the Working Capital Fund shall be transferred to the Association when Declarant control of the Association is terminated. The Declarant is prohibited from using the Working Capital Fund to defray any of Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits while Declarant is in control of the Association. The Association shall adopt reasonable procedures for replenishing the Working Capital Fund.

15.13 Reserve Fund for Replacement of Improvements. The Association shall establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements (the "Reserve Fund"). This Reserve Fund shall be a line item in the periodic budget and shall be collected from and as part of the regular Common Expense Assessments.

ARTICLE 16 RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense Assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose and with the Eligible Mortgagee consent described in Article 14.

ARTICLE 17
PERSONS AND UNITS SUBJECT TO DOCUMENTS

17.1 Compliance with Documents. All Unit Owners, tenants, occupants of Units, and, to the extent they own Units, mortgagees and the Declarant shall comply with the Documents and shall be subject to all rights and duties under the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by that Unit Owner, tenant, mortgagee, or occupant. All provisions recorded in the Records are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Unit.

17.2 Adoption of Rules. The Executive Board may adopt Rules regarding the use and occupancy of Units as they affect the Common Elements and the activities of occupants, subject to Notice and Comment.

17.3 Enforcement. In addition to, but not intended to contradict, the provisions of C.R.S., § 38-33.3-123, the Association, as well as any aggrieved Unit Owner, is hereby granted a right of action against any Unit Owner who fails to comply with the provisions of the Documents or to comply with decisions made by the Association. Each and every Unit Owner is also granted a similar right of action against the Association. In any action maintained under this Section, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

ARTICLE 18
INSURANCE

18.1 Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described in this Article will not be maintained, the Executive Board shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and Eligible Mortgagees at their respective last known addresses.

18.2 Property Insurance Coverage.

(a) Property insurance will cover:

(i) the facilities, consisting of all Common Elements; and not the Residence constructed by a Unit Owner or interior improvements made by, or personal property owned by, a Unit Owner; but excluding other items normally excluded from property policies; and

(ii) all personal property owned by the Association.

(b) The Project insurance will be for an amount (after application of any deductions) equal to one hundred percent (100%) of the Project facilities' actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association will be insured for an amount equal to its actual cash value.

(c) The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

(d) The maximum deductible for insurance policies shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount.

(e) The difference between the total policy deductible and Two Hundred and Fifty Dollars (\$250.00) deductible per Unit damaged shall be paid by the Association as a Common Expense. Of the deductible portion, Two Hundred and Fifty Dollars (\$250.00) per Unit Owner affected shall be paid by each of the Unit Owners suffering the loss as an additional Common Expense.

(f) The insurance shall afford protection against "all risks" of direct physical loss commonly insured.

(g) Insurance policies required by this Section shall provide that:

(i) the insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.

(ii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.

(iii) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner that covers the same risk covered by the policy, the Association's policy provides primary insurance.

(iv) losses must be adjusted with the Association.

(v) insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose and otherwise to the Association, but, in any case, the proceeds are to be held in trust for each Unit Owner and the Unit Owner's mortgagee.

(vi) the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, to each Unit Owner, and to each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

18.3 Liability Insurance. Liability insurance, including medical payments insurance, will be maintained in an amount determined by the Executive Board, but in no event shall it be less than One Million Dollars (\$1,000,000). This insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of, or in connection with, the use, ownership, or maintenance of the Common Elements and the activities of the Association. Insurance policies carried pursuant to this Section shall provide that:

(a) each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner's membership in the Association;

(b) the insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;

(c) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;

(d) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and

(e) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

18.4 Fidelity Bonds. A blanket fidelity bond or dishonesty insurance coverage may be provided at the option of the Executive Board for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond or insurance shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the Manager at any time while the bond is in force. In no event shall the bond or coverage be for an amount less than the sum of two months' Common Expense Assessments on all Units plus reserve funds as calculated from the current budget for the Association. The bond or coverage shall include a provision that calls for ten (10) days' written notice to the Association, each holder of a Security Interest in a Unit, each servicer that services a FNMA-owned or FHLMC-owned mortgage on a Unit, and the insurance trustee, if any, before the bond can be cancelled or substantially modified for any reason. The bond or coverage shall be in an amount equal to the maximum amount of funds in the custody and control of the Association when the bond or insurance is in effect. When either (a) separate bank accounts for working funds and reserves are maintained and monthly checks are sent directly to the Association; (b) a management company maintains separate records and bank accounts for each association's reserve account; or (c) two Directors must sign any check written on the reserve

account, then the fidelity bond or coverage may be in an amount equal to three months' Common Expense Assessments on all Units.

18.5 Unit Owner Policies. An insurance policy issued to the Association does not preclude Unit Owners from obtaining insurance for their own benefit.

18.6 Workers' Compensation Insurance. The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Colorado.

18.7 Directors' and Officers' Liability Insurance. The Executive Board may obtain and maintain directors' and officers' liability insurance covering all of the Directors and officers of the Association. This insurance will have limits determined by the Executive Board.

18.8 Other Insurance. The Association shall carry such other insurance as may be required by an Eligible Mortgagee or Eligible Insurer and may carry other insurance that the Executive Board considers appropriate to protect the Association.

18.9 Premiums. Insurance premiums for insurance carried or to be carried by the Association shall be a Common Expense.

ARTICLE 19 DAMAGE TO OR DESTRUCTION OF PROPERTY

19.1 Duty to Restore. A portion of the Common Interest Community for which insurance is required under C.R.S., § 38-33.3-313, or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed, must be repaired or replaced promptly by the Association unless:

- (a) the Common Interest Community is terminated;
- (b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- (c) sixty-seven percent (67%) percent of the Unit Owners, including each Owner of a Unit that will not be rebuilt, vote not to rebuild.

19.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

19.3 Plans and Specifications. The Property must be repaired and restored in accordance with either the Plat or other plans and specifications that have been approved by the Executive Board, a majority of Unit Owners, and fifty-one percent (51%) of Eligible Mortgagees.

19.4 Insurance Proceeds. The Trustee or, if there is no Trustee, the Executive Board of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners, and lien holders as their interests may appear. Subject to the provisions of Subsection 19.1(a) through Subsection 19.1(c) of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Property. The Association, Unit Owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Property has been completely repaired or restored or unless the Common Interest Community is terminated.

19.5 Replacement of Less Than Entire Property.

(a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community.

(b) Except to the extent that other persons will be distributees:

(i) the insurance proceeds attributable to a Unit that is not rebuilt must be distributed to the Owner of the Unit or to lien holders as their interests may appear; and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the Common Expense Assessment percentages of all the Units.

(c) If the Unit Owners vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned under C.R.S., § 38-33.3-107(1), and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

19.6 Certificates By Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

(a) whether or not damaged or destroyed Property is to be repaired or restored; and

(b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

19.7 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Unit Owners or mortgagees, then the Executive Board, and the Trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Records from the date of the recording of the original Declaration, stating the names of the Unit Owners and the mortgagees.

19.8 Association as Attorney-in-Fact—Damage and Destruction. All of the Unit Owners irrevocably constitute and appoint the Association as their attorney-in-fact, for them and in their names, respectively, to deal with the Common Interest Community upon its destruction, repair, or obsolescence as herein provided. As attorney-in-fact, the Association, by its president and secretary, acting pursuant to authorization from the Executive Board, shall have full and complete authority, right, and power to receive the proceeds of any insurance in the names of the Unit Owners or the Association, and to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of a Unit Owner that is necessary and appropriate to exercise the powers herein granted.

ARTICLE 20 NOTICE AND COMMENT; NOTICE AND HEARING

20.1 Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after “Notice and Comment,” and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Unit Owner in writing, delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication that is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

20.2 Right to Notice and Hearing. Whenever the Documents require that an action be taken after “Notice and Hearing,” the following procedure shall be observed. The party proposing to take the action (*e.g.*, the Executive Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

20.3 Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE 21 EXECUTIVE BOARD

21.1 Association Records and Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner, or holder, insurer, or guarantor of first mortgages secured by Units, to inspect the records of the Association and the minutes of Executive Board and committee meetings during normal business hours. The minutes shall be available for inspection within thirty (30) days after any such meeting.

21.2 Powers and Duties. The Executive Board may act in all instances on behalf of the Association except as provided in this Declaration, the Bylaws, or the Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

- (a) adopt and amend Bylaws, Rules, and regulations;
- (b) adopt and amend budgets for revenues, expenditures, and reserves;
- (c) collect Common Expense Assessments from Unit Owners;
- (d) hire and discharge Managers;
- (e) hire and discharge independent contractors, employees, and agents other than managing agents;
- (f) institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of, or otherwise enforce, the Association's Declaration, Bylaws, or Rules in the Association's name, on behalf of the Association, or two or more Unit Owners on matters affecting the Common Interest Community;
- (g) make contracts and incur liabilities;
- (h) regulate the use, maintenance, repair, replacement, and modification of the Common Elements, and, to the extent set forth herein, the landscaped portions of the Units exterior to the Residences, including but not limited to enforcing parking restrictions along private streets within the Property, such as those required and imposed by Boulder County and/or the Subdivision Plat;
- (i) cause additional Improvements to be made as a part of the Common Elements;
- (j) acquire, hold, encumber, and convey, in the Association's name, any right, title, or interest to real property or personal property, but Common Elements may be conveyed or

subjected to a Security Interest only pursuant to Section 14.4 above and C.R.S., § 38-33.3-312;

(k) grant easements for any period of time, including permanent easements, and leases, licenses, and concessions through or over the Common Elements, but for no more than one year;

(l) impose and receive a payment, fee, or charge for the use, rental, or operation of the Common Elements and for services provided to Unit Owners;

(m) impose a reasonable charge for late payment of assessments, and after Notice and Hearing, levy reasonable fines for violations of this Declaration, the Bylaws, Rules, and regulations of the Association;

(n) impose a reasonable charge for the preparation and recordation of amendments to this Declaration and for a statement of unpaid assessments;

(o) provide, at the option of the Executive Board, for the indemnification of the Association's officers and Executive Board and/or maintain directors' and officers' liability insurance;

(p) assign the Association's right to future income, including the right to receive Common Expense Assessments;

(q) exercise any other powers conferred by this Declaration, the Bylaws, or the Act;

(r) exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

(s) exercise any other power necessary and proper for the governance and operation of the Association; and

(t) by resolution, establish permanent and standing committees of the members of the Board of Directors to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of the notice. If an appeal is made, the committee action must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

21.3 Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect Members of the Executive Board or determine the qualifications, powers and duties, or

terms of office of Executive Board Members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

ARTICLE 22 OPEN MEETINGS

22.1 Access. All meetings of the Executive Board, at which action is to be taken by vote, will be open to the Unit Owners except as hereafter provided.

22.2 Notice. Notice of, and an agenda for, every such meeting will be given not less than twenty-four (24) hours prior to the time set for such meeting by posting the same on the Association's website, if possible, and by posting such notice in a conspicuous location in the Common Interest Community except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

22.3 Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners, in either of the following situations only:

(a) if no action is taken at the executive session requiring the affirmative vote of Directors; or

(b) if the action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual Unit Owners, matters that are to remain confidential by request of the affected parties and agreement of the Board, or actions taken by unanimous consent of the Board, or as otherwise specified in C.R.S., § 38-33.3-308(4).

ARTICLE 23 CONDEMNATION

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with C.R.S., § 38-33.3-107.

ARTICLE 24 MISCELLANEOUS PROVISIONS

24.1 Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Documents or the intent of any provision thereof.

24.2 Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

24.3 Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

24.4 Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

24.5 Conflict. The Documents are intended to comply with the requirements of the Act. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

[END OF PAGE]
[SIGNATURE PAGE TO FOLLOW]

DRAFT

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this _____ day of _____, 20__.

DECLARANT:

MERIT DEVELOPMENT GROUP, LLC
a Colorado limited liability corporation

By: _____
Nick McCormac, Manager

ATTEST:

Secretary

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Nick McCormac as Manager of Merit Development Group, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

MORTGAGEE CONSENT

Consent is hereby given to this Declaration and to the common interest community map of the Project recorded in conjunction herewith. The undersigned agrees and acknowledges that any foreclosure or enforcement of any other remedy available to the undersigned under the Deed of Trust recorded on _____, at Reception No. _____ of the records of the Clerk and Recorder of the County of Boulder, Colorado, or under any other deeds of trust or other security agreements for the benefit of the undersigned with regard to the Project described in this Declaration will not render void or otherwise impair the validity of the Declaration and said condominium map. Additionally, the undersigned subordinates the lien and interests of the undersigned under said Deed of Trust as above referenced and under any other deeds of trust or other security agreements for the benefit of the undersigned with regard to the Project described in the Declaration to the covenants, terms and conditions of the above Declaration and condominium map.

By: _____

Its: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____ as _____ of _____.

Witness my hand and official seal.

My commission expires:

(S E A L)

Notary Public