

FINAL
FOUNTAIN GREENS HOMEOWNERS ASSOCIATION, INC.,
POLICY NUMBER 10

ENCROACHMENTS BY HOMEOWNERS ON COMMON AREA

SUBJECT: This Policy establishes principles and procedures to be followed by the Board of Directors (the “Board”) in addressing encroachments by a Homeowner who is a Member (“Member”) of Fountain Greens Homeowners Association, Inc., (the “Association”) on the “Common Properties” of the Association (the “Common Area”).

PURPOSE: This Policy is intended by the Board to create a uniform system of dealing with “encroachments” (as that term is hereafter defined) over and upon the Common Area of the Association (as that term is hereafter defined). This Policy also is intended to establish procedures which will allow for the creation of short-term leases of limited portions of the Common Area upon terms and conditions acceptable to the Board.

AUTHORITY: The laws of the State of Colorado and the Covenants, Articles of Incorporation, and Bylaws of the Association (as said authority has been or may be amended from time to time hereafter).

EFFECTIVE DATE: APRIL 1, 2019 (which date shall not be earlier than the day which is thirty (30) days subsequent to the day this Policy was first published in final form on the Association’s Website as an approved Policy together with the required Policy Notice).

RESOLUTION: On June 20, 2018, the Board resolved that the previous Policy concerning encroachments dated June 1, 2011, would be repealed. Said previous (and now revoked) policy shall be replaced by this new Policy Number 10, to wit:

ARTICLE I

Purpose and Intent

The Board of Directors (the “Board”) of Fountain Greens Homeowners Association, Inc. (the "Association") intends to comply with the requirements of those provisions of the Colorado Common Interest Ownership Act (Title 38, Article 33.3 of the Colorado Revised Statutes). The Board also intends to comply with the common and statutory laws of the State of Colorado insofar as the real estate owned by the Association and encroachments thereupon by the Members of the Association are concerned. This Policy Number 10 (“this Policy”) has been adopted to specify how the Board will determine whether an encroachment exists, the manner in which an encroachment will be addressed by the Board, and under what circumstances and upon what terms short term leases of portions of the Association’s Common Area will be leased to

Members. This Policy shall be interpreted in a manner consistent with the Authority cited above. It shall replace the previous Policy concerning encroachments dated June 1, 2011.

ARTICLE II

Definitions

In this Policy, the following terms (regardless of whether capitalized) will have the following meanings, to wit:

1. “Adverse Use” means any principle of the laws of Colorado which describes how a claimant may acquire title to real estate under the laws of Colorado by proving that the claimant’s title was acquired as the result of the claimant’s possession of said real estate which was actual, adverse, hostile, under adequate claim of right, exclusive and uninterrupted for the requisite period of time. The term “Adverse Use” also shall be construed to comprehend the concepts of easement through adverse use, prescriptive easement, and other similar causes of action relating to quieting title to real estate (or any aspect of the ownership thereof) based on the continuous possession or use of real estate which is open, notorious, adverse, continuous for the requisite period of time, under adequate claim of right, and which the courts of Colorado have declared to be effective to divest the legal owner of real estate of said owner’s title thereto.
2. The term “Common Area” shall have the same meaning as the term “Common Properties” as defined in the Association’s FIRST AMENDMENT TO DECLARATION OF HOMEOWNERS ASSOCIATION COVENANTS AND RESTRICTIONS FOR FOUNTAIN GREENS, A SUBDIVISION LOCATED IN BOULDER COUNTY, COLORADO, recorded on Film 984 as Reception Number 250329 in the records of the office of the Clerk and Recorder of Boulder County, Colorado.
3. The term “Correction” shall mean either: (i) the removal of an Encroachment and the restoration of the relevant portions of the Common Area to the same condition as then exists on those portions of the Common Area which are immediately adjacent to the area of the Encroachment; or (ii) the entering into a Lease between the Association and a Member for leasing a portion of the Common Area under a Lease which complies with Article VI of this Policy.
4. “Covenants” means the “Declaration of Homeowners Association Covenants and Restrictions for Fountain Greens, a Subdivision located in Boulder County, Colorado,” dated June 12, 1975, and recorded on Film Number 893, reception number 144190, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended by the “First Amendment” thereto recorded November 9, 1977, on Film Number 984, reception number 250929 in records of the office of the Clerk and Recorder of Boulder County, Colorado.

5. “Encroachment” means any Improvement or Landscaping constructed or installed by a Member (or a Member’s predecessor in title) and which is located in whole or in part upon any portion of the Common Area except for Improvements and Landscaping authorized under a Lease complying with Article VI. “Encroachment” also means any attempt by a Member or any person acting on behalf of a Member to exercise sufficient dominion or control over some portion of a Common Area that is: (i) not under a Lease; and (ii) inconsistent with the Common Area’s original purpose or the Association’s ownership thereof; or (iii) any action or effort by a Member or a person acting on behalf of that Member (such as an unpermitted Landscaping, construction of an Improvement, or any other affirmative act regarding any portion of the Common Area) which would imply that the encroaching Member owns or has the exclusive right to use that portion of the Common Area.

6. “Improvement” means any structure, driveway, concrete foundation, sidewalk, deck, patio, wall, beam, rafter, or piling which anchors, supports, is attached to, or which comprises a permanent portion of any residence which exists on a Lot, but which is not located entirely within the boundaries of that Lot.

7. “Landscaping” means any tree, bush, flowers, rocks, decorations, or pathways within the Common Area.

8. “Lease” means a written agreement between the Association and a Member which involves the rental of a portion of the Common Area directly adjacent to that Member’s Lot and which meets the terms and conditions specified in Article VI of this Policy.

9. “Lot” means one of the platted residential lots within the Subdivision. However, for this Policy, a Lot shall not be deemed to include: (i) any portion of a Common Area; (ii) any portion of any Outlot as depicted on any Plat of any portion of the Subdivision; or (iii) any Encroachment.

10. “Member” means an Owner of a Lot within the Subdivision, as defined in Article III, Section 1 of the Covenants.

11. “Subdivision” means Fountain Greens Subdivision, which is a subdivision of a part of the South ½ of the Northwest ¼ of Section 12, Township 1 North, Range 70 West of the 6th Prime Meridian, and a replat of a part of Outlot J and a part of Block 1, Gun Barrel Green, all in the county of Boulder, State of Colorado, containing an area of 77.060 acres, more or less, which has been subdivided into 13 Blocks and their respective and constituent Lots, all as depicted on the plat recorded on July 10, 1975, as Reception Number 00144183, in the office of the Boulder County Recorder.

12. “Title” means legal title in fee simple absolute under the laws of the State of Colorado. “Title” also means any legally enforceable easement for any purpose recognized by the laws of the State of Colorado over real estate (such as a prescriptive easement).

ARTICLE II

Recitals of Pertinent Facts

This Policy has been adopted in view of the following facts, which the Board considered and believed to be true on the date of its adoption, to wit:

1. Encroachments may exist in the Subdivision as the result of inadvertence or deliberate actions by some Members or the predecessors in title to those Members.
2. The Association does not have the lawful power to convey Title to any portion of the Common Area except pursuant to Article IV of the Covenants and Section 38-33.3-312 C.R.S.
3. The consent by the Association to an Encroachment over any portion of the Common Area would be the equivalent of the conveyance of Title to that portion of the Common Area.
4. The Board (and therefore the Association) has never sought the consent of the requisite percentage of the Members specified in either the Covenants or Section 38-33.3-312 C.R.S. to convey Title to any portion of the Common Area to any person. Nor has the Board sought the consent of the requisite percentage of the Members specified in either the Covenants or Section 38-33.3-312 C.R.S. to the continuation of or acquiesce to any Encroachment over any portion of the Common Area.
5. The Board does not have the authority to act on behalf of the Members of the Association to acquiesce to, approve of, or ignore an Encroachment. Nor does the Board have the authority to convey Title to any portion of the Common Area to any Member. Any such action by the Board without the consent of the requisite percentage of the Members specified in either the Covenants or Section 38-33.3-312 C.R.S. would be: (i) inconsistent with the obligations imposed upon the Board by the Covenants; (ii) an ultra vires action by the Board; and (iii) void ab initio.
6. The Board has the obligation to identify all potential Encroachments over or upon any portion of the Common Area and obtain the correction of same pursuant to the terms and conditions of this Policy.
7. The Board also has the obligation to accomplish the intents and purposes of this Policy with due regard for the sensibilities of the Members and generally accepted principles of comity and fairness.

ARTICLE III

Identification of Encroachments

The Board shall determine whether Encroachments exist within the Subdivision, to wit:

1. The Board shall use its best efforts to determine whether any potential Encroachment(s) exist within the Subdivision, and the nature, extent and location thereof no less frequently than annually.
2. In determining the nature, extent, and location of a potential Encroachment, the Board may approximate or estimate the location of adjacent Lot lines without obtaining a survey by a land surveyor.
3. If the Board, in its discretion, determines that a survey by a licensed land surveyor is needed to precisely establish the extent of an Encroachment, the Board may allocate and expend operating reserve funds for that purpose.
4. If the Board determines that any Encroachments exist, the Board shall prepare (and update from time to time) a list of potential Encroachments in an approximately chronological order, with older Encroachments listed first, and more recent Encroachments last. Thereafter the Board shall address and attempt to correct listed Encroachments in the order listed.

ARTICLE IV

Encroachments Committee

As soon as reasonably possible after this Policy is effective, the Board shall establish a permanent committee of the Association (which may have both Directors and non-Director Members appointed to that committee by the Board) which shall be known as the "Encroachments Committee." The purpose of the Encroachments Committee shall be to establish whether any Encroachments exist within the Subdivision and to make recommendations to the Board about how to correct same. The Encroachments Committee shall have the following functions, authority, and duties:

1. The Encroachments Committee shall investigate any suspected or reported Encroachments and make a preliminary determination of whether a possible Encroachment exists, in fact. Such determination shall include a good faith determination of the nature, extent, duration, and location of each Encroachment, and the name(s) and contact information of the Member(s) who owns the Lot immediately adjacent to that Encroachment. Members of the

Encroachments Committee shall use their best efforts to contact and meet with that Member and inform him or her or them that his/her/their Improvements and/or Landscaping appear to encroach on a portion of the Common Area, and that the Encroachments Committee must use reasonable efforts to negotiate a Correction to such Encroachment. Any written agreement between the Association and a Member concerning the Correction of an Encroachment shall include:

a. A written description of the nature, extent, and location of the Encroachment which the Member whose Improvements and/or Landscaping encroach upon the Common Area agrees is accurate;

b. A written acknowledgement by the Member whose Improvements and/or Landscaping encroach on a portion of the Common Area that such Encroachment exists, in fact; and

c. A written agreement by the Member that the Member either will: (i) remove the Encroachment at the Member's sole and separate expense; or (ii) enter into a Lease between that Member and the Association that complies with Article VI of this Policy.

2. If the Encroachments Committee cannot negotiate a correction to an Encroachment as prescribed above, the Chair of the committee shall report to the Board that the encroaching Member is not willing to correct that Encroachment. The Board thereafter shall proceed in the manner described in Article V of this Policy.

3. The Encroachments Committee shall meet as often as is necessary to deal with Encroachments on behalf of the Association in a conscientious manner, and no less frequently than four (4) times per calendar year until said committee concludes that it has documented all potential Encroachments, at which time it shall meet no less frequently than annually.

4. The Board shall designate the members of the Encroachments Committee. Each member of the Encroachments Committee shall serve as a member thereof until his or her successor has been appointed or the member resigns. The Board shall designate one member of the Encroachments Committee to act as chairperson and one member to act as secretary. The secretary shall prepare minutes of actions taken and matters considered by the Encroachments committee at its meetings and shall furnish the Board with a conformed copy of said minutes, which shall be included in the official records of the Association.

5. Each member of the Encroachments Committee shall be a Member of the Association and shall be subject to the Association's Conflicts of Interest Policy (Policy Number 2). No member of the Encroachments Committee shall participate as a member of the Encroachments committee regarding an Encroachment which exists immediately adjacent to or which directly affects that committee member's Lot. Nor shall any member of the Board participate in resolving or correcting an Encroachment created by or affecting that Board member's Lot.

6. The Encroachments Committee shall encourage the use of Leases complying with Article VI of this Policy as the preferred method of correcting an Encroachment which a Member acknowledges exists.

7. The Encroachments Committee shall not waive (and shall not have the authority to waive) any of the provisions of this Policy.

ARTICLE V

Adversarial Encroachments

If a Member whose Improvements or Landscaping encroaches on a portion of the Common Area refuses to correct an Encroachment by either removing such Encroachment or entering into a Lease which complies with Article VI, then the Board shall proceed in the manner specified in this Article, to wit:

1. The Board shall instruct the Association's Manager to notify the Member whose Improvements and/or Landscaping encroaches on any portion of the Common Area (the "Encroaching Member") as to the Board's belief that an Encroachment exists. Such notification (the "Notice") shall be in writing, shall be either personally delivered to the Encroaching Member or sent to the Encroaching Member's last known address by Registered U.S. Mail, Postage prepaid in the proper amount, Return Receipt requested. In addition, if the Encroaching Member has furnished the Association with the Encroaching Member's E-Mail address, then a copy of the Notice shall be sent to the Encroaching Member by E-Mail. The Notice also shall include:

- a. A description of the nature, extent, and location of the Encroachment (which need not be described by metes and bounds or a survey, but may instead recite approximate dimensions, and may refer to a depiction of the Encroachment on a separate document or illustration);
- b. A statement that the Board, on behalf of the Association, demands that the Encroachment be removed and corrected as soon as reasonably possible, and in any event not later than sixty (60) days subsequent to the date of the Notice;
- c. A statement that if there is a reasonable necessity for a delay in such removal, and is objectively verifiable, i.e., the need for additional time to allow the Encroaching Member to remove the Encroachment is both reasonable and necessary, that the Board

will grant that additional time if the Encroaching Member requests same in a written request which also: (i) acknowledges the fact of the Encroachment; (ii) acknowledges that the Encroaching Member must remove the Encroachment; and (iii) states a date (within 180 days thereafter) by which the Encroachment will be removed;

d. A statement that the failure by the Encroaching Member to remove the Encroachment as demanded (and within 60 days of the date of the Notice) or to ask for additional time in which to do so will result in the Association filing a lawsuit against the Encroaching Member seeking: (i) a declaration that the Encroaching Member has no right to occupy the Encroachment area; (ii) the removal of the Encroachment; (iii) the Encroaching Member's Ejection from the encroached upon area under the laws of Colorado; (iv) an order of the court directing the removal of any Landscaping or Improvements which may be located within the Common Area; (v) the recovery from the Encroaching Member of an amount equal to the Association's attorneys' fees, court costs, and other expenses incurred by it in connection with said litigation; and (vi) such other relief under the laws of Colorado to which the Association may be entitled; and

e. A listing of the persons whom the Encroaching Member (or said Member's attorney) should contact for further information or clarification, and the contact persons' names, addresses, phone numbers, and E-Mail addresses.

2. If the Encroaching Member does not respond to the Notice described above within sixty (60) days of the date said Notice was sent to the Encroaching Member, then the Association shall sue the Encroaching Member seeking the relief described above in subparagraph 1, d.

3. The Board may expend such sums from the Association's reserve accounts as is reasonable and appropriate in order to: (i) obtain the judicial relief sought; (ii) hire surveyors, attorneys, civil engineers, and other experts required to present the Association's case; and (iii) thereafter enforce any judgment or court order in favor of the Association.

4. The Board shall not have the authority to settle any such litigation if such settlement does not involve the correction or termination of the Encroachment, i.e., the Board may not stipulate to any settlement which involves the actual or defacto conveyance or abandonment of any portion of the Common Area except with the consent of the necessary portion of the membership of the Association as specified in Article IV of the Covenants. The Board shall not stipulate, agree to, or otherwise acquiesce to any Member's assertion that said Member acquired Title to any portion of the Common Area through said Member's Adverse Use thereof.

5. Neither the Board nor the Association shall have the responsibility to seek the approval of the necessary portion of the membership of the Association for any conveyance of any portion of the Common Area. If any Member asserts any rights to the Common Area and desires to obtain from the Association a deed to any portion thereof based upon the acquiescence or approval of the required majority of the Association's Members to an encroaching Member's Adverse Use of any portion thereof, the encroaching Member shall bear all costs of contacting and polling the

Association's membership regarding that issue. Any vote by the Association's membership about whether the number of Members required by Article IV of the Covenants approves of a Member's acquisition of any portion of the Common Area must be obtained in accordance with the Association's Covenants and Bylaws or as otherwise permitted by the laws of the State of Colorado before such vote shall be binding upon the Association.

6. To the extent that any Encroachment exists on or prior to the effective date of this Policy, and with respect to any Encroachment that may be created subsequent to the effective date of this Policy, the Board (and therefore the Association):

- a. Objects to any such Encroachment;
- b. Demands the removal and correction of any such Encroachment;
- c. Does not consent to or approve of or acquiesce to any such Encroachment;
- d. Denies that any previous Board had the authority to consent to any Encroachment, or to grant permission for any Encroachment to exist or to allow that such Encroachment continue in any manner; and
- e. Denies that prior to this Policy any Member has acquired Title to any portion of the Common Area through an Adverse Use, denies that any Member is lawfully entitled to establish that said Member possesses Title to any portion of the Common Area as the result of that Member's Adverse Use thereof, and denies that at any time after the adoption of this Policy any Member will be entitled to establish that said Member possesses Title to any portion of the Common Area as the result of that Member's Adverse Use thereof.

ARTICLE VI

Leases of Portions of Common Area

The Association, acting through the Board, shall have the discretion and right to enter into leases of portions of the Common Area if such leases do not conflict with the Policies of the Association, the Covenants, or the laws of the State of Colorado. If, in an effort to correct an Encroachment or for other good and sufficient reason the Board determines that it is in the best interests of the Association to enter into a lease agreement between the Association and a lessee/Member with respect to a portion of the Common Area, then any such agreement ("Lease") shall be required to meet the terms and conditions of this Article, to wit:

1. Any Lease entered into between the Association and a Member pursuant to this Article must:

- a. Be in writing;
- b. Be duly authorized and approved by the Board;
- c. The signature(s) of the Member(s) as Lessee(s) and the Board's President on behalf of the Association must be duly acknowledged before a Notary Public authorized as such under the laws of Colorado;
- d. Be filed of record at the sole and separate expense of the Lessee(s) in the Office of the Clerk and Recorder of Boulder County, Colorado, Recording Division, 1750 33rd Street, Suite 201, Boulder, CO 80301;
- e. Satisfy the requirements of paragraph 2 of this Article.

2. Any Lease entered into between the Association and a Member pursuant to this Article must contain terms and conditions which obligate the Lessee(s) as to the following:

a. The Lessee(s) must arrange for the modification or endorsement to the Lessees' homeowner's insurance policy for liability insurance coverage for any injuries to persons or property caused by any activity, slip, fall, or other damage caused by any condition or structure within the leased area during the Lease Term. The Association must be named as an "additional insured" on the Lessees' policy of premises liability insurance regarding the leased area, and the limits of liability insurance afforded by the Lessees' policy shall be no less than Five Hundred Thousand Dollars (\$500,000) for any one or more occurrences and injuries during the policy's reporting period. The Lessees must provide to the Lessor such certifications from the Lessees' casualty insurance provider as the Lessor may reasonably require and all costs of such insurance and such certifications shall be paid by the Lessees. The Lessee(s) must indemnify and hold the Association harmless from any failure to provide this insurance coverage.

b. The Lessee(s) must stipulate and agree that he/she/they have no rights with respect to the leased area described in the Lease except as is granted by and is based upon the Lease, and the Lessee(s) must specifically disclaim and waive any ability on their part (or on the part of any predecessor or successor in title) to assert any rights to the leased area because of any alleged adverse possession, adverse use, prescriptive easement, or any similar legal principle under the laws of Colorado.

c. The Lessee(s) must maintain the leased area and comply with the terms and conditions of the Lease, and the Lessee(s)' failure to do so shall entitle the Association as Lessor to terminate the Lease.

3. Any Lease entered into between the Association and a Member pursuant to this Article shall contain terms and conditions which are acceptable to the Board. A Lease which is consistent with and reasonably similar to those contained in the form for a Lease which is

attached to this Policy as Exhibit A (which is incorporated in this Policy by reference) is hereby declared to an acceptable format for same.

ARTICLE VII

Amendments

This Policy may be amended from time to time by the Board, but only pursuant to and in accordance with the requirements and procedures set forth in the Association's Policy Number 7.

PRESIDENT'S CERTIFICATION:

The undersigned, being the President of Fountain Greens Homeowners Association, Inc., certifies that the foregoing Policy was approved and adopted by the Board of Directors of the Association, to be effective on the Effective Date specified above, at a duly called and held meeting of the Board of Directors of the Association on FEB 20, 2019 and in witness thereof, the undersigned has subscribed his/her name.

Fountain Greens Homeowners Association, Inc., a Colorado nonprofit corporation

By: *Janie Kopf, President* Its: President

Exhibit A

FORM FOR LEASE AGREEMENT

This lease agreement (“this Lease”) is an agreement between Fountain Greens Homeowners Association, Inc., a Colorado non-profit corporation (the “Lessor”) and Jay and Jane Doe, husband and wife (jointly referred to in this Agreement as the “Lessees”). The Lessees reside at 1234 XXX Circle, Boulder, CO 80301.

1. **RELEVANT FACTS:** This Lease has been entered into because of these facts, which the Lessor and Lessees stipulate are true, to wit:

a. The Lessor was formed on June 6, 1975, by the persons involved in developing the “Gunbarrel” residential development. The Lessor has the duty to act for the benefit of homeowners in that portion of the Gunbarrel Subdivision known as “Fountain Greens” by owning title to “the common properties and facilities” (the “Common Property”) of that subdivision and managing those properties under the “Declaration of Homeowners Association Covenants and Restrictions for Fountain Greens” dated June 10, 1975, as amended (the “Covenants”). The Covenants were filed (recorded) in the Boulder County records on June 10, 1975, on Film 893 as Reception No. 144190, and a Supplement thereto was recorded May 9, 1978, as Reception No. 278027. The Lessor has the authority to enter into this Lease pursuant to the Covenants. The Lessor’s address for the purposes of any notice required under this Lease is: Fountain Greens Homeowners Association, Inc., c/o Foster Management, 700 Ken Pratt Blvd., SUITE 111, Longmont, CO 80501.

b. The Lessee's residence is in the Fountain Greens Subdivision, and is legally described as: *Lot X, Fountain Greens Resubdivision Number **, a Resubdivision of Block ## Fountain Greens Subdivision in the South Half of the Northwest Quarter Section 12, Twp. 1 North, Range 71 West of the 6th P.M., county of Boulder, State of Colorado* (hereafter called "Lot X"). The Lessee's address for the purposes of any notice required to be given under this Lease is 1234 XXX Circle, Boulder, CO 80301. The Lessee will promptly advise the Lessor of any change in Lessee's mailing address.

c. Adjacent to Lessees' residence is a portion of Outlot Z, which is one of the Common Properties. A small portion or parcel of the Common Properties is the subject of this Lease, and is generally described as follows: *Commencing at the Southwest corner of Lot X; thence North along the West boundary of Lot X to the Northwest corner of Lot X; thence west four (4) feet; thence South and parallel to the west boundary of Lot X to a point four (4) feet West of the Southwest corner of Lot X; thence East a distance of four (4) feet to the point of beginning.* A depiction of said parcel is attached as "Exhibit A," and is hereafter called the "Parcel."

d. The Lessees desire to [install a path within the Parcel using paving stones to allow access to along the length of the Parcel] consistent with the depiction of same on Exhibit A, and thereafter to maintain [that path and paved area] in good and safe condition. Lessees desire to acquire from the Lessor the right to maintain and repair the Parcel during the term of this Lease, including any extension of the term of this Lease, all has hereafter prescribed. The Lessee has requested permission to do so from the Lessor, and the Lessor has agreed to lease the Parcel to the Lessee under and subject to the terms of this Lease.

e. Lessees would not have the right to construct, maintain, or repair the path described above but for this Lease, and if this Lease is terminated, Lessees' rights to maintain and use the Parcel likewise will terminate. The Lessor has granted the permissions and has entered into this Lease with the Lessees upon the condition that Lessees acknowledge that Lessees' rights are permissive and granted only under this document, and not otherwise.

f. This Lease was approved by the Board of Directors of the Lessor at a meeting of said Board on _____.

2. Lease of Parcel by Lessor to Lessees: Lessor hereby leases the Parcel to the Lessees, and the Lessees lease the Parcel from the Lessor for the Lease Term specified in this Lease, and the Lessees agrees to be bound by the Lessees' obligations specified below.

3. Commencement Date, Lease Term, and Renewal of Lease: This Lease shall become effective on August ____, 2019 (the "Commencement Date"). It shall have a duration of ten years (the "Lease Term") and shall terminate on the earlier of: (i) the date the Lessor gives the Lessees a "Notice of Termination" in the manner specified in subparagraph a of this paragraph 3; or (ii) the day prior to the eleventh (11th) anniversary of the Commencement Date. However, the term of this Lease may be renewed under subparagraph b of this paragraph 3. Furthermore:

a. This Lease (and therefore the Lease Term) may be terminated at any time by the Lessor if the Lessor reasonably determines that the Lessees have neglected or refused to fulfill “Lessees’ Responsibilities” under this Lease as the responsibilities are hereafter prescribed. If the Lessor determines that the Lessees have failed or refused to fulfill Lessees’ Responsibilities, the Lessor shall send notice to that effect to Lessees, and Lessees shall have 10 days following receipt of the notice from the Lessor to reasonably satisfy the Lessor that the Lessees have not failed or will not fail to fulfill Lessees’ Responsibilities under this Lease. If the Lessees fails to cure Lessees’ omissions or to reasonably satisfy the Lessor that Lessees will not thereafter fail to fulfill Lessees’ Responsibilities within said 10 day period, then the Lessor may thereafter declare this Lease to be terminated, and the Lessees shall immediately remove any improvement installed on the Parcel, and shall restore the Parcel to the same condition as that portion of the Common Property adjacent to the Parcel, shall not thereafter maintain or improve the Parcel or place any structure thereupon, and any rights Lessees had under this lease shall terminate.

b. If the Lessees fulfill the Lessees’ Responsibilities under this Lease, then this Lease (and therefore the Lease Term) shall be renewed for successive periods of ten (10) years each, with each new lease year commencing on the anniversary date of the Commencement Date. However, this Lease shall not be renewed for more than twenty (20) successive years. At the end of the 20th consecutive year of Lessees’ lease of the Parcel, the Lessor and Lessees shall negotiate and determine the extent to which the terms of this Lease need to be modified or superseded with a new lease agreement, and both the Lessor and Lessees shall be obligated to negotiate in good faith regarding the terms of a replacement lease agreement. If, despite such good faith negotiations, the Lessor and Lessees cannot agree with respect to a new lease agreement, then, subject to the provisions of subparagraph c of this paragraph, the Lessor shall have the right to terminate this Lease.

c. If, for any reason, neither the Lessor nor the Lessees seek to enter into a new Lease agreement to replace this Lease at the expiration of the 20-year lease term specified above, then this Lease shall be converted into a month-to-month tenancy commencing on the 21st anniversary of the Commencement Date. Following such conversion, either the Lessor or the Lessees may terminate this Lease by complying with the provisions of Colorado law concerning the termination of month-to-month tenancies. Rental during such month-to-month tenancy shall accrue and be paid at the rate of \$0.10 per month, but the Lessees also shall remain obligated to perform all other obligations under this Lease until it is terminated.

4. Rent: Unless and until the provisions of subparagraph c of paragraph 3, above, become effective, the Lessees shall pay the Lessor an annual rental of \$1.00 per lease year. The Lessees and the Lessor stipulate and agree that the payment of this rental plus the faithful and proper fulfillment by the Lessees of the Lessees’ responsibilities shall constitute good, sufficient, and valuable consideration for the agreements of both the Lessor and Lessees under this Lease. The Lessees may pre-pay the stipulated cash rental at any time. Otherwise said cash rental shall be due each year beginning on the Commencement Date and on each anniversary of the Commencement Date thereafter during which this Lease is in effect.

5. Lessees' Responsibilities: During the Lease Term (including any extension of the Lease Term under paragraph 3), the Lessees shall have the following obligations and duties (the "Lessees' Responsibilities"), which the Lessees shall perform at Lessees' sole expense, to wit:

a. The Lessees shall build no permanent improvement or structure (such as any concrete, wooden, or metal foundation, pier, wall, box, or the like) which is permanently anchored or buried within the Parcel except as same are specifically identified, described on a new Exhibit B attached to this Lease, and specifically approved by the Lessor, in writing, hereafter. If this Lease is terminated, then the Lessees, at Lessees' expense, shall remove all such improvements, at Lessees' sole and separate expense, as soon as reasonably possible after the termination of this Lease;

b. The Lessee shall not plant any additional vegetation on the Parcel except as approved in writing and in advance by the Lessor. The Lessee shall use the Parcel only for purposes permitted by the Covenants and this Lease;

c. The Lessees shall maintain, repair, paint, clean, and otherwise preserve the aesthetic appearance and safe condition of any improvement within the Parcel (normal and unavoidable wear and tear excepted);

d. The Lessees shall arrange for the modification or endorsement to the Lessees' homeowner's insurance policy for liability insurance coverage for any injuries to persons or property caused by any activity, slip, fall, or other damage caused by any condition or structure within the Parcel during the Lease Term. The Lessor shall be named as an "additional insured" on the Lessees' policy of premises liability insurance regarding the Parcel, and the limits of liability insurance afforded by the Lessees' policy shall be no less than Five Hundred Thousand Dollars (\$500,000) for any one or more occurrences and injuries during the policy's reporting period. The Lessees shall provide to the Lessor such certifications from the Lessees' casualty insurance provider as the Lessor may reasonably require and all costs of such insurance and such certifications shall be paid by the Lessees. The Lessee(s) shall indemnify and hold the Association harmless from any failure to provide this insurance coverage;

e. If any injury to any person occurs within the boundaries of the Parcel during the Lease Term, the Lessees shall promptly notify the Lessor of such injury and occurrence, and shall keep the Lessor advised on any claim filed because of such injury and the Lessees shall otherwise indemnify and hold the Lessor harmless from any cost, expense, or liability to any person injured or for any property damaged during the Lease Term;

f. The Lessees shall keep the Parcel free from debris, trash, noxious weeds, and from the presence of any other item or activity which may constitute a nuisance, or which disturbs the peace of Lessees' neighbors;

g. The Lessees shall not treat the Parcel as a part of Lessees' separately owned property or use the Parcel for any purpose not specifically allowed under this Lease. The Lessees stipulate and agree that they have no rights with respect to the Parcel except as granted by this Lease, and specifically disclaim and waive any ability on their part (or on the part of any predecessor or successor in title) to assert any rights to the Parcel because of any alleged adverse possession, adverse use, prescriptive easement, or any similar legal principle under the laws of Colorado.

h. As soon as reasonably possible after the Effective Date, the Lessees, at the sole and separate expense of the Lessees, shall record this Lease in the Office of the Clerk and Recorder of Boulder County, Colorado, Recording Division, 1750 33rd Street, Suite 201, Boulder, CO 80301. A copy of this Lease as recorded and containing the pertinent recording information shall be furnished to the Lessor as soon as possible thereafter.

6. Disclaimer by Lessees of Ownership Rights to Parcel: The Lessees disclaim any right to claim any ownership of, title to, or adverse use or possession of the Parcel. The Lessees acknowledge that their only right to occupy, use, or improve the Parcel exists pursuant to this Lease, but not otherwise. The Lessees make this disclaimer on behalf of themselves, any predecessor or successor in title to Lot X, and their respective heirs, executors, successors and assigns.

7. Binding Effect and Enforcement: The Lessor and Lessees may enforce this Lease only under the laws of the State of Colorado. This Lease shall be binding upon the Lessor and the Lessees and upon their respective successors. The Lessees may not assign this Lease to any person or entity without prior written notice to and the express written consent of the Lessor. However, the Lessor shall not unreasonably withhold its consent to such assignment in the event of the sale of Lot X to a purchaser who is willing and able to assume the Lessees' responsibilities and obligations under this Lease, and who expressly agrees to do so in writing at the time of said purchaser's acquisition of title to Lot X.

8. Mediation of Disputes: Before any dispute regarding this Lease is submitted for resolution to a court of competent jurisdiction, the Lessor and Lessees shall attempt to mediate such dispute, and the Lessor and Lessees shall undertake such mediation in good faith and in a sincere effort to negotiate an acceptable resolution to any such dispute in a manner consistent with the terms and requirements of this Lease.

In Witness Whereof, the Lessor and Lessees have signed this Lease on this _____ day of _____, 20__.

Fountain Greens Homeowners Association, Inc. ("Lessor")

By: _____
_____, President and Authorized Agent

_____(“Lessee”)
Jane Doe

_____(“Lessee”)
John Doe

* * * * *

State of Colorado

County of Boulder

The foregoing instrument was acknowledged before me this ____day of _____, 20____, by _____, President of Fountain Greens Homeowners Association, Inc., a Colorado not-for-profit corporation, and who, upon her oath and upon being duly sworn, did state and affirm that she is the President of said corporation, that she was duly authorized to execute the foregoing document on behalf of said corporation as its free act and deed.

Print Name: _____

Notary Public for the State of Colorado

Commission Expires: _____

State of Colorado

County of Boulder

The foregoing instrument was acknowledged before me on this ____day of _____, 20__, by Jane Doe and John Doe, wife and husband, and who, upon their oaths and being duly sworn, did state that they did so as their free act and deed and for the purposes above stated.

Print Name: _____

Notary Public for the State of Colorado

Commission Expires: _____