

**Recording Requested  
and After Recording Return To:  
Holme Roberts & Owen, LLP  
1700 Lincoln Street, Suite 4100  
Denver, CO 80203  
Attn: Lindsey W. Hunt, Esq.**

**GRANT OF RECIPROCAL EASEMENTS  
AND DECLARATION OF COVENANTS  
FOR  
HARMONY TECHNOLOGY PARK**

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This Grant of Reciprocal Easements and Declaration of Covenants (the "Declaration") is made and entered into this 16<sup>th</sup> day of June, 2008 by Harmony Technology Park, LLC, a Colorado limited liability company ("Declarant"), whose address is c/o MAV Development Company, 303 Detroit Street, Ann Arbor, MI 48104.

**RECITALS**

This Declaration is made and executed upon the basis of the following facts, understandings and intentions of the Declarant;

A. Declarant is the owner of that certain parcel of real property located in the City of Fort Collins, County of Larimer, State of Colorado, with the legal description as set forth on **Exhibit A**, attached hereto and made a part hereof (the "Property").

B. The Declarant has or will develop and operate the Property to insure proper use, appropriate development and improvement of the Property. To effectuate the common use and operation of the Property, Declarant intends that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the Property and be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

C. The conditions, covenants, restrictions and easements set forth herein are intended to replace, amend, restate and supersede those certain Harmony Technology Park (HTP) Protective Covenants recorded February 18, 1998 at Reception No. 98011695 in the records of the Clerk and Recorder of Larimer County, Colorado (the "Prior Covenants") with respect to the Property. The Prior Covenants shall be of no further force and effect with respect to the Property.

NOW THEREFORE, Declarant makes the following grants, covenants, conditions, restrictions, submissions and declarations:

1. Definitions. Each reference in this Declaration to any of the following terms shall mean:

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

1.2 Common Area. All areas of the Property, other than Lots, encompassing without limitation all those facilities within or upon the Property for the non-exclusive use of Owners, Occupants and Users in common, including but not limited to Private Roads, driveways, areas of ingress and egress, sidewalk and other pedestrian ways, areas containing buildings or structures used in connection with the maintenance of the Common Area roadways, sanitary and storm sewer areas (and sanitary and storm sewers to the extent shared by more than one Lot), delivery areas, landscape areas, areas containing signs or structures advertising the common name given for the Property, together with the signs and structures constructed thereon. Any enlargement of or addition to the Common Area as provided herein shall be included in the definition of Common Area for purposes of this Declaration. Portions of the Common Area are subject to certain easements as granted by Declarant.

1.3 Common Area Expenses. All costs and expenses incurred in connection with management, operation, maintenance, repair and replacement of the Common Area and Improvements thereon in accordance with or pursuant to this Declaration including, without limitation, gardening and landscaping, cleaning, sweeping, replacements, repairs, line painting, lighting, sanitary control, removal of snow, ice, trash, rubbish, garbage and other refuse, cost of personnel to implement such services, maintenance of shared sanitary sewer or storm lines outside the Lot, management fee for the Common Area Manager and any third-party manager hired by the Common Area Manager, any costs and expenses of collection of Common Area Expenses and of enforcement of this Declaration and the rules and regulations issued pursuant to this Declaration, if any, and any other costs and expenses incurred in connection with the exercise or performance by the Common Area Manager of any of its rights or obligations hereunder. In the event there is no Common Area Manager pursuant to the terms of Section 1.4 herein, there shall be no shared Common Area Expenses.

1.4 Common Area Manager. Declarant as the Owner of the Property, or its assigns and/or its successors as Owner of all of the Common Area, or any party appointed or hired by Declarant to serve as Common Area Manager. In the event Declarant transfers the entirety of its interest in the Common Area without an assignment of Declarant's rights and obligations as the Common Area Manager to a successor, assign, or third party appointed or hired to act as Common Area Manager (a "Termination Transfer"), there shall no longer be a Common Area Manager.

1.5 Declarant. Harmony Technology Park, LLC, a Colorado limited liability company, or any entity that controls, is controlled by or is under common control with Declarant, provided that written notice of assignment is executed by the Declarant designated and by the transferee and recorded in the real property records for Larimer County, Colorado.

1.6 Declarant Control Period. The period of time that the Declarant is entitled to exercise the Declarant Rights, including but not limited to the appointment of the Common Area Manager and the members of the DRC. The Declarant Control Period begins on the date of recording of this Declaration and expires upon the first of the following to occur:

(a) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or

(b) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

1.7 Declarant Rights. Each provision in this Declaration that calls for Declarant approval, that gives the Declarant a veto, or that otherwise entitles the Declarant to exercise or refuse to exercise a right, remedy or similar entitlement of any kind shall be deemed a "declarant right" for purposes of Colorado law.

1.8 Design Guidelines. Those architectural, landscape and/or design standards adopted by the Declarant as the Design Guidelines, as the same may be updated, modified, or revised from time to time.

1.9 Development and Sale Period. The period of time during which the Declarant or any "Declarant Affiliate" owns any portion of the Property. A "Declarant Affiliate" is any Person that controls, is controlled by, or is under common control with the Declarant, and any Person who is an owner, a member, a manager, a partner, or a shareholder of the Declarant.

1.10 DRC. The design review committee established by the Declarant pursuant to this Declaration as the board that will administer the aesthetic and architectural servitudes set forth in this

Declaration, and for the purpose of exercising the functions set forth in this Declaration relating to design review and approval.

1.11 Improvements. Including but not limited to buildings, parking areas, loading areas, fences, walls, hedges, landscaping, mass plantings, poles, signs, any structures of any type or kind or any other change in the Property from its natural state.

1.12 Lot. Those separately platted portions of the Property (whether platted at the time of this Declaration or subsequent to the date hereof) intended to be conveyed to a third party, whether related or unrelated to Declarant, and utilized for construction of Improvements intended for commercial or other related uses by the Owners and other Occupants.

1.13 Occupant. Any Person or Persons from time to time entitled to the use and occupancy of any portion of a Lot in the Property under this Declaration or any lease, license or concession agreement, or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy.

1.14 Owner or Owners. The Declarant executing this Declaration and its successors in interest holding fee simple title to the Property, as shown in the official records of the County of Larimer, State of Colorado, as of the time in question. The term Owner shall include the Person or Persons holding record fee title to all or any portion of the Property.

1.15 Person or Persons. Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agency, administrative tribunal, or any other form of business or legal entity.

1.16 Plans and Specifications. Any and all documents designed to guide, govern, or otherwise control the exterior architectural, aesthetic, and site design of an Improvement including, but not limited to, those indicating size, shape, configuration or materials; all site plans; grading plans; drainage plans; landscaping, fencing, signage and lighting plans; elevation drawings, specifications on all exterior building products; samples of exterior colors; and all other documentation or information relevant to the exterior architectural, aesthetic, and site design of a particular Improvement.

1.17 Private Road. Portions of the Common Area may consist of private roads abutting one or more lots ("Private Roads"). Common Area Expenses for Private Roads shall be limited Common Area allocable only to those Lots to which a Private Road abuts. With respect to any Lot to which a private road is appurtenant, each Lot's share ("Limited Share") shall be a fraction, the denominator of which is the square footage of the Private Road, and the numerator of which for each Lot is the square footage of the portion of the Private Road adjacent to its Lot from the boundary of such Lot to the centerline of such Private Road.

1.18 Pro Rata Share. With respect to each Lot, a fraction, the numerator of which is the number of square feet of such Lot and the denominator of which is the number of square feet contained in all of the Property, excluding the square footage of the Common Area.

1.19 Property. As shown on **Exhibit A** hereto, including Lots and Common Area.

1.20 Users. All persons granted permission to utilize the Common Area, including without limitation, Occupants, Owners, employees and service people, licensees, invitees, customers, owners, contractors, agents, leasees, subleasees, tenants and concessionaires.

1.21 Transfer. The sale or other conveyance by any Owner of its interest in the Property or any Lot or any portion thereof. The following shall not be considered a Transfer: (i) the

Owner elects to transfer an interest in such Owner to an entity controlled by or in control of the Owner or its affiliates; or (ii) the Owner transfers to a lender with a lien on the Property.

1.22 Other Terms. Certain other terms shall have the meaning set forth for each such term in this Declaration.

2. Purpose, Declaration and Grant of Reciprocal Easements.

2.1 Purpose. The Property is made subject to the conditions, covenants, restrictions and easements set forth herein, all of which shall be deemed to run with the Property and each and every Lot thereof (a) to provide for mutual, common and reciprocal rights and easements in certain portions of the Property constituting Common Area; (b) to provide for the management, operation, maintenance, repair and replacement of the Common Area; (c) to ensure a reasonably consistent development of the Property; and (d) to protect and enhance the quality, value, desirability and attractiveness of the Property.

2.2 Declaration. Declarant, for itself, its successor and assigns, hereby declares that the Property and each part thereof shall from and after the date of this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, easements, equitable servitudes and other provisions set forth in this Declaration for the duration hereof, all of which shall run with the title to such Property and be binding upon all parties having any right, title or interest in the said Property or any part thereof and upon their heirs, personal representatives, successors and assigns and shall inure to the benefit of each party having any such right, title or interest in said Property or any part thereof and to and for the benefit of Declarant so long as it owns a Lot, and the Common Area Manager all as hereinabove or hereinafter defined, and their successors and assigns.

2.3 Not a Common Interest Community. The Property has not been established as a Common Interest Community and is not a Common Interest Community by virtue of this Declaration.

2.4 Common Area Easements. The Common Area shall be used only for the following purposes related to the businesses and activities conducted in the Property.

(a) Ingress and Egress. Ingress and egress by any Users and any motor vehicles of such Users to and from any portion of the Common Area and the public streets adjacent to the Common Area, including, without limitation, service and delivery vehicles.

(b) Public Utilities. Installation, maintenance, repair, replacement and operation of public utilities and services for the Common Area or Lots, together with and including, without limitation, vaults, manholes, meters, transformers, pipelines, valves, pumps, generators, hydrants, sprinkler controls, conduits, sewage facilities, and all related facilities, all of which shall whenever and wherever reasonably feasible be located below the surface of the Common Area, or the surface of any other above ground improvements located thereon; provided, however, that in any event, (i) all of the foregoing permitted public utilities and installations, which are located above the surface of the Common Area, shall be placed so as not to interfere with, restrict, or impede other uses of Common Area provided for herein; and (ii) no such public utilities and installations, which must be located above the surface of the Common Area, shall be placed upon any Lot without the prior written consent of the Owner whose Lot is affected, which consent shall not be unreasonably withheld.

(c) Pedestrian Traffic. Pedestrian traffic by Users upon the Lots, between the Lots and between the Lots and the adjoining public or private streets.

(d) Temporary Construction Activity. Construction, maintenance, repair, replacement, rearrangement and remodeling of Improvements, Lots, and landscaping, pedestrian walkways and other Improvements in the Common Area that may include benches, mailboxes and public telephones not substantially affecting or changing the Common Area except as permitted or required herein. All such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with use of Common Area, shall be diligently prosecuted to completion, and shall otherwise be performed in compliance with the provisions of Section 2.8 hereof. In connection with work of construction performed within Lots, incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of the Common area, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work expeditiously pursued, but in no event shall any public or private road that serves as an entrance to the Property be closed for construction-related purposes without the prior written consent of the Declarant. Common Area may be utilized for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any work provided for herein and temporary storage of materials and vehicles being utilized in connection with such construction, subject to all of the other terms of this Agreement.

2.5 Lot Easements. The Lots shall be subject to use for the benefit of other Lots relating to connection to or with utility installations; provided, however, that no such use shall be allowed in a manner which unreasonably burdens the affected Lot, results in interference with the Improvements thereon, or inconveniences unreasonably the Users or Occupants thereof.

2.6 Grant of Easements by Declarant. Declarant hereby grants and conveys the following easements:

(a) Declarant as the Owner of the Property hereby grants, bargains, sells and conveys to the Owners of the Lots and their respective successors and assigns a perpetual, non-exclusive easement for ingress, egress, access to the Common Area, and for the purposes set forth in Sections 2.1, 2.2 and 2.3,.

(b) Declarant hereby grants and conveys to each Owner of a Lot a nonexclusive easement appurtenant to the Common Area for the purpose of permitting the drainage of water from, over and across the Property in accordance with a drainage plan established by Declarant and if such approval is required, by the City of Fort Collins.

2.7 Use and Duration of Easements. Each easement granted herein shall be used by the Owners as an appurtenance to their respective Lot and solely for the purposes of developing and operating the Property. Subject to the provisions of Section 16.2 hereof relating to the amendment of this Declaration, the easements herein granted in each instance shall be perpetual and shall be appurtenant to each Lot owned by the Owner of each such Lot, and in each instance such easement shall be non-exclusive and for use in common with the granting Owner by the other Lot Owners, Users and Occupants.

2.8 Construction and Installation.

(a) Construction Work Generally. All construction, alteration or repair work, undertaken by any Owner upon any Lot it does not own pursuant to any easement granted herein, any other provision of this Declaration or otherwise shall be accomplished promptly using due diligence so to do. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work to the other Owners, Occupants or Users of the affected Lot. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Lot upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. In addition, the Owner

undertaking such work shall pay all costs and expenses associated therewith. All such work shall be undertaken only after giving the Owner of the affected Lot thirty (30) days prior written notice of the work to be undertaken, the scope and nature of the work, the duration of the work, and the area in which the work is to be performed. Such notice shall include any plans or specifications for the work which is to be accomplished on the affected Lot.

(b) Utility Connections. Any work performed by an Owner to connect to, repair, relocate, maintain or install any storm drain, utility line, sewer, water line, gas line, telephone conduits or any other public utility service to the extent not a shared utility line maintained by the Common Area Manager, shall be the responsibility of the Owner of the affected Lot and shall be performed so as to minimize interference with the provisions of such services to any other Owner, Occupant or other Lot. No Owner shall interfere with any such public utilities and services if such interference would disrupt the orderly development and operation of the businesses conducted by any other Owners or Occupant on any other Lot unless notice is provided pursuant to subsection (a) hereof of the nature and extent of the work to be undertaken in connection with such utilities and services, together with an offer to the Owner notified to permit that Owner to require that such work be carried on at such times as would minimize or prevent the disruption of the orderly development and operation of any business conducted on the other Owner's Lot. If an Owner elects to require performance of such work in such a manner so as to minimize or prevent such disruption, the Owner undertaking such work shall bear the cost of any overtime or other additional expenses necessitated by such request. Any work of installation, alteration, replacement or repair of utility installations which requires interference with the paving in the Common Area shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the Common Area and access of all Users to the various businesses established in the Property.

(c) Obstruction. No construction work shall be undertaken or caused to be undertaken, by any Owner which would interfere with or prevent ingress, egress and access by service or delivery vehicles to the service driveways upon each Lot.

(d) Emergency Work. Notwithstanding any other notice provision contained in this Section 2.8, in the event of emergency conditions, any Owner may undertake the necessary construction work on another Owner's Lot to remedy the emergency condition, provided that the Owner undertaking such work does so in good faith, gives notice thereof to the other Parties, Declarant, and the Common Area Manager upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable provisions of this Section 2.7. As used herein, an emergency condition is one that poses an imminent risk of damage to property or injury to persons.

### 3. Use and Restrictive Covenants.

3.1 Use. The Property shall be used for purposes allowed under the Harmony Technology Park Overall Development Plan for approved by the City of Fort Collins ("ODP"), as the same may be amended from time to time.

3.2 Lot and Height Limitations. Buildings and structures shall only be placed or constructed only upon the Lot(s) in accordance with the building code of the City of Fort Collins, as the same may be amended from time to time.

3.3 Remodeling and Replacement. Improvements located within a Lot may be remodeled, demolished, removed and replaced upon compliance with the provisions of this Declaration.

3.4 Upkeep and Maintenance. All Owners shall provide for appropriate upkeep and maintenance for the Improvements upon each such Owner's Lot to ensure that the Property and each part

hereof is maintained in a good condition and retains at all times the appearance of a first class commercial complex. Such upkeep and maintenance shall include, without limitation, appropriate measures to protect wood, stucco and concrete surfaces from weathering, deterioration and aging, and to protect from and immediately remove graffiti or other defacement from such surfaces; installing and maintaining landscaping and signage consistent with the Design Guidelines; removal of snow and ice; maintenance, repair or replacement of all paving, including sidewalks and parking areas; removal of trash; installation and maintenance of exterior lighting; and other items as necessary to maintain the Lot and Improvements in a first-class condition. All required maintenance shall be performed whenever reasonably necessary in order to comply with the provisions of this Section 3.4. Declarant shall have a license over each Lot to perform the maintenance required by this Section 3.4 if the Owner of such Lot fails to comply with this Section 3.4 after reasonable notice and opportunity to cure, and the Owner shall reimburse Declarant upon demand for all costs incurred by Declarant therefor.

3.5 Nuisances. No Owner, Occupant or User shall use or permit the use of its Lot, or any portion thereof, (i) for the conduct of any offensive, noisy or dangerous trade, activity or occupation, (ii) for the maintenance of any nuisance or the conduct of any activity which violates public policy, (iii) for any activity which interferes with the business of any other Owner or Occupant of the Property, (iv) in violation of any governmental law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Property or any portion thereof.

3.6 Rules and Regulations. Declarant may, from time to time, adopt reasonable rules and regulations pertaining to the use of all Common Area by Owners, Occupants and Users, including the monument signs for the Property.

3.7 No Walls, Fences or Barriers. No walls, fences or barriers of any sort or kind shall be constructed or erected in the Property, or any portion thereof, by any Owner or Occupant which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement of Owners, Occupants and Users, including without limitation pedestrians and vehicular traffic, between the various Property; provided, however, curb stops and other reasonable traffic controls, including without limitation, directional barriers and parking stops and as may be necessary to guide and control the orderly flow of traffic, may be installed so long as access to the Lots and the Property are not closed or blocked except to limit access to exclusive parking areas on the Lots, and the traffic circulation driveways of the Common Area, as shown on the Site Plan, is not changed or affected in any substantial way.

3.8 Fencing off Construction. Each Owner at its own cost and expense shall fence off or cause to be fenced off any development, construction, repair, alteration or remodeling work performed by the Owner on any Lot under this Declaration, that could adversely affect the other Property. Fencing shall be of a height and construction sufficient to protect existing facilities in the Property from inconveniences occasioned by such work.

3.9 Signs. No freestanding, monument or pylon signs shall be located on the Common Area or Lot except as shown on **Exhibit B** hereto. No such signs shall be erected without the prior written approval of the DRC as to size, style, priority and arrangement of names, wording and height, including but not limited to real estate signs (e.g. "for sale" or "for rent" or similar signs, whether installed by an Owner or its broker or agent), which approval shall not be unreasonably withheld. All signs within the Property shall conform to the Sign Criteria set forth in the Design Guidelines.

3.10 Lighting. If "special" lighting (other than necessary for Property security) is required by any Owner or Occupant of the Property, such special lighting shall comply with this Declaration, the Design Guidelines, and the applicable requirements of the City of Fort Collins. The electricity to service said lighting requirements shall be separately metered and all expenses thereof shall



be paid by such Owner or Occupant which requires the special service. If such separate metering is not reasonably feasible, then the cost of such special lighting shall be determined on a pro rata basis in accordance with the special usage and all such pro rated expenses shall be paid by such Owner or Occupant which requires the special service.

4. Design Review Covenants.

4.1 General Purposes. The DRC shall perform the aesthetic, architectural and design review functions provided for in this Declaration so as to further the purposes set forth in the recitals and other provisions of this Declaration. The Declarant reserves the right from time to time to replace the members serving on the DRC and appoint new members to serve as the DRC or appoint an entity or board to serve as the DRC as provided in Section 4.3(a) below. If the Declarant appoints an entity or board to serve as the DRC, the Declarant may from time to time replace the entity or board serving the DRC and appoint a new entity or board or individual members to serve as the DRC.

4.2 Authority. The business affairs of the DRC shall be managed by the Declarant. The Declarant may, by written resolution, delegate authority to a manager or managing agent.

4.3 Design Review Committee.

(a) Members. The initial DRC shall consist of a committee appointed by the Declarant consisting of at least three (3) members but no more than seven (7) members.

(i) All of the members of the DRC shall be appointed by the Declarant. The Declarant may appoint any Person or entity to succeed to its appointment powers set forth in this Section. Appointed members of the DRC, or other entity or board serving as the DRC, may be removed by the party or parties with appointment power, as provided for above.

(ii) Each member of the DRC or entity or board serving as the DRC shall serve until such time as such member, entity or board has resigned and a successor has been appointed or until such time that the member, entity or board is removed.

(iii) Each and every member of the DRC shall possess experience in the practice of real estate/land development (not to include real estate sales), or in the practice of architecture, urban design, land use planning, or other similar professional design practice.

(b) Division of Duties of the DRC Among Subcommittees. The DRC may, at any time and from time to time, create subcommittees and divide among such subcommittees the duties, responsibilities, and obligations of the DRC where such division is deemed in the best interest of the DRC.

(c) Meetings of the DRC. The DRC shall meet from time to time as it determines to perform its duties. The DRC may from time to time by resolution unanimously adopted in writing designate one or more of its members to take any action or perform any duties for and on behalf of the DRC, except the granting of waivers or variances pursuant to this Section. In the absence of such designation, the vote of the majority of a quorum of present and voting members of the DRC at a meeting, or the written consent of a majority of all of the members of the DRC taken without a meeting, shall constitute an act of the DRC. A quorum for any DRC meeting or action shall be two-thirds (2/3) of the members.

(d) Indemnification. Each member of the DRC shall be and are hereby indemnified by Declarant and its successors hereunder against all expenses and liabilities, including attorneys' fees and costs, reasonably incurred by or imposed upon them in any proceeding to which they

may be a party, or in which they may become involved, by reason of being or having been a member of the DRC, or any settlements thereof, whether or not they are a member of the DRC at the time such expenses are incurred; except in such cases wherein such member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. Such indemnification shall extend to the individuals serving for an entity or board that is acting as the DRC.

(e) Liability Insurance. The DRC may obtain and maintain adequate comprehensive policy of professional liability insurance in such limits as the Declarant may from time to time determine.

(f) No Liability of DRC Members. No DRC member 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 under this Declaration unless due to the wanton and willful misconduct of that person, party or entity.

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

(h) Records. The DRC shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records may be open and available for inspection by any interested party, subject to reasonable advance notice, during reasonable hours of the business day.

#### 4.4 Aesthetic Covenants, Restrictions and Equitable Servitudes

(a) Restriction on Improvements. Prior to commencement of construction of any Improvement upon any portion of the Property, including but not limited to signs and lighting as described in Sections 3.9 and 3.10 hereof and including any renovation or alteration to any existing Improvement, the Plans and Specifications therefor shall be submitted to the DRC, and construction thereof may not commence unless and until the DRC has approved such Plans and Specifications in writing. This requirement shall not apply to subsequent renovations or alterations to the interior of any Improvements after substantial completion of their initial construction, provided such substantial completion of their initial construction is consistent with and in compliance with the approvals of the DRC as required under this Declaration.

(b) Design Guidelines. The DRC, after or with any recommendations of the DRC, may, from time to time, publish, amend, and promulgate Design Guidelines, to implement the spirit and intent of this Declaration and to encourage and achieve efficient, coordinated, and high quality use of the property within the Property. The Design Guidelines may be amended from time to time as provided by the Design Guidelines and this Declaration. The Design Guidelines may contain standards, requirements, recommendations, or limitations in addition to those expressly set forth or referred to in this Declaration and more stringent standards, requirements or limitations than the specific standards, requirements or limitations set forth or referred to in this Declaration.

(c) Review Process. All Real Property shall be subject to the review process set forth in this Declaration and the Design Guidelines.

(d) Review Standards. Whenever in this Declaration or any Design Guidelines the approval of the DRC is required, the DRC shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which the DRC deems

relevant. The submittal requirements, specific procedures, form of approval process for waivers and variances, and timing of each decision shall be provided in the Design Guidelines. The DRC shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated in the locations indicated are in compliance with this Declaration and the Design Guidelines.

The DRC may condition its approval of Plans and Specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The DRC may consider and review any and all aspects of construction, construction of other Improvements and locations, quality and quantity of landscaping, and may disapprove aspects thereof which may, in the opinion of the DRC, adversely affect the living, work, educational or other environment or enjoyment of one or more Owner(s) or of the general value of property within the Property. The DRC is also permitted to consider technological advances in design, materials and construction and such design, materials and construction may or may not be permitted in accordance with the opinion of the DRC.

(e) Requirements of Submitted Plans and Specifications. The DRC may require such detail in Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the DRC of all required or requested Plans and Specifications and other information, the DRC may postpone review of any material submitted for approval. Any material modification or change to an approved set of Plans and Specifications must again be submitted to the DRC for its inspection and approval.

(f) Fee for Review. The DRC may only levy a fee upon application for design review, or upon approval of an Owner's proposed Improvements. Except for fees imposed for architectural and design review as allowed for in this Declaration, the DRC shall not have the authority to impose or levy assessments for common expenses. In all events, fees imposed for architectural and design review shall not be deemed as an assessment for a common expense under the Act.

(i) Effect of Non-Payment of Fees. Any fee, including any charge or fee provided for in this Declaration, which is not fully paid within ten (10) days after the due date thereof, as established by the DRC, shall bear interest at the rate of interest as may be determined, from time to time, by the DRC, and the DRC may assess a reasonable late charge thereon as determined by the DRC. Further, the DRC may bring an action at law or in equity, or both, against the person(s) personally obligated to pay any overdue fees and charges. An action at law or in equity against an Owner to recover a money judgment for unpaid fees or charges may be commenced and pursued by Declarant in accordance with applicable law.

(g) Reply and Communication. The DRC is under no obligation to reply to all submittals of Plans and Specifications; flexibility in response being expressly reserved to the DRC. All communications and submittals shall be addressed to the DRC at such address as the chairman of the DRC may designate. The DRC shall have no obligation or liability to any applicant or other party for the timing of its response to any submittal.

(h) Variances. The DRC may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration or in the Design Guidelines in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or any Design Guidelines. For items in any submittal which are not contemplated in the Design Guidelines, the DRC may use its reasonable discretion in evaluating and responding to such items.

(i) Waivers Not Implied. The approval or consent of the DRC, or appointed representative thereof, to any application for approval or any Improvement shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the DRC as to any application or other matters subsequently or additionally submitted for approval or consent.

(j) No Waiver of Future Approvals. The approval or consent of the DRC to any Plans or Specifications, to any work completed or proposed for performance or completion, or to any other matter that requires the approval or consent of the DRC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter subsequently or additionally submitted for approval or consent by the same or a different Person, including subsequent renovation or remodeling of an Improvement.

(k) No Deemed Approval. The DRC's failure to approve or disapprove any submittal or any portion thereof shall in no event be deemed the DRC's approval thereof. All approvals of the DRC will be given in writing to the applicant.

4.5 Enforcement. Declarant and each Owner of any portion of the Property shall comply with this Declaration, as amended, supplemented or modified from time to time. Failure to comply with this Declaration shall be grounds for an action by the DRC to recover sums due for damages or injunctive relief, or both. Failure to enforce this Declaration shall in no event be deemed a waiver of the right to do so at a later date or in a similar event.

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

4.7 Declarant-Retained Rights. Notwithstanding anything in this Declaration to the contrary, in the event of a Termination Transfer or other expiration or termination of the Declarant Control Period, Declarant shall nevertheless retain the rights to appoint or remove the members of the DRC in its sole discretion. Notwithstanding anything in this Declaration to the contrary, the terms and conditions of this Section 4 may not be amended, modified or terminated without Declarant's consent, which shall be at Declarant's sole discretion.

## 5. Common Area Maintenance.

5.1 Common Area Maintenance. Except as set forth herein, the Common Area Manager shall operate, manage, replace, repair, resurface, maintain and make necessary improvements to the Common Area unless prohibited from so doing by any governmental authority having jurisdiction and shall keep the same in a clean condition, including but not limited to, Private Roads, sidewalks, landscaping, drainage, monument signs, public utilities and lighting facilities. In the event of a Termination Transfer as defined in Section 1.5 herein, the Common Area Manager shall not operate the Common Area but instead each Owner shall be obligated to maintain and operate the Common Area located on the Lot each may own in full compliance with the following:

(a) Paved Areas. Maintaining all paved surfaces and curbs of the Common Area in a smooth and evenly covered condition, which maintenance work shall include without limitation, cleaning, sweeping, restriping, repairing, and resurfacing of any Private Roads, driveway areas and curbs, using surfacing material of quality equal or superior to the original surfacing material.

(b) Debris and Refuse. Removal of papers, debris, snow, ice, filth and refuse; and sweeping the Common Area to the extent necessary to keep the Common Area in a clean and orderly condition.

(c) Signals and Markers. Placing, keeping in repair and replacing any appropriate directional signs, markers and lines.

(d) Lighting. Operating, keeping in repair and replacing when necessary, such lighting facilities as may be reasonably required.

(e) Landscaped Areas. Maintaining all present and future landscaped areas, repairing automatic sprinkler systems or water lines in the Common Area, and making replacement of shrubs and other landscaping as necessary; provided, however, and if any Owner requires or installs "special" landscaping other than that normal and consistent with the landscaping requirements of the remainder of the Property, the maintenance and cost thereof shall be borne solely by such Owner without cost or expense to the other Owners and shall not be included in the cost of maintaining the Common Area hereunder.

(f) Utilities. Maintaining and repairing any and all common storm drains, utility lines, sewers and other utility systems and services located in the Common Area which are necessary for the operation of the Common Area and the Lots, and any Improvements thereon within the Property.

(g) Obstructions. Keeping Common Area free from obstructions not required or permitted hereunder, specifically (but without limitation) keeping Common Area free from any obstructions except in areas within the Property specifically designated by the Owners for such purposes.

(h) Property Monument Signs. Maintaining and repairing any free-standing, monument or pylon signs in the Common Area which advertise the Property by its name. The only Property monument sign meeting this criteria is located where shown on **Exhibit B** hereto. The entire cost of installing and maintaining any portion of such signs which advertise the presence or business of any Owner or Occupant, together with an appropriate pro rata share of the cost of maintenance of the sign structure, shall be borne by such Owner or Occupant without cost or expense to the other Owners, and shall not be included in the cost of maintaining the Common Area hereunder.

(i) Governmental Requirements. Complying with all applicable requirements of governmental agencies pertaining to the Common Area, including without limitation, any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about the Common Area under any laws, ordinances, rules, and regulations or orders now or hereafter adopted, enacted or made and applicable to the Common Area.

(j) Personnel. Employment of such personnel, contractors, subcontractors, managers and other persons reasonably necessary for operation and maintenance of the Common Area, including employment of persons required to regulate and administer parking regulations, to provide for security in the Common Area. The Common Area Manager shall pay all Social Security, Workmen's Compensation, State Disability Insurance and other payments required to be made in connection with any such employment or for the benefit of such employees and contractors.

5.2 Insurance. Subject to the provisions herein contained, the Common Area Manager shall maintain commercial general liability insurance for the Common Area against the risks of

bodily injury, property damage and personal injury liability with a limit of not less than \$2,000,000.00 for each occurrence.

### 5.3 Cost of Operation and Maintenance of Common Area.

(a) Payment by the Common Area Manager. All costs incurred in the operation and maintenance of the Common Area shall be promptly paid directly by the Common Area Manager when incurred. The Common Area Manager shall expend only the monies reasonably necessary for the operation, maintenance and insurance of the Common Area. Notwithstanding anything to the contrary herein contained, the Owners of the Property shall reimburse the Common Area Manager for their Pro Rata Share of all Common Area Expenses.

(b) Payment. Owners' Pro Rata Share of Common Area Expenses shall be payable within thirty (30) days after a reasonably detailed statement of actual Common Area Expenses is presented to Owners by the Common Area Manager. At the Common Area Manager's option however, an amount may be estimated by the Common Area Manager from time to time of each Owner's Pro Rata Share of Common Area Expenses and the same shall be payable monthly as the Common Area Manager shall designate during each calendar year on the first day of each month. If during any calendar year there is a change in the information on which the Common Area Manager based the estimate upon which Owners are then making their estimated payments so that such estimate furnished to Owners is no longer accurate, the Common Area Manager shall be permitted to revise such estimate from time to time by notifying the Owners and there shall be adjustments made in the monthly amount of Owners' Pro Rata Share on the first day of the month following service of such statement to Owners. The Common Area Manager shall also, within one hundred twenty (120) days after the end of each calendar year, submit to the Owners a reasonably detailed statement summarizing all Common Area Expenses during the previous calendar year, together with the total amount paid by the Owners during such year hereunder. The Common Area Manager shall in accordance with good bookkeeping practices maintain a complete record of each and every item of Common Area Expenses shall make such records available during normal business hours at the Common Area Manager's office in the metropolitan Denver area for inspection or audit by the Owners or their designated representatives, accountants, agents or attorneys. If an Owner shall dispute the amount of its Pro Rata Share of Common Area Expenses submitted by the Common Area Manager, such Owner shall give the Common Area Manager written notice of such objection within one hundred twenty (120) days after the Common Area Manager's notice of adjustment. If Owners do not give the Common Area Manager such written notice within such time, Owners shall have waived their right to the dispute the amounts so determined. If an Owner timely objects, the Common Area Manager's accountants and Owner's accountants shall endeavor to agree upon the manner, failing which the parties shall settle the dispute by judicial action or in such other manner as they agree. All costs incurred by an Owner in obtaining its own accountants shall be paid for by such Owner. Notwithstanding the pendency of any dispute over any particular statement, such Owner shall continue to pay the Common Area Manager the amount of the monthly installments of Common Area Expenses determined by the Common Area Manager until the adjustment has been determined to be incorrect. If it is determined that any portion of the Common Area Expenses were not properly chargeable to the Owners, then the Common Area Manager shall promptly credit or refund the appropriate sums to Owners. All information disclosed to or discovered by an Owner or its accountant must be kept strictly confidential and may not be disclosed except in judicial action, required securities disclosure, or governmental action including audits.

(c) Major Repairs or Replacements. Notwithstanding anything to the contrary contained in subsection (a) and (b) hereof in the event the Common Area Manager is required to incur extraordinary cost or expense for a major repair or replacement of any portion of the Common Area, and in the event the estimated average Pro Rata Share of the cost of which is anticipated to exceed \$100,000.00 (which amount shall be adjusted annually based on the then-current CPI Index for the

Denver metropolitan area), the prior written consent of the Owners of the Property shall be required. The Common Area Manager shall notify the Owners of the Property of the nature of the major repair or replacement and the estimated Pro Rata Share of the cost of such repair or replacement for each Lot. Each Owner shall have fourteen (14) business days after written notice to disapprove of such expenditure by providing written notice to the Common Area Manager. Should an Owner not respond within such fourteen (14) business day period, the repair or replacement shall be deemed approved as to such Owner's Lot. Should at least 85% of the Owners timely object, the repair or replacement will not be undertaken; provided, however, (i) such repair or replacement may be undertaken in the event of an emergency condition described in subsection 2.8(d) herein; and (ii) if the parties cannot agree on the expense and specifications for such major repair or replacement within six (6) calendar months after the month of the Common Area Manager's first notice, the Common Area Manager shall be entitled to proceed with such repair or replacement and bill each Lot its Pro Rata Share provided such amount does not exceed the estimate originally contained in the Common Area Manager's first notice. The Pro Rata Share of such cost and expense shall be billed by statement to the Owners immediately upon being incurred by the Common Area Manager, and shall be due and payable within thirty (30) days from the date of mailing thereof. In addition to setting forth the Pro Rata Share due from the Owners the statement shall contain an appropriate description of the major repair or replacement, together with a complete itemization of cost or expense incurred by the Common Area Manager for the major repair or replacement and shall summarize the totals of all such costs and expenses.

(d) Remodeling, Change or Modification of Common Areas. If at any time Declarant or its successor desires to or is required to make modifications, additions, releases, remodels or other changes to the Common Areas, Declarant shall give reasonable notice of the same to the Owners. The Pro Rata Share of such cost and expense shall be billed by statement to the Owners immediately upon being incurred by the Common Area Manager, and shall be due and payable within thirty (30) days from the date of mailing thereof. In addition to setting forth the Pro Rata Share due from the Owners the statement shall contain an appropriate description of the modification, addition, release, or remodel or other change, together with a complete itemization of cost or expense incurred for the same and shall summarize the totals of all such costs and expenses. Unless the change is (i) required by any governmental authority, the ODP, the Site Plan, or further development of the Property or (ii) reasonably necessary to maintain the Property in a first-class condition, the Owners shall have the same approval rights as described in Section 5.3(c) above.

(e) In the event of a Termination Transfer, the cost of operation and maintenance of the Common Area on each Lot shall be solely the responsibility of the Lot Owner without reimbursement from any other Owner whether or not the items to be maintained or repaired serves only that Owner's Lot or serves both Property. As of the date of such Termination Transfer, Sections 5.3(a), (b), (c) and (d) shall be of no further force and effect.

## 6. Property Taxes.

6.1 Payment of Property Taxes. The Owners and any successors in interest, shall each pay or cause to be paid directly when due all real property taxes and other special taxes and assessments which may be levied or assessed against their respective Lots and the Improvements thereon, including without limitation, any tax or assessment attributable to any interest created by this Declaration, any and all real property taxes and other special assessments levied or assessed against that portion of the Common Area lying within their respective Property and any and all taxes assessed pursuant to law or ordinance hereinafter enacted, by way of substitution for or in addition to all or any part of the taxes or assessments levied or assessed against the Property and/or Common Area.

6.2 Contest of Property Taxes. The Owners, individually or collectively, may contest in good faith any real property tax or other special tax or assessment levied upon its own Lot.

Any such contested tax or assessment shall be paid, however, prior to the time when an event may occur under any applicable law pursuant to a proceeding which may result in impairment of the rights created hereunder or terminate any provision hereof as applied to any Lot. The Owners who are not parties to such contest shall execute such documents as may be reasonably necessary to establish or evidence the contesting Owner's right to contest any such tax, assessment or charge. The Owner making such contest shall indemnify the other Owners against any loss, cost, damage, injury or expense, including reasonable attorneys' fees, arising out of or relating to the conduct of such contest, but no Owner shall be charged with responsibility as a result of any such contest for any increased taxes allegedly resulting therefrom or as a result therefrom or as a result thereof.

7. Indemnification and Public Liability Insurance.

7.1 Common Area Indemnity. Each Owner shall indemnify, defend and hold the other Owners harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including any actions or proceedings in connection therewith and reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of (i) the negligence, omission or willful misconduct of the indemnifying Owner, its agents, servants, employees, or Occupants; wherever the same may occur, or (ii) by reason of injury to or death of persons, damage to property or claims of lien arising from work or labor performed, materials or supplies furnished in connection with use by an Owner of the easements and rights granted hereunder or exercise by an Owner of the rights granted to it herein, except claims resulting from the negligence or willful act or omission of the indemnified Owner, or its agents, servants, employees or Occupants and such Occupants' agents, servants or employees. Notwithstanding any of the provisions of this Section 7.1 to the contrary, each Owner hereto waives any right of recovery against the other Owners for any loss, damage or injury to the extent the same is covered by insurance provided for by this Declaration.

7.2 Lot Indemnity. Each Owner shall indemnify, defend and hold the other Owners harmless from and against all claims, expenses, liabilities, loss, damage and costs, including any actions or proceedings in connection therewith and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of the death of any accident, injury, loss or damage, however caused, to any person or loss of or damage to the property of any person as shall occur in the Lot located or occupied on each Owner's Lot, except claims resulting from the negligence or willful act or omission of the indemnified owner or any Occupant of any such Owner's Lot, or the agents, servants or employees of such indemnified Owner or Occupant, wherever the same may occur. Notwithstanding any of the provisions of this Section 7.2 to the contrary, each Owner hereto waives any right of recovery against the other Owners for any loss, damage or injury to the extent the same is covered by insurance provided for by this Declaration.

7.3 Commercial General Liability Insurance. Each Owner shall at all times during the term hereof maintain or cause to be maintained commercial general liability insurance covering the Lot located or occupied on each Owner's Lot, insuring against the risks of bodily injury and property damage with respect to each Lot with a limit not less than \$2,000,000.00 per occurrence. Each Owner shall furnish to the other Owners, on or before the effective date of any such policy, a certificate thereof stating that such insurance is in full force and effect and that the premiums therefor have been paid. The other Owners shall be additional insureds thereunder and such insurance shall provide that the same may not be canceled without at least thirty (30) days' prior written notice to the other Owners. Such policy shall contain an endorsement providing that any insurance maintained by a Lot Owner as to their Lot shall be primary over any valid and collectable insurance maintained by any other Owner or the Declarant pursuant to this Declaration.

7.4 Casualty Insurance. The Owners shall at all times during the term hereof maintain or cause to be maintained casualty insurance with extended coverage, vandalism and malicious



mischievous endorsements upon all buildings located in the Lot upon their respective Property of not less than ninety percent (90%) of the full replacement cost thereof (excluding foundations or excavations); provided however, Owner agrees that all damage to Common Area will be fully repaired notwithstanding the amount of insurance proceeds received by such Owner and available for such repair. The loss, if any, covered by such insurance shall be paid to the respective Owner unless payment of all or a portion of said insurance is required to be made to a mortgagee, deed of trust beneficiary or leaseback lessor, as its interest may appear. Each Owner shall have the power to adjust and settle any loss with its insurer. In the event of any damage to or destruction of any building in the Lot of a Lot from any cause insured against by the insurance required under this Section 7.4, the Owner that is the affected party, shall unless released from such obligation by the other Owners in writing, repair (or cause to be repaired) any such damage or destruction and reconstruct the building in accordance with (i) the concept of an integrated Property, and (ii) the provisions of Section 9 of this Declaration. The proceeds of all insurance shall be used by the affected Owner in payment for the restoration and reconstruction of the building and Improvements on the Common Area that may have been destroyed. The affected Owner shall commence (or cause to be commenced) restoration and reconstruction as herein provided as soon as possible after receipt of the proceeds from insurance therefor and shall use all diligence to repair or reconstruct within a reasonable period of time thereafter.

7.5 Mutual Release. Each Owner for itself, and, to the extent it is legally possible for it to do so, on behalf of its insurer and without affecting the coverage provided by insurance required to be maintained by any Owner hereunder hereby releases and waives any right to recover against the other Owners from any liability for (i) any loss or damage to property, including without limitation the property of any Owner, Occupant or User located upon or in the Property, (ii) any loss or damage to buildings or other Improvements in the Property or the contents thereof, (iii) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is of the type capable of being covered by standard casualty insurance coverage, whether carried or not, or claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by each Owner. No Owner shall be liable to any other Owner for such loss or damage, irrespective of any negligence on the part of such Owner which may have contributed to such loss or damage. The provisions of this Section 7.5 are intended to restrict each Owner (as permitted by law) to recovery against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

7.6 Mechanics' Liens. Nothing contained herein shall authorize an Owner or any person or entity acting through, with or on behalf of an Owner to subject any other Owner's Lot or any portion thereof to mechanics' liens. If any such mechanics' lien shall be filed against an Owner's Lot and another Owner is charged with causing such mechanics' lien, the Owner causing the lien shall, at its expense, cause the mechanics' lien to be discharged by payment or by posting a surety bond. In the event that such mechanics' lien is not discharged within twenty (20) days after receipt of written notice of the mechanics' lien by the Owner charged with causing such mechanics' lien, then the Owner whose Lot is subject to the mechanics' lien, at its option, and at the reasonable expense of the Owner causing the lien, including attorneys' fees, costs and interest at the Default Rate described in Section 9.3 herein, may enter into, defend, prosecute or pursue any effort or action, whether or not litigation is involved which such Owner deems reasonably necessary to defend it and its Lot from an against such mechanics' lien.

## 8. Future Construction.

8.1 Additional Buildings. Subject to the provisions contained in this Section 8 and Section 4 hereof, Declarant and the Owners may develop and construct (or cause to be developed and constructed) within the Lots additional buildings and Improvements to the Property, and may remodel and

reconstruct existing buildings and improvements located in the Lot all in accordance with requirements of the ODP and the City of Fort Collins.

8.2 Area Limitations. The Owners shall not make any extensions or enlargements of buildings or structures in the Lots located on their Lot, including without limitation, basements, second story levels and upstairs, except with the approval of the DRC pursuant to Section 4 hereof and in compliance with the building code of the City of Fort Collins.

9. Rights Upon Default.

9.1 Rights to Cure. In the event any owner or Occupant, or any successor in interest, defaults in the performance of any of the obligations of this Declaration, the Common Area Manager (and if (i) such Common Area Manager fails to take action after written notice to the Common Area Manager from a non-defaulting Owner and a reasonable opportunity for the Common Area Manager to take action; or (ii) in the event there is no Common Area Manager as described in Section 1.5 and Section 5 herein, then non-defaulting Owners, and each of them, which right of non-defaulting Owners may be referred to as "Non-defaulting Cure Right") shall have the right, but not the obligation, upon written notice as hereinafter specified to cure such default for the account of and at the expense of the defaulting Owner. For defaults in the payment of monies due to the Common Area Manager or the non-defaulting Owner under this Declaration, ten (10) days' written notice shall be required; and for all other defaults thirty (30) days' written notice shall be required, but if such default is not capable of cure within said thirty (30) days, an Owner or Occupant shall not be in default hereunder if, upon receipt of written notice, it immediately commences cure of the default and thereafter uses all due diligence continuously to effectuate cure of the default until such default is cured. After notice as herein specified and to effectuate any such cure, the Common Area Manager and, if a Non-defaulting Owner Cure Right, the non-defaulting Owners shall have the right to enter upon the Lot of the defaulting Owner or Lot of the defaulting Occupant to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. The Common Area Manager and, if a Non-defaulting Owner Cure Right, the non-defaulting Owners shall have the further right to recover from the defaulting Owner or Occupant all costs and other sums expended in connection with the cure of the default hereunder, plus interest thereon at the Default Rate specified in Section 9.3 herein. The Owners shall be responsible hereunder for the defaults of their respective tenants, agents and concessionaires, but if, despite diligent efforts, including the use of persuasion or negotiation which may be appropriate or necessary under the circumstances, the default cannot be prevented or cured, the Owners' obligation hereunder shall be limited to invocation of the remedies available hereunder for enforcement of the provision hereof, without however guaranteeing the success of such remedies.

9.2 Legal and Equitable Relief. The Common Area Manager and, if a Non-defaulting Owner Cure Right, each Owner shall have the right to prosecute any proceedings at law or in equity against any other Owner, or any successor in interest or any other Person, violating or attempting to violate any of the provisions contained in this Declaration, including, by way of illustration but not limitation, *ex parte* applications for temporary restraining orders, and preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation of any provision of this Declaration.

9.3 Costs of Cure. All costs and expenses incurred by the Common Area Manager and, if a Non-defaulting Owner Cure Right, any Owner to cure a default of a defaulting Owner or Occupant under the provisions of Section 9.1 hereof, together with interest thereon at the rate of two percent (2%) over the prime rate announced by Wells Fargo Bank West or its successor from time to time to its preferred customers on a ninety (90) day unsecured basis (the "Default Rate"), and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to any

party by an order of court pursuant to Sections 9.2 and 9.4 hereof, shall be assessed against and paid by the defaulting or violating Owner or Occupant.

9.4 Lien. Costs and expenses assessed pursuant to Section 9.3 hereof and pursuant to Section 5 hereof shall constitute a lien against the defaulting Owner's Lot or the interest therein of the Person in default hereunder. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of Arapahoe, State of Colorado, by the Common Area Manager or non-defaulting Owner, if applicable pursuant to Section 9.1 herein, making the claim and shall include: (a) the name of the lien claimant; (b) a statement concerning the basis for the claim of lien; (c) an identification of the owner or reputed owner of the Lot or interest therein against which the lien is claimed; (d) a legal description of the Lot against which the lien is claimed; (e) a description of the work which has given rise to the claim of lien and a statement itemizing the amount thereof; and ( f ) a statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date, book and page of recordation hereof.

The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, either by personal service or by mailing at the address given for the mailing of tax statements in the Office of the Treasurer of the County of Arapahoe, State of Colorado, for the Lot or interest against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and it may be enforced in any manner allowed by law, including but without limitation, suit in the nature of a suit to foreclose a mortgage or lien under the applicable provisions of the Colorado Code of Civil Procedure.

9.5 Removal of Lien. The Owner causing a claim of lien to be recorded shall remove the same and take such action as may be reasonably necessary to clear the title of the affected Lot of the claim of the lien, and/or reasonably required by a title insurance company which is requested to write a policy of title insurance on such Lot not showing the lien as an exception thereto, provided the defaulting Owner or Occupant first performs one of the following acts: (i) pays the amount at issue; (ii) posts a bond in favor of and provide to the Common Area Manager (or a non-defaulting Owner, as the case may be) imposing the lien in the amount of 1½ times the claim of lien executed by an approved corporate surety; or (iii) posts an irrevocable letter of credit in favor of the Owner claiming the lien executed by a national banking association in the amount of 1½ times the claim of lien, which letter of credit unconditionally provides that it may be drawn upon in the event of a final judgment entered by a court of competent jurisdiction in favor of the Owner claiming the lien.

9.6 Remedies Cumulative. All of the remedies permitted or available to the Owners under this Section 9 shall be cumulative.

9.7 Estoppel Certificate. Any Owner may, upon the terms and conditions herein contained, in connection with the sale or transfer of the Owner's Lot, or in connection with the financing or refinancing of the Owner's Lot by mortgage, deed of trust or sale-leaseback made in good faith, deliver written notice to the Common Area Manager requesting such Owners to certify in writing that, to the best knowledge of the certifying Owner, the requesting Owner is not in default in the performance of its obligations under this Declaration, or, if in default, to describe therein the nature and amount of any and all defaults. The Common Area Manager receiving such request shall execute and return such certificate within fifteen (15) days following the receipt thereof. Failure by the Common Area Manager to so execute and return such certificate within the specified period shall be deemed an admission on the Common Area Manager's part that the Owner requesting the certificate is current in all amounts to be paid hereunder and not in default in the performance of such Owner's obligations under this Declaration. The Owners acknowledge that such certificate may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback-lessors. A certificate hereunder may be requested by each Owner from the other Owners at any time and from time to time.

10. Multiple Ownership. In the event that any Owner, or any successor in interest to such Owner, shall transfer or convey its interest in its Lot, or a portion of its interest in its Lot, in such a manner as to vest ownership of the Lot in more than one Person, then the several Owners of the Lot involved in such transaction shall designate one of their number to act on behalf of all such Owners in the performance of the provisions of this Declaration. Any such designation shall be in writing and shall be served upon all the other Owners in accordance with the notice provisions of this Declaration. Notwithstanding such designation, the acts of one Owner shall be binding upon all of the Owners of such Lot and all obligations under this Declaration shall be joint and several. Any Person designated pursuant to the provisions of this Section 10 shall be the agent of each of its principals and as if hereby appointed for such purpose, upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Declaration may be made, and service upon such designated Person shall constitute due and proper service of any such matter if copies are also mailed to such principals at the principals' last addresses known to the sender.

11. Release Upon Sale of Interest.

11.1 Sale by Any Party. Upon the Transfer by any Owner, or any successor in interest, of its entire right, title and interest in its Lot, that Owner shall be released from the obligations of this Declaration (other than those obligations arising from any default by such Owner in the performance of any provision of this Declaration, including payment of any amounts which may have accrued prior to such transfer) provided that such Owner shall have given notice to every other Owner of the sale, transfer, conveyance, assignment or termination of all of its right, title and interest in a Lot concurrently with the filing for record of the instrument effecting the same.

11.2 Sale by Party Maintaining Common Area. In addition to the provisions of Section 11.1 hereof, upon sale or transfer by the Owner of the Common Area, of its entire right, title and interest in the Common Area without designation of a successor pursuant to Section 1.5. Upon such sale or transfer by such Owner, it shall deliver to the Owners a final closing statement in accordance with the provisions of Section 5 of this Agreement, detailing all costs and expenses incurred for the operation and maintenance of the Common Area as of the effective date of the sale, transfer, conveyance or assignment of its right, title and interest in its Lot. Any amounts due such Owner pursuant to the provisions of this Declaration at the time of the sale, transfer, conveyance or assignment of such Owner's right, title and interest in the Common Area shall be paid in accordance with the provisions of this Declaration at the times herein specified, but the amounts due shall be appropriately prorated or otherwise broken down so that those amounts due for costs and expenses incurred by such Owner shall be paid to such Owner. Such Owner, as of the date of such sale, shall have no further liability for or obligation regarding the Common Area.

11.3 Liability of Transferor. In no event shall any transferee of any Owner be liable for any default under this Declaration of the transferring Owner, or any successor in interest, which occurred prior to the effective date of the Transfer of all right, title and interest in the affected Lot to the transferee; provided, however, that nothing contained in this Section 11.3 shall affect the existence, priority, validity or enforceability of any lien placed upon the affected Lot under the provisions of Section 10.4 of this Declaration prior to the effective date of the transfer.

11.4 Assumption Statement. Until such time as there is no Common Area Manager, concurrently with the transfer of all right, title and interest in any Lot by any Owner, the transferee shall execute and deliver to the Common Area Manager a written statement in which the name and address of the transferee shall be disclosed. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, as provided by Section 13.1 hereof, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Declaration, but such failure shall constitute a default by the transferee hereunder.

12. Effect of Breach Upon Purchasers and Mortgagees.

12.1 No Termination. The breach of this Declaration shall not entitle any Owner or Person to cancel, rescind or otherwise terminate its obligations hereunder.

12.2 Mortgagee Protection. No breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but the covenants and restrictions, easements and conditions herein contained shall be binding upon and effective against the Owner of any Lot, or any portion, thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

12.3 Subordination as to Encumbrance Prior to Lien Claim. Any lien created pursuant to the provisions hereof shall be subject and subordinate to the interests of any bona fide purchaser or encumbrancer of all or any part of the property subject hereto, or any interest therein, who acquired its interest prior to the date of recordation of the claim of lien, notwithstanding the fact that the claim of lien may be asserted with respect to work performed or costs incurred prior to the date the claim was duly recorded. From time to time or until such time as there is no Common Area Manager, the Common Area Manager may require the Owners to execute an estoppel certificate, testifying that no lien has been filed.

12.4 Title by Foreclosure. All of the provisions contained in this Declaration shall be binding and effective against Owner whose title to any Lot, or any portion thereof, is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

13. Covenants and Recordation.

13.1 Covenants Run With the Land. All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Declaration which are subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effective for a period of twenty-one (21) years following the death of the survivor of George W. Bush and the now living descendants of said person or until this Declaration is terminated as hereinafter provided, whichever first occurs. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective until **December 31, 2027**, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by the affirmative vote, by written ballot, of Owners holding at least seventy-five percent (75%) of the Pro Rata Share of all Owners of all of the Property, with the prior written consent of one hundred percent (100%) of the first mortgagees (based on one vote for each first mortgage owned) and with the prior written consent of Declarant, unless Declarant has transferred its rights under this Declaration pursuant to Section 15.13. The termination of this Declaration shall be effective upon the recording of a certificate duly executed by the Common Area Manager until such time as there is no Common Area Manager stating that this Declaration has been terminated by the vote of Owners as provided herein. In the event there is no Common Area Manager, the termination of this Declaration shall be effective on recording of a certificate duly executed by each Owner stating that this Declaration has been terminated by the vote of Owners as provided herein. All of the provisions of this Declaration shall be covenants running with the land pursuant to applicable law, including but not limited to the Colorado Revised Statutes. It is expressly agreed that each covenant to do or refrain from doing some act on each Lot hereunder (i) is for the benefit of each other Lot and is a burden upon each other Lot, (ii) runs with each Lot, and (iii) shall benefit or be binding upon each successive Owner during its ownership of each Lot, or any portion thereof, and each Person having any interest therein derived in any manner through any Owner of any Lot, or any portion thereof.

13.2 Recordation. This Declaration shall become effective and binding upon the Owners and their respective heirs, successors in interest (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other Persons acquiring a Lot or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever in accordance with the provisions of this Section 14 upon recordation of this Declaration in the office of the County Recorder for the County of Larimer, State of Colorado. Recordation shall be effected by Declarant.

14. Special Declarant Rights. In addition to the other rights described in this chapter and elsewhere within this Declaration, the Declarant hereby reserves the following "special declarant rights" (as that term is defined in the Act):

14.1 the right to complete any improvements indicated on plats recorded with this Declaration or a Supplemental Declaration, recorded subdivision plats of portions of the Property, and development plans approved by the City of Fort Collins;

14.2 the right to exercise any of the following rights:

(a) the right to expand the Property subject to this Declaration, or subdivide or combine those portions of the Property it owns or to convert the Property it owns into Common Area;

(b) the right to withdraw from the Property any Lot or any portion of the Property not yet conveyed by the Declarant, subject to such local government approvals as may be required;

(c) the right to reconfigure the boundaries of the Common Area;

(d) the right to maintain sales offices, management offices, and advertising signs on the Property;

(e) the right of access over the Common Area for the purpose of making improvements within the Property; and

(f) the right to appoint and remove Common Area Manager during the Declarant Control Period.

The foregoing rights may be exercised with respect to different portions of the Property at different times. If a development right is exercised with respect to any portion of the Property, it need not be exercised with respect to all or any other portion of the Property. No assurances are made as to the boundaries of the Property or with respect to the order in which such development rights may be exercised or whether such development rights may be exercised.

14.3 Termination of Rights. The rights contained in this chapter shall not expire until the earlier of (a) expiration of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity has ceased and Declarant has surrendered such rights.

15. Miscellaneous.

15.1 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Declaration is not intended nor shall it be construed to create any third party beneficiary rights in any Person who is not a party hereto unless expressly otherwise provided.

15.2 Approvals. Unless otherwise herein provided, whenever approval is required of any Owner, it shall not be unreasonably withheld. Unless provision is made for a specific time period, approval by an Owner shall be deemed given within thirty days of the receipt of the request for approval, and if any Owner shall neither approve nor disapprove within said thirty day period, the Owner shall be deemed to have given its approval. If an Owner shall disapprove, the reasons therefor shall be stated.

15.3 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Lot or portion thereof to the general public or for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed solely for the benefit of the Owners and Declarant.

15.4 Severability. Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Declaration.

15.5 Notices. Any notice or other communication required or permitted to be given hereunder shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the addressee's mailing address as specified in Recital A. If notice is received on a Saturday Sunday or a legal holiday, it shall be deemed received on the next business day. The term "business day" if used in this Declaration shall mean and refer to Monday through Friday, excluding legal holiday on which the U.S. Post Office is closed.

15.6 Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.

15.7 Time. Time is of the essence of this Declaration and each and every provision hereof.

15.8 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

15.9 Amendment. Any amendment to this Declaration or termination of this Declaration shall require the affirmative consent of Declarant and/or its successors and/or assigns. If Declarant releases its amendment rights under this section, or ceases to exist, any such written instrument shall no longer require Declarant's approval.

15.10 Unlimited Period of Declarant Amendment. In addition to other amendments and supplements permitted by this Declaration, the Declarant expressly reserves the right and discretion to unilaterally amend this Declaration at any time and from time to time in order to add, delete, or revise any term, condition, or provision necessary or convenient to: (a) bring this Declaration into conformance or compliance with any applicable governmental statute, rule, or regulation or judicial determination; and (b) enable any title insurance company to issue title insurance coverage with respect to all or any portion of the Property or property proposed for inclusion into or addition to this Declaration.

15.11 Non-Liability for Certain Changes and Amendments. Neither the Declarant, so long as Declarant has not released this right or no longer exists or no longer is operating, nor its express successors and/or assigns, shall be liable to, or subject to injunction by, any Owner or to one another in

the event that any change in zoning or any change in development rights of the property within the Property is sought or obtained, or in the event that any subdivision plat amendment or change in density shall be sought and obtained.

15.12 Governing Law. This Declaration shall be governed by, and construed under, the laws of the State of Colorado in existence as of the date of Recording of this Declaration in the Records.

15.13 Assignment of Declarant's Rights. All or any portion of Declarant's rights under this Declaration may be transferred at any time to any Person, by recording in the real property records of Larimer County, Colorado, a written assignment and executed by the Declarant and such transferee.

15.14 Exhibits. All exhibits and riders attached hereto shall be deemed incorporated herein by this reference unless stated otherwise.

15.15 Liberal Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating aesthetic equitable servitudes for the development of the Property and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration.

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

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

DECLARANT:

Harmony Technology Park, LLC  
a Colorado limited liability company

By: MAV Development Company  
a Michigan corporation, its Manager,

By: Robert A. Alorick  
ROBERT A. ALORICK  
Its: PRESIDENT

STATE OF Michigan )  
 ) ss.  
COUNTY Washtenaw OF )

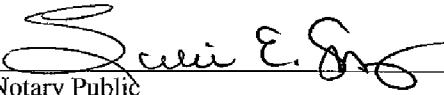
The foregoing instrument was acknowledged before me this 13 day of June, 2008, by Robert A. Alorick as President of MAV Development Company, a Michigan corporation, as Manager of Harmony Technology Park, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission August 9, 2013  
expires:

**LORELEI E. SMITH**  
Notary Public, Genesee County, MI  
Acting in Washtenaw County  
My Commission Expires 8-09-2013



  
Notary Public

## **EXHIBIT A**

### **Property**

All of the following described property:

Lot One, Harmony Technology Park Second Filing, County of Larimer, State of Colorado.

Lot Two, Harmony Technology Park Second Filing, County of Larimer, State of Colorado.

Lots 1, 2, and 3, and Tract A, Harmony Technology Park Third Filing, County of Larimer, State of Colorado

A tract of land located in the Northwest Quarter of Section 4, Township 6 North, Range 68 West of the 6th Principal Meridian, City of Fort Collins, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the North line of the Northwest Quarter of said Section 4 as bearing South 89°40'08" East from a 2" brass cap at the Northwest Corner of Section 4 to a 2 1/2" aluminum cap at the North Quarter Corner of Section 4 and with all bearings contained herein relative thereto: Commencing at the North Quarter Corner of Section 4; thence along the East line of said Northwest Quarter, South 01°43'05" East, 25.05 feet to South right-of-way line of Colorado State Highway No. 68, said point being the POINT OF BEGINNING; thence, continuing along said East line South 01°43'05" East, 2583.66 feet to the Southeast Corner of said Northwest Quarter; thence, along the South line of said Northwest Quarter, North 88°47'16" West, 2624.18 feet to a point on the East right-of-way line of County Road 9; thence along said East right-of-way line, North 01°42'15" West, 2464.08 feet to a point on the South right-of-way line of Colorado State Highway No. 68; thence along said South right-of-way the following 6 courses and distances, North 41°21'52" East, 66.94 feet to a non-tangent curve concave to the South having a central angle of 05°04'29", a radius of 5655.00 feet and the chord of which bears North 8r25'37" East, 500.70 feet; thence, along the arc of said 500.87 feet; thence, North 89°33'22" East, 21.30 feet; thence, South 89°40'08" East, 61300 feet; thence, South 89°50'23" East, 1000.00 feet; thence, South 89°40'08" East, 440.70 feet to the POINT OF BEGINNING,

EXCEPTING therefrom those portions deeded to the City of Fort Collins for road purposes in Deeds of Dedication for Right-of-Way recorded September 24, 2001 at Reception No. 2001085353, October 19, 2001 at Reception No. 2001094094 and December 17, 2003 at Reception No. 20030157902, and June \_\_\_\_, 2008 at Reception No. \_\_\_\_\_.

ALSO EXCEPTING therefrom any portions lying within any public roads.

**EXHIBIT B**

**[Intentionally Omitted for Recording]**