

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
MOUNTAIN SKY**

After recording return to:  
WHITE BEAR ANKELE TANAKA & WALDRON  
2154 E. Commons Avenue, Suite 2000  
Centennial, Colorado 80122

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MOUNTAIN SKY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN SKY ("Declaration") is made and entered by FL MOUNTIAN SKY, LLC, as of \_\_\_\_\_, 2016 ("Effective Date"). Capitalized terms used in this Declaration have the meanings set forth further in this Declaration.

SUMMARY OF DEVELOPMENT

A. Declarant is the owner of that certain real property in the City of Fort Lupton, County of Weld, State of Colorado, which is legally described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property," as hereinafter more fully defined); and

B. Declarant desires to subject and place upon the Property certain covenants, conditions, easements, architectural guidelines, reservations, rights-of-way, obligations, liabilities and other provisions and restrictions, for the development, improvement, use, operation, maintenance, repair and enjoyment of the Property, that run with the land.

C. This Declaration does not create a Common Interest Community (as defined by the Colorado Common Interest Ownership Act at C.R.S. § 38-33.3-103(8)). Therefore, this Declaration is not governed by the Colorado Common Interest Ownership Act.

D. Declarant imposes the covenants, conditions, restrictions and easements set forth in this Declaration on the Property, and pursuant to C.R.S. § 32-1-1004, Declarant empowers the Home Owners Association with authority to furnish covenant enforcement and design review services for the Property, usmg revenues that are derived from the Property, as more fully set forth in this Declaration.

E. Declarant reserves the right to add additional real property to this Declaration by recording a Supplemental Declaration.

F. The statements in this Summary of Development have the same binding effect as if set forth in the Declaration.

DECLARATION

NOW, THEREFORE, Declarant declares that the Property, and all property that becomes subject to this Declaration in the manner hereinafter provided, is subject to this Declaration and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained and altered subject to the terms contained in this Declaration. The terms of this Declaration touch and concern the Property, and (a) run with the land, (b) benefit and burden the Property as an equitable servitude, (c) bind all Persons having or acquiring any interest in the Property or any part of the Property, (d) inure to the benefit of and bind every part of the Property and every interest in the Property, and (e) inure to the benefit of and are enforceable by Declarant, its Affiliates, the Home Owners Association, and their respective designees, assigns and successors in interest.

## ARTICLE 1. DEFINITIONS

The following words and phrases as used in this Declaration have the meanings set forth below. Other terms in this Declaration may be defined in specific provisions of this Declaration and have the meaning assigned by such definition.

### Section 1.1 Defined Words and Phrases.

1.1.1 "Adjacent Properties" has the meaning given to that term in Section 12.1.

1.1.2 "Affiliate" means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with the Person for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to (i) vote 20% or more of the ordinary voting power of such Person, or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and either alone or in conjunction with others.

1.1.3 "Applicable Laws" means the laws, orders, ordinances, regulations, rules and statutes of all federal, state and local, jurisdictions having authority over the Property, including the City, the Home Owners Association, County, and any other statutory created governing body including, without limitation, associations.

1.1.4 "ARC" means the Architectural Review Committee, which shall be appointed by the Declarant during the Declarant Development Period (as defined in Section 1.1.11), and upon expiration of the Declarant Development Period, appointed by the Home Owners Association, all as provided in Section 3.1 of this Declaration. The ARC shall review, consider and approve, or disapprove, requests for architectural approval, as more fully provided in this Declaration. To the extent (i) the Person with the authority to appoint the ARC, as provided in Section 3.1, has delegated, in writing, some or all architectural authority, to one or more other Persons, or (ii) a representative or committee has been appointed by the ARC to act on its behalf, as provided in Section 3.3.4, then the actions of such Person, representative or committee shall be deemed to be the actions of the ARC.

1.1.5 "Benefited Parties" means Declarant, the Home Owners Association, the ARC and each of their respective parents, subsidiaries, and Affiliates and each of their agents (including, but not limited to, any representative or committee appointed by the ARC or the Home Owners Association and any member of any such committee), directors, employees, members, managers, officers, partners, and shareholders, and their respective heirs, successors, and assigns.

1.1.6 "Builder" means (i) any Person who acquires one or more Lots or Parcels within the Property for the purpose of constructing a building thereon for subsequent sale, and/or rental, or (ii) any Person who is designated by Declarant as a "Builder."

1.1.7 "Claims" means any and all causes of action, claims, costs, damages, expenses, liabilities, and other claims. Notwithstanding anything contained herein to the contrary, however, whenever the same are used in Article 10, the term "Claim" or "Claims" shall have the meaning set forth in Section 10.1.4.

**1.1.8 "Commercial Unit"** means a structure constructed on a Lot for commercial or retail purposes and "for rent" multi-family housing projects that may consist of apartments or townhomes.

**1.1.9 "County"** means Weld County, Colorado.

**1.1.10 "Declarant"** means Liberty Savings Bank, FSB, an Ohio for profit corporation and Platte Basin Consultants, Inc., a Colorado corporation, and/or any other Person to whom Declarant assigns one or more of Declarant rights under this Declaration (which assignment will only be the extent of Declarant rights to which such assignee succeeds), provided, that no assignment of any Declarant rights will be effective unless such assignment is duly executed by the assignor Declarant and recorded in the Recorder's Office.

**1.1.11 "Declarant Development Period"** means the period of time commencing on recordation of this Declaration in the Recorder's Office, and expiring the first to occur of: (a) fifty (50) years after recording of this Declaration, or such shorter period as deemed necessary by Declarant to comply with Applicable Laws, or (b) the date of conveyance of all the Lots to the first Owners thereof other than: (i) the Declarant; or (ii) any Builder; or (iii) any other Person who acquires one or more Lots for the purpose of constructing at least one Commercial Unit or Residential Unit on each such Lot.

**1.1.12 "Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Mountain Sky, as amended from time to time.

**1.1.13 "Development Rights"** means the rights reserved to Declarant in Section 9.I.

**1.1.14 "District Property"** means any real or personal property, including any infrastructure or other Improvements, owned, leased or being constructed by or on behalf of the Home Owners Association. Notwithstanding anything to the contrary, including the location of the Property within the Property, the Property shall not be subject to this Declaration.

**1.1.15 "Established Drainage Pattern"** means the drainage pattern that exists at the time of the overall grading of any Lot which may be reflected on a grading plan or an as-built civil engineer plan for such Lot.

**1.1.16 "Fees"** means, collectively, (i) any type of charge for any services or facilities provided by or through the Home Owners Association, or (ii) any charges imposed by the Home Owners Association for the Services.

**1.1.17 "Fines"** means any monetary penalty imposed by the Home Owners Association or the ARC against an Owner due to a Violation of the Governing Documents by such Owner or any Occupant.

**1.1.18 "Governing Documents"** means this Declaration, the Guidelines, the Rules and Regulations and any other documents, rules, regulations or guidelines now or hereafter adopted by or for the Home Owners Association or ARC, as may be amended and supplemented from time to time.

1.1.19 "Guidelines" means the guidelines as amended from time to time, and further described in Section 3.3.

1.1.20 "Improvements" means all improvements, structures, buildings, and any all landscaping features, buildings, outbuildings, geothermal systems, solar systems, swimming pools, hot tubs, satellite dishes, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, roads, driveways, parking areas, fences, gates, basketball backboards and hoops, swing sets or other play structures, screening walls, retaining walls, stairs, decks, fixtures, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment. Improvements includes, without limitation, all initial Improvements constructed on any Lot and all subsequent changes, modifications, alterations or adjustments to any previously approved Improvement, including any change of exterior appearance, color, or texture, other than any changes, modifications, alterations or adjustments to the interior of a Unit. Improvements do not include any District Property.

1.1.21 "Lot" means any Parcel of real property within the Property that is described on a recorded plat as a lot or is otherwise designated on a recorded plat as a separate Parcel upon which a Residential Unit or Commercial Unit may be constructed, and includes all Improvements that may be made to such Parcel from time to time including, but not limited to, any Unit that may be constructed on such Parcel.

1.1.22 "Home Owners Association" means Mountain Sky Home Owners Association. In addition to the authority to provide the Services, the Home Owners Association has such other authority with respect to the provision of the Services, as may be permitted by the Special District Act, C.R.S. 32-1-101 et seq., including but not limited to the right to adopt rules and regulations, fees, rates, tolls, penalties and charges, and undertake enforcement actions.

1.1.23 "Mortgage" means any mortgage or deed of trust or other similar security instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure the performance of an obligation or the payment of a debt and which is to be released upon performance of the obligation or payment of the debt.

1.1.24 "Notice of Completion" means the notice described in Section 3.7.

1.1.25 "Notice of Noncompliance" means the notice sent by the ARC described in Section 3.9.

1.1.26 "Notice of Violation" has the meaning given to that term in Section 7.4.3.

1.1.27 "Occupant" means any Person, other than Declarant, Declarant's Affiliates, a Builder, the Enforcement Committee, and the Home Owners Association, from time to time that uses or occupies any portion of a Lot or Unit under an ownership right or any lease, sublease, license or concession or other use and occupancy agreement, any guests and invitees of any Owner or Occupant and any other Person that uses any portion of the Property.

1.1.28 "Owner" means each fee simple title holder of a Lot or Unit, including Declarant, Declarant's Affiliates and/or, any Builder, but does not include a Person having a security interest in a Lot or Unit, including, without limitation, a Mortgagee. If there is more than one fee simple holder of title, "Owner" includes each such Person, jointly and severally.

1.1.29 "Parcel" means any portion of real property within the Property that is described on a recorded plat that may be sold or conveyed without violation of Applicable Laws, and includes all Improvements that may be made to such parcel from time to time including, but not limited to, any Unit that may be constructed on such parcel.

1.1.30 "Person" means a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other entity or any combination thereof and includes each Owner, Declarant, Declarant's Affiliates, the Builders, the ARC, and the Home Owners Association.

1.1.31 "Plans and Specifications" means complete plans and specifications of a proposed Improvement, in the requisite number and format, and containing such information as required by the Guidelines and/or Rules and Regulations, and any other information and materials as may be required by the ARC. By way of example, the Guidelines and/or Rules and Regulations may require plans and specifications to show exterior design, height, materials, color, and location of the Improvement, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan.

1.1.32 "Property" means the real estate described on the attached Exhibit A, as supplemented and amended from time to time, as the same may now or hereafter be improved, and as the Declarant or a Builder may now or hereafter subdivide or re-subdivide, or any portion thereof, provided, however, Property does not include any property that has been withdrawn as provided in Section 11.7 or any District Property.

1.1.33 "Property Risks" has the meaning given to that term in Section 12.1.

1.1.34 "Recorded Covenants" means any covenant recorded in the Recorder's Office encumbering any portion of the Property, by way of example, and not by limitation, any declaration of covenants, any public improvement fee covenants, any associations, any use restrictions or any other type of covenant that has the intent of a covenant that runs with the land.

1.1.35 "Recorder's Office" means the Clerk and Recorder's Office for Weld County.

1.1.36 "Residential Unit" means a residential dwelling constructed on a Lot within the Property, specifically including, but not limited to, a detached home, an attached home or a condominium unit or other separate living unit within a multi-family home, but excluding multi-family projects with "For Rent" units.

1.1.37 "Rules and Regulations" means rules and regulations concerning, without limitation, (i) the appointment of members to the ARC and any established enforcement committee (the

"Enforcement Committee"), (ii) the use of the Property, (iii) certain use restrictions on Residential Units or Commercial Units, (iv) other restrictions governing the conduct of Owners, (v) rules and regulations specific to Residential Units and/or (vi) rules and regulations specific to Commercial Units, as such rules and regulations are adopted initially by Declarant or the Home Owners Association and as may be amended from time to time. The Rules and Regulations are binding upon all Owners and Occupants.

1.1.38 "Services" means the services that the Home Owners Association is empowered to provide pursuant to C.R.S. §32-1-1004, as amended, and other provisions of Title 32 of C.R.S., as amended, including but not limited to covenant enforcement and design review services.

1.1.39 "Special Declarant Rights" means rights which only Declarant has the right to exercise as enumerated in this Declaration, unless assigned by Declarant.

1.1.40 "Supplemental Declaration" means any supplement to this Declaration that amends this Declaration, or adds or withdraws real property to the Property and is recorded in the Recorder's Office.

1.1.41 "Tract" means any parcel of real property within the Property that is described on a recorded plat as a tract and that is not District Property.

1.1.42 "Unit" means a Residential Unit or Commercial Unit that may be constructed on a Lot.

1.1.43 "Violation" means (a) an Improvement that has been installed or constructed without obtaining the ARC's approval, (b) an Improvement that was not installed or constructed in substantial compliance with the approval that was granted by the ARC, or (c) any other violation of the Governing Documents by an Owner or Occupant.

## Section 1.2 Incorporation of Recitals.

The recitals are incorporated into this Declaration by this reference.

## ARTICLE 2. HOME OWNERS

### ASSOCIATION Section 2.1 Authority.

Declarant delegates certain governance matters to the Home Owners Association. Declarant, through this Declaration, grants authority to the Home Owners Association to act on behalf of Declarant for certain matters specifically set forth in this Declaration, including implementing this Declaration.

## ARTICLE 3. ARCHITECTURAL REVIEW

### Section 3.1 Composition of Architectural Review Committee.

The ARC will consist of three (3) or more Persons unless the Person with the authority to appoint the members of the ARC has delegated some or all of the architectural authority pursuant to

Section 3.2. The Declarant has the authority to appoint and remove the members of the ARC, and/or to delegate some or all architectural authority (as provided in Section 3.2 hereof) during the Declarant Development Period. After expiration of the Declarant Development Period, the governing board of the Home Owners Association has the authority to serve as, appoint and remove the members to the ARC, and/or to delegate some or all architectural authority (as provided in Section 3.2 hereof). The appointments of all then-current members of the ARC who were appointed by the Declarant shall automatically terminate on the date which is thirty (30) days after expiration of the Declarant Development Period.

### Section 3.2 Delegation of Authority.

The Person with the authority to appoint the members of the ARC, as provided in the preceding Section 3.1, shall have the right and authority to: (i) delegate, in writing, some or all architectural authority to one or more other Persons, including one or more management companies or Home Owners Association or other district(s), such as by entering into intergovernmental agreement(s) or other document(s) or agreement(s); and (ii) withdraw, in writing, any delegated authority.

### Section 3.3 Architectural Review Requirements; Authority of ARC

3.3.1 Subject to the provisions of this Declaration, no Improvement may be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Lot, unless the Improvement is in full compliance with all provisions of the Governing Documents. Prior to constructing, erecting, placing, altering, planting, applying, installing or modifying an Improvement upon any Lot, the Owner of the Lot must submit Plans and Specification of the proposed Improvement to the ARC for review and consideration, and then receive approval in writing from the ARC, all in accordance with the Guidelines and/or Rules and Regulations. An Owner may designate in writing a Person other than Owner to submit Plans and Specifications as a co-applicant with Owner.

3.3.2 The ARC shall endeavor to exercise its judgment in an attempt to provide for each proposed Improvement to generally harmonize with the existing surroundings, residences, landscaping and structures. Neither the Declarant nor ARC will review or approve any proposed Improvements regarding whether the same complies with Applicable Laws. Rather, as provided in Section 3.3.3, below, Owner is required to submit proposed Improvements to the applicable governmental entities for approval and a determination of compliance with Applicable Laws. In its review of the Plans and Specifications, the ARC may require, as a condition to its considering an approval request, that the Owner pay Fees and reimburse the ARC for the expenses incurred in the process of review and approval or disapproval of the Plans and Specifications.

3.3.3 In addition to the foregoing review and approval, and notwithstanding anything to the contrary in this Declaration, prior to the construction, erection, addition, deletion, change or installation, of any Improvement, Owner must obtain the approval of all governmental entities with jurisdiction there over, and issuance of all required permits, licenses and approvals by all such entities. Owner is solely responsible for compliance with Applicable Laws.

3.3.4 The ARC may, at any time, appoint a representative or committee to act on its behalf. During the Declarant Development Period, the Declarant may contract with the Home Owners Association in order for the Home Owners Association to provide the architectural review services. **If** so, then the actions of

such representative or committee, or the Home Owners Association, as applicable, shall be the actions of the ARC. However, if such a representative or committee is appointed, then the ARC shall have full power over such representative or committee, including the power to at any time withdraw from such representative or committee, any authority to act on behalf of the ARC, and the power to at any time remove or replace such representative or committee.

#### Section 3.4 Guidelines.

If the Guidelines conflict with this Declaration, this Declaration controls. The Guidelines bind the Property and each Owner. The Declarant, the Home Owners Association or the ARC with the prior, written approval of the Person who then has the authority to appoint the ARC, as provided in Section 3.1 of this Declaration, may promulgate, adopt, enact, modify, amend, repeal, and re-enact, architectural standards, rules, regulations and/or guidelines, regarding architectural matters and matters incidental thereto (collectively the "Guidelines"). The Guidelines may include, without limitation: clarification of designs and materials that may be considered in architectural approval and requirements for submissions, procedural requirements, and specification of acceptable Improvements that may be installed without prior review or approval. The Guidelines may permit the Home Owners Association to send demand letters and notices, levy and collect Fees, Fines and interest, and negotiate, settle and/or take any other actions with respect to any violation or alleged violation of any of the Governing Documents. In addition, the Guidelines may provide for blanket approvals, interpretations, or restrictions. By way of example, and not by way of limitation, the Guidelines may state that a certain type of screen door will be acceptable and will not require approval, or may state that only one or more types of fences are acceptable and no other types will be approved. All Improvements proposed to be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Lot by any Owner shall be done and used in accordance with the Guidelines and this Declaration. The Guidelines (as amended from time to time in accordance with their terms) shall not be recorded against the Property but are hereby incorporated into this Declaration as if fully set forth herein.

#### Section 3.5 Procedures.

The ARC will review and approve in writing (which may be with conditions and/or requirements), or disapprove, each request for architectural approval within forty-five (45) days after the complete submission to the ARC, along with receipt acknowledgement by the ARC, of the Plans and Specifications and other materials and information which the ARC may require in conjunction therewith in accordance with the design review procedures set forth in the Guidelines or the Rules and Regulations. If the ARC fails to review and approve in writing (which may be with conditions and/or requirements), or disapprove, a request for architectural approval within forty-five (45) days after the complete submission of the Plans and Specifications and other information requested with respect thereto, such request is deemed approved by the ARC.

#### Section 3.6 Vote.

The affirmative, majority vote of the present members of the ARC is required for approval (which may be with conditions and/or requirements) of each matter, unless the Person with the authority to appoint the ARC, as provided in Section 3.1, has delegated, in writing, some or all architectural

authority, to one or more other Persons or the ARC has appointed a representative or committee to act for it, in which case the decision of such Person, representative or committee shall control.

### Section 3.7 Prosecution of Work After Approval.

After approval (which may be with conditions and/or requirements) of any proposed Improvement, Owner is required to complete and construct the Improvement promptly and diligently, and in complete conformity with all conditions and requirements of the approval and any provision of the Guidelines relating to construction. Except for Declarant or Declarant's Affiliates, failure to complete the proposed Improvement within one (1) year after the date of approval of the application (the "Completion Deadline"), or to complete the Improvement in complete conformance with the conditions and requirements of the approval, constitutes noncompliance with the provisions of this Declaration; provided, however, that the ARC may grant extensions of time for completion of any proposed Improvements, either (a) at the time of initial approval of such Improvements, or (b) upon the request of any Owner, provided such request is delivered to the ARC in writing; provided that the Owner is diligently prosecuting completion of the subject Improvements or other good cause exists at the time such request is made.

### Section 3.8 Notice of Completion.

Upon the completion of any Improvement, Owner will submit a written "Notice of Completion" to the ARC on forms provided by the ARC. Until the date of receipt of such Notice of Completion, the ARC shall not be deemed to have notice of completion of any Improvement for which approval (which may be with conditions and/or requirements) has been sought and granted as provided in this Article.

### Section 3.9 Inspection of Work.

The ARC, or its duly authorized representative, has the right to inspect any Improvement at any time, including prior to or after completion, to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article. However, such right of inspection shall terminate ninety (90) days after the ARC has received a Notice of Completion from the applicant and no action has been initiated by the ARC. The 90-day period to perform inspections after the ARC has received a Notice of Completion does not apply to or limit the right or authority of the Home Owners Association, Enforcement Committee or ARC to require compliance with the Improvement review and approval process as set forth in this Declaration and the Guidelines, or the right or authority of the Home Owners Association or Enforcement Committee to enforce this Declaration, the Guidelines, or any Rules and Regulations, including but not limited to the requirements pertaining to the maintenance of Improvements.

### Section 3.10 Notice of Noncompliance.

If, as a result of inspections or otherwise, or following receipt of a Notice of Completion, the ARC determines that any Improvement has been constructed without obtaining all required approvals (which may be with conditions and/or requirements), or was not constructed in substantial compliance with the approval that was granted, or has not been completed by the Completion Deadline (except landscaping, as provided below), subject to any extensions of time granted pursuant to Section 3.7

hereof, then the ARC will notify the applicant in writing of the non-compliance, specifying the particulars of the noncompliance ("Notice of Noncompliance").

#### Section 3.11 Correction of Noncompliance.

If the ARC determines that a non-compliance exists, the Person responsible for such non-compliance must remedy or remove the same, and return the subject property or structure to a condition acceptable to the ARC, within the period specified in the Notice of Noncompliance. If such Person does not comply with the Notice of Noncompliance by amending the condition within the period specified, the ARC may submit the Notice of Noncompliance to the Home Owners Association for enforcement. The Home Owners Association may at its option, record a notice of non-compliance against the Lot on which the non-compliance exists, may impose Fees, Fines, penalties and interest, may remove the non-complying Improvement, or may otherwise remedy the non-compliance, and the Person responsible for such non-compliance shall reimburse the Home Owners Association, upon demand, for all costs and expenses, as well as anticipated costs and expenses, with respect thereto.

#### Section 3.12 Cooperation.

The ARC has the right and authority to enter into agreements and otherwise cooperate with any architectural review or similar committees, any Home Owners Association or other districts, or one or more boards or committees that exercise architectural or design review functions, or any other Person, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the ARC. Cooperation may include, without limitation, collection, payment, and disbursement of Fees, Fines or charges.

#### Section 3.13 Access Easement.

The Declarant hereby reserves, and each Owner hereby grants, to the ARC, the Home Owners Association, and the Person who then has the authority to appoint the ARC, as provided in Section 3.1 of this Declaration, including the agents, representatives, employees and contractors of the ARC, Home Owners Association and each such Person on, over, under and across each Lot and each of them, excluding any habitable structure and the interior of any residence thereon, easements for performing any of the actions contemplated in the Governing Documents, including inspections and enforcement of each of the terms and provisions of the Governing Documents. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owners of any affected Lot; except that no such notice is required (i) in connection with any exterior, non-intrusive inspections and maintenance; and (ii) in emergency situations. The interior portions of any Residential Unit are not subject to the easements provided for in this Section.

#### Section 3.14 No Liability.

Neither the Declarant, the ARC, the Home Owners Association, the Person who then has the authority to appoint the ARC, nor any representative or committee appointed by the ARC or any member of any such committee (the "Released Parties") are liable or shall be liable to any Person by reason of any action, failure to act, approval (which may be with conditions and/or requirements), disapproval, or

failure to approve (which may be with conditions and/or requirements) or disapprove, in regard to any matter whether for damage or in equity. In reviewing or approving any matter, the Released Parties are not be responsible for any issue related to the Improvements, whether structural or otherwise, and whether submitted for review or otherwise. The Released Parties are not responsible for any matter related to safety. The Released Parties are not responsible for the conformance of Improvements with applicable Law or compliance with any other standard or regulation, and any approval (which may be with conditions and/or requirements) of any Improvement by the ARC will not be deemed an approval of any such matters, will not be deemed to represent that the Improvement conforms to Applicable Law or complies with any other standards or regulations, and will not constitute a warranty by the ARC to any applicant of the adequacy of design, workmanship or quality of such work or materials for any applicants' intended use. No Owner or other Person is a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by, the Released Parties. Each Owner (i) waives and releases the Benefited Parties from all Claims related to approval or disapproval of any Improvements and (ii) waives and releases all Claims against the Benefited Parties. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The ARC members, acting in that capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The ARC members, acting in that capacity, have no personal liability with respect to any contract or other commitment made or action taken on behalf of the ARC.

#### Section 3.15 Variance.

The ARC may, but under no circumstances is obligated to grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration or by the Guidelines, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments will be granted in the ARC's sole discretion and may only be granted if such variance does not impose a material detriment or injury to the other property or improvements within the Property and does not militate against the general intent and purpose hereof. However, any variance that may be granted under this Section is only a variance from the requirements of the applicable Governing Document for the individual applicant, and is not a variance from the requirements of any applicable governmental or quasi-governmental agency or entity. No granting of a variance or adjustment to any one applicant/Owner shall constitute a variance or adjustment, or the right to a variance or adjustment, to any or all other applicants/Owners.

#### Section 3.16 Waivers; No Precedent.

The approval or consent of the ARC, or any representative or committee thereof, to any application for approval does not constitute a waiver of any right to withhold or deny approval or consent by such Person, or any Person, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter. Any changes in Plans and Specifications previously approved by the ARC must be reviewed and approved by the ARC in the same manner as the initial Plans and Specifications.

**Section 3.17 Declarant's Exemption.**

Notwithstanding anything to the contrary, Declarant, Declarant's Affiliates, and the Home Owners Association are exempt from any and all other matters that require ARC review and/or approval.

**Section 3.18 Builders Exemption.**

Notwithstanding anything to the contrary, as long as, and to the extent that, a Builder has received written architectural approval from the Declarant, such Builder shall, as to Declarant-approved Improvements, be exempt from this Article and all provisions of the Governing Documents that require ARC review and/or approval.

**ARTICLE 4. RESTRICTIONS**

**Section 4.1 Property Subject to Applicable Law and this Declaration.**

Notwithstanding anything in this Declaration to the contrary, the Property is subject to Applicable Laws and to all documents recorded in Recorder's Office. Declarant declares that all Lots and Units shall be held and sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the provisions, conditions, limitations, restrictions, agreements and covenants in this Declaration. All Owners, and Occupants shall comply with all Applicable Laws. Neither the ARC nor the Home Owners Association shall have any obligation to enforce compliance with Applicable Laws.

**Section 4.2 Residential Use; Professional or Home Occupation.**

Residential Units must be used for residential use only, including uses which are customarily incident thereto, and not for business, commercial or professional purposes. Notwithstanding the foregoing, Owners may conduct business activities within their Residential Unit if permitted by Applicable Law and if all of the following conditions are satisfied:

**4.2.1** The business conducted is clearly secondary to the residential use of the Residential Unit and is conducted entirely within the Residential Unit;

**4.2.2** The existence or operation of the business is not detectable from outside of the Residential Unit by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted (other than as may be permitted by the Guidelines and approved by the ARC);

**4.2.3** The business does not result in an undue volume of traffic or parking within the Property;

**4.2.4** The business conforms to all Applicable Laws; and

**4.2.5** the business complies with all the Governing Documents.

Section 4.3 Restriction on Further Subdivision.

No Residential Unit or Lot may be further subdivided or separated into smaller units or lots by any Owner (other than Declarant, Declarant's Affiliates, the Home Owners Association or a Builder), and no portion consisting of less than all of any such Residential Unit or Lot, nor any easement or other interest therein, may be conveyed or transferred by an Owner (other than Declarant, Declarant's Affiliates or a Builder), provided that this prohibition does not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar non-material corrective instruments.

Section 4.4 Residential Leases.

The term "Residential Lease," as used in this Section 4.4 includes any agreement for the leasing or rental of a Residential Unit, or any portion thereof, and shall specifically include month-to-month rentals and subleases. Subject to the provisions of Section 4.2, nothing shall prohibit an Owner from leasing his Residential Unit, or any portion thereof, as long as all residential leases provide that the terms of the Residential Lease and lessee's occupancy of the leased premises is subject in all respects to the provisions of the Governing Documents and that any failure by the lessee to comply with any of the Governing Documents, in any respect, is a default under the Residential Lease, and provided that Home Owners Association may adopt Rules and Regulations that require a minimum lease term.

Section 4.5 Animals.

No animals, birds, livestock, reptiles or insects of any kind may be raised, bred, kept or boarded in or on a Lot or in any Residential Unit, except as permitted by Applicable Laws and in compliance with any Guidelines or Rules and Regulations not in conflict with such Applicable Laws. Each animal must be controlled by its owner and is not allowed off Owner's Lot except when properly controlled and accompanied by its owner or his or her representative, who is responsible for collecting and properly disposing of any animal waste. An Owner's and/or Occupant's right to keep animals is coupled with the responsibility to pay for any damage caused by such animal, as well as any costs incurred as a result of such animals.

ARTICLE 5. OTHER USE RESTRICTIONS

Section 5.1 Temporary Structures; Unsightly Conditions.

No structure of a temporary character, including a house, trailer, tent, shack, mobile home, storage shed, or outbuilding may be placed or erected upon any Lot except (i) by Declarant, Declarant's Affiliates or a Builder at any one time or (ii) by Owner during construction, alteration, repair or remodeling of Improvements. If placed by Owner only necessary temporary structures for storage of materials may be erected and maintained. A Lot Owner's construction or alterations, except during initial construction by Declarant, Declarant's Affiliates or a Builder, of any Improvements must be prosecuted diligently from the commencement until completion. Further, no Owner, except during initial construction by Declarant, Declarant's Affiliates or a Builder, will permit any unsightly conditions or equipment on any Lot to be visible from a street.

## Section 5.2 Miscellaneous Improvements.

5.2.1 Except as provided herein, or as permitted by the ARC and in compliance with the Rules and Regulations and Guidelines, no advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot or Residential Unit other than a name plate of the occupant and a street number. If permitted by Applicable Law and the Governing Documents an Owner may place on its Lot a "For Sale," "Open House," "For Rent," or security sign of not more than five (5) square feet in the aggregate. In addition, signs advertising garage sales, block parties, or similar community events, may be permitted if the same are in accordance with Applicable Law, the Governing Documents or have been submitted to the ARC for review, and have been approved by ARC, in writing, prior to posting of such signs. Notwithstanding the foregoing, signs, advertising, or billboards used by Declarant or Declarant's Affiliates in connection with the sale or rental of Lots or Units, or otherwise in connection with development of or construction on the Lots or Units are permissible. Notwithstanding anything to the contrary set forth in this Section but subject to the limitations set forth in the Rules and Regulations, the ARC shall not prohibit an Owner from displaying an American flag, military service flag or political signage in a window of its Unit or on the balcony or patio adjacent to such Unit.

5.2.2 No wood piles or other stock piles may be located on any Lot as to be visible from a street or from the ground level of any other Lot.

5.2.3 The ARC may adopt Guidelines and/or Rules and Regulations, consistent with applicable state or federal laws and regulations, regarding the installation of satellite dishes, exterior aerials, antennas of any kind, and any wind-electric generator, further, any such devices may be erected or installed by Declarant, Declarant's Affiliates or by any Builder during its construction of Units.

5.2.4 Other than fences which may be constructed, installed or located by Declarant, Declarant's Affiliates or by a Builder, no fences are permitted on the Property except in accordance with the Guidelines and with the prior written approval of the ARC. Each Lot Owner must maintain any fences on its Lot.

## Section 5.3 Vehicular Parking, Storage and Repairs.

Except as may otherwise be provided in the Guidelines and/or Rules and Regulations, commercial vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, golf carts and boat trailers, must be parked within areas designated by the ARC and must be screened from view by such fencing, screening and/or landscaping as may be specified in the Guidelines and/or the Rules and Regulations. This restriction does not prohibit trucks or commercial vehicles which are necessary for construction or for the maintenance of any portion of the Property or any Improvements, or vehicles for temporary loading or delivery services or in the case of an emergency. Stored vehicles and vehicles which are inoperable or do not have current operating licenses, or other vehicles described in the Guidelines and/or Rules and Regulations, are not permitted on the Property except within enclosed garages. For purposes of this Section the ARC may consider a vehicle to be "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours. The ARC may adopt Guidelines and/or Rules and Regulations, consistent with applicable state or federal laws and regulations, regarding the parking, storage and repairs of vehicles.

5.3.1 No maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of any motor vehicles, trailers or boats may be performed or conducted on the Property unless it is done within a completely enclosed structure which screens the sight and sound of the activity from the street and from Adjacent Properties. The foregoing restriction does not prevent washing and polishing of any motor vehicle, trailer or boat.

#### Section 5.4 Nuisances.

No Owner or Occupant will permit a nuisance on its Lot. Owner and Occupant will not permit any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot or Unit. This Section 5.4 does not apply to any activities of Declarant, Declarant's Affiliates or of a Builder. Owner or Occupant will not permit any noxious or offensive activity upon any Lot or Unit.

#### Section 5.5 No Hazardous Materials or Chemicals.

No hazardous materials or chemicals may be located, kept or stored in, on or at any Lot except in household products normally kept at homes for use of the residents thereof and in such limited quantities so as not to constitute a hazard or danger to person or property. This Section does not apply to the activities of Declarant, Declarant's Affiliates or a Builder.

#### Section 5.6 No Annoying Lights.

Owner or Occupant will not permit any light to be emitted from any Lot or Unit which is unreasonably bright or causes unreasonable glare. In addition to the foregoing, no electromagnetic, light, laser, or any physical emission which might interfere with aircraft, navigation, communications or navigational aids are permitted. This Section does not apply to the activities of Declarant, Declarant's Affiliates or a Builder.

#### Section 5.7 Restrictions on Trash and Materials.

No Owner or Occupant will permit any refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind to be kept, stored, accumulated on its Lot, nor will such items be deposited on a street, unless placed in a suitable, tightly covered container that is suitably located solely for the purpose of garbage pickup, recycling or composting. Further, no Owner or Occupant will permit any trash or materials to accumulate in such a manner as to be visible from any Lot or Unit. Owners and Occupants will keep all equipment for the storage or disposal in a clean and sanitary condition. No Owner or Occupant will permit any garbage or trash cans or receptacles to be maintained in an exposed or unsightly manner.

#### Section 5.8 Trash Removal Services and Recycling.

Declarant requires centralized trash removal and recycling services for the Lots and/or Units. Without limiting its authority, the Home Owners Association may levy and collect fees, charges, and other amounts to be imposed upon the Lots and/or Units for such trash removal and recycling services; provided,

however that such fees, charges and other amounts must be derived from within the boundaries where the trash removal and recycling services are required or performed. The scope, frequency, and all other matters with respect to such trash removal and recycling services, shall be determined by the Home Owners Association. Without limiting the generality of the foregoing, Home Owners Association may, for example, as a part of establishing rules and regulations related to the enforcement of the covenant to provide centralized trash removal and recycling services, elect to provide for regularly scheduled trash pick-ups and recycling, but may require each Owner to be responsible for scheduling, and paying for, any extraordinary trash pick-ups and/or other recycling and may limit the items eligible for trash pick-up and/or recycling from time to time. In the event that the Home Owners Association does not administer trash removal and/or recycling services for the Property, the Home Owners Association shall enforce this covenant by coordinating the centralized trash removal and recycling services for the Lots and/or Units, including, without limitation, the levy and collection of fees, charges, and other amounts to be imposed upon the Lots and/or Units for such trash removal and recycling services; provided, however that such fees, charges and other amounts must be derived from within the Home Owners Association boundaries where the trash removal and recycling services are required or performed.

#### **Section 5.9 Maintenance.**

Each Lot (including any adjacent tree lawn) must at all times be kept in a clean and sightly condition.

#### **Section 5.10 Landscaping.**

The Owner of each Lot (other than Declarant or a Builder) shall install landscaping on all portions of the Lot which is not covered by a building or Improvement in accordance with the Governing Documents and Applicable Laws. Landscaping plans must be submitted to the ARC for review and approval (which may be with conditions and/or requirements), and such approval shall be obtained prior to the installation of landscaping, in accordance with Article 2 of this Declaration.

#### **Section 5.11 Retention Ponds and Detention Ponds.**

Each Owner acknowledges that in furtherance of developing the Property, retention ponds and/or detention ponds may be constructed within or in proximity to the boundaries of the Property to hold and release storm water in accordance with storm water drainage plans approved by Declarant or Home Owners Association, as applicable. With the presence of retention ponds or detention ponds, surface water may accumulate within the area of such ponds, and there may be periods of time when the area immediately surrounding a retention pond or detention pond is subject to flooding. Additionally, certain risks and dangers of physical injury and property damage are inherent in the physical configuration of a retention pond and a detention pond. The Benefitted Parties are not liable for any injury, loss or damage arising from such flooding or otherwise arising from the retention ponds or detention ponds.

#### **Section 5.12 Grade and Drainage.**

Each Owner shall maintain the Established Drainage Pattern. Any alteration in the Established Drainage Pattern for any Lot will result in the full release of the Benefitted Parties as to any and all liabilities or obligations with respect to the Established Drainage Pattern for any Lot. Each Lot Owner

agrees to indemnify and hold the Benefited Parties harmless from any and all Claims, liabilities, expenses, damages, and attorneys' fees which may be asserted against or incurred by any of the Benefited Parties, and which arise out of or relate to any alteration of the Established Drainage Pattern.

#### Section 5.13 Restrictions on Storage Tanks.

Except as provided in the Rules and Regulations, no tanks for the storage of gas, fuel, oil, or other materials may be erected, placed, or permitted above or below the surface of any Lot (other than reasonably sized propane tanks intended for use with gas grills) and as specifically allowed in the Guidelines and/or Rules and Regulations.

#### Section 5.14 Restrictions on Sewage Disposal Systems.

No cesspool, septic tank or other individual sewage disposal system may be installed on a Lot.

#### Section 5.15 Restrictions on Wells.

No wells may be installed or maintained unless such system is approved in writing by the ARC, and is constructed, designed, equipped, and located in accordance with all Applicable Laws and the recommendations, requirements, and standards of the ARC.

#### Section 5.16 Insurance Risks.

No Lot or Unit may be used for any use, and nothing may be stored on any Lot or Unit, which would constitute an unusual fire hazard, or would result in jeopardizing any insurance maintained on other Lots or Units within or on any other portion of the Property.

#### Section 5.17 Mining or Drilling.

No Lot may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

#### Section 5.18 Storage of Explosives, Gasoline and Similar Substances.

Gasoline or other volatile or incendiary materials or devices shall be stored only in a manner that strictly complies with all Applicable Laws.

#### Section 5.20 Damage or Destruction of Structures on Lots.

Any damage to or destruction of any structure or Improvement located on a Lot shall be promptly repaired and replaced by the Owner of the Lot, in accordance with this Declaration. "Repaired and replaced," as used in this Section 5.21, means restoring the structure or Improvement to substantially the same condition in which it existed immediately prior to such damage or destruction. Except as otherwise provided in this Declaration, the cost of such repair or replacement shall be the personal obligation of the Owner of the Lot on which such work was performed.

### Section 5.21 Violation of Governing Documents.

If any Owner or Occupants are in Violation of Article 4 or this Article 5, then in addition to any enforcement and remedies available to the Home Owners Association, and in accordance with the procedures in Section 7.4, the Home Owners Association may invoke any one or more of the following remedies: (a) levy Fines upon such Owner for each Violation; (b) cause the Violation to be cured and charge the cost thereof to such Owner; and (c) obtain injunctive relief against the continuance of such Violation. Before invoking any of the foregoing remedies, the Enforcement Committee shall give such Owner prior written notice of the Violation, including a specific description of the Violation and require Owner to take such action as may be necessary to remedy the Violation, including the time period in which the Violation is to be remedied, which time period may not exceed forty-five (45) days.

### Section 5.22 Easement Areas.

By taking title to any Lot, each Owner acknowledges that certain portions of the Property are subject to easement rights in favor of governmental, quasi-governmental and other parties, including easements for the benefit of utility providers, and the Home Owners Association, among others, pursuant to a plat or other document creating such easement rights recorded in the Recorder's Office. No Owner may use any portion of the Property or place any trees, structures, fences or other improvements on any portion of the Property that would violate any use restrictions contained in any easement, plat or other document creating easement rights.

## ARTICLE 6. EASEMENTS

### Section 6.1 Easements for Access.

Declarant declares, establishes, grants, and reserves easements over each Lot in favor of Declarant, its Affiliates, the Home Owners Association, the ARC or Enforcement Committee, and the Person who then has the authority to appoint the ARC, including each of their respective agents, representatives, contractors and employees, for performing maintenance, repair, or replacement or other services, including, without limitation, enforcement of any provision in the Governing Documents. The access easements granted in this Section 6.1 may be exercised only during reasonable hours after reasonable notice to the Owner of any affected Lot or Unit; provided, however, that no such notice is required in connection with any exterior, non-intrusive maintenance and in emergency situations entry upon a Lot may be made at any time, provided that Owner is notified of impending emergency entry as early as is reasonably possible. The interior of any Unit is not be subject to the easements provided for in this Section 6.1.

### Section 6.2 Intentionally Omitted.

### Section 6.3 Additional Easements.

Until such time, if any, as Declarant subjects any additional property to this Declaration, and after such time, if any, as Declarant withdraws any portion of the Property from this Declaration, Declarant and Declarant's Affiliates shall have whatever easements are reasonably necessary or

desirable across the Property for access to and utility services for the additional property added to, or the portion of the Property withdrawn from, the Property, as the case may be

#### Section 6.4 Limitations on Easements.

The easements established pursuant to this Declaration (a) shall in no way affect, avoid, extinguish, or modify any other covenants, easements, limitations, reservations, or restrictions affecting all or part of the Property recorded prior to this Declaration and (b) shall not be interpreted or construed as preventing or precluding the construction, operation, and use of any Unit or Lot which is otherwise permitted by the terms of this Declaration.

#### Section 6.5 Recorded Easements.

In addition to all easements and rights-of-way of recorded at or before this Declaration, the Property, and all portions thereof, are subject to the easements shown on any plat of the Property.

#### Section 6.6 Acknowledgment of Inconvenience.

Each Owner agrees that there are inconveniences which will accompany the construction of the Development, including, without limitation, construction noise, portable toilets, construction traffic, uncompleted buildings, areas not landscaped, potholes and construction supplies stored in plain view and general inconvenience associated with construction sites and related issues. Each Owner, by taking title to any Lot or Unit, waives any claims associated with the inconveniences, nuisance and hazards associated with such construction.

### ARTICLE 7. COVENANT ENFORCEMENT

#### Section 7.1 Committee.

Declarant grants to the Home Owners Association the right to establish an Enforcement Committee and, upon its establishment, the members of the Enforcement Committee will be appointed and removed by the governing board of the Home Owners Association and shall have the same rights as the Home Owners Association under this Article 7. The Home Owners Association shall be responsible for the ministerial administration and enforcement of the Governing Documents, and has the right to: (a) accept complaints for Violations of the Governing Documents; (b) submit complaints regarding Violations of the Governing Documents; (c) inspect the Property for Violations of the Governing Documents; (d) issue various notices to Owners regarding the Governing Documents; and (e) provide all ministerial administration and enforcement of the Governing Documents.

#### Section 7.2 Purpose and General Authority.

The Home Owners Association shall review all complaints and notifications provided by Declarant, Declarant's Affiliates, an Owner, or the ARC regarding any alleged Violation. The Home Owners Association also has the right to make an investigation on its own regarding potential Violations. The Home Owners Association has the authority to determine whether a Violation has occurred by any Owner, and upon such determination, may issue to an Owner a Notice of Violation identifying the particular circumstances or

conditions of the Violation and require Owner to take such action as may be necessary to correct, remedy or otherwise remove the Violation, including the time period in which the Violation is to be remedied as further set forth in Section 7.4.

### Section 7.3 Fees and Expenses.

All expenses of the Enforcement Committee must be paid by the Home Owners Association with revenues derived from that portion of the Property with respect to which the Enforcement Committee's services are required or performed. The Home Owners Association has the right to charge Fees and Fines for costs of enforcement of the Governing Documents and the costs incurred to correct, remedy or otherwise remedy Violations, in amounts which may be established by the Home Owners Association from time to time.

### Section 7.4 General Inspections; Violation Identified by Another Owner; Notice and Hearing; Remedies.

7.4.1 General Inspection. Any member or authorized agent or consultant of the Enforcement Committee or the ARC, or any authorized officer, director, employee or agent of the Home Owners Association may enter upon any Lot, at any reasonable time after notice to Owner, without being deemed guilty of trespass, in order to investigate or inspect any portion of the Property for alleged Violations of the Governing Documents, or to read a utility meter or to verify any utility matter.

7.4.2 Notice of Alleged Violation; Right to a Hearing. If (i) an investigation or inspection reveals that any part or portion of a Lot or Unit is not in compliance with the Governing Documents, (ii) the ARC has submitted a Notice of Noncompliance with respect to a Lot or Unit, or (iii) another Owner has submitted a complaint in accordance with the Rules and Regulations, the Home Owners Association may send a notice of alleged Violation (a "Notice of Alleged Violation") to the Owner of such Lot or Unit in accordance with the Rules and Regulations. Upon receipt of a Notice of Alleged Violation, an Owner shall be entitled to request a hearing with respect thereto in accordance with the Rules and Regulations.

7.4.3 Remedies. If, after receipt of the Notice of Alleged Violation and, to the extent requested in accordance with the Rules and Regulations, any hearing requested by an Owner, such Owner is found by the Home Owners Association to be in Violation of the Governing Documents and fails to remedy the Violation within the time period specified in the notice of violation ("Notice of Violation") issued pursuant to the Rules and Regulations, the Home Owners Association shall have all remedies available to it at law or in equity, including, without limitation, the following remedies:

7.4.3.1 The Home Owners Association may record a Notice of Violation against the  
Lot or Unit on which the Violation exists;

7.4.3.2 The Home Owners Association has the right to remove, correct or otherwise remedy any Violation in any manner the Mero District deems appropriate;

7.4.3.3 The Home Owners Association may file an action for injunctive relief to cause an existing Violation to be brought into compliance with the Governing Documents and the Home Owners Association shall recover all costs and attorneys' fees associated with bringing the action.

7.4.3.4 The Home Owners Association may levy Fines for such Violation.

7.4.3.5 The Home Owners Association may collect, and shall have a statutory perpetual lien pursuant to § 32-1-1001(1)U(I), C.R.S. against the Lot subject to the Violation to secure, (1) payment for reimbursement by the violating Owner for any remedial work performed by the Home Owners Association to remove, correct or otherwise remedy the Violation, (2) payment for expenses incurred in obtaining injunctive relief, including costs and attorneys' fees, (3) payment of any Fines levied by the Home Owners Association against such Lot, plus the following amounts, to the extent not inconsistent with Applicable Laws, (4) interest on such amount at a rate equal to eighteen percent (18%), and (5) all costs and expenses of collecting the unpaid amount, including, without limitation, reasonable attorneys' fees.

7.4.4 Deemed Nuisances. Every Violation constitutes a nuisance, and every remedy allowed for such Violation at law, in equity or under the Governing Documents against the violating Owner is available to the Home Owners Association,

7.4.5 Access Easement. Each Lot is subject to an easement in favor of the Home Owners Association, the Enforcement Committee and the ARC, including their respective members, employees, agents and representatives, for the performance of any actions contemplated by this Article 7. All Persons performing such work shall use reasonable efforts to minimize interference with Owner's use and enjoyment of the Lot and Unit when performing such work.

#### Section 7.5 No Liability.

Neither the Home Owners Association, ARC or Enforcement Committee are liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing any alleged Violation, the Home Owners Association and/or Enforcement Committee are not responsible for any issue related to the alleged Violation. No Owner or other Person is a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Home Owners Association and/or Enforcement Committee. Each Owner (i) waives and releases the Benefited Parties from all Claims related to the actions of the Home Owners Association and/or Enforcement Committee and (ii) waives and releases all Claims against the Benefited Parties. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The Enforcement Committee members, acting in that capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Enforcement Committee members, acting in that capacity, shall have no personal liability with respect to any contract or other commitment made or action taken on behalf of the Home Owners Association.

### ARTICLE 8. SPECIAL DECLARANT RIGHTS

#### Section 8.1 Special Declarant Rights.

Declarant reserves for itself and its successors and assigns the right during Declarant Development Period to perform the acts and exercise the rights specified below (the "Special Declarant Rights"). Special Declarant Rights include the following rights:

8.1.1 Add or Withdraw Real Property. The right to add or withdraw real property as set forth in this Declaration.

8.1.2 Completion of Improvements. The right to construct and complete Improvements within the Property.

8.1.3 Exercise of Development Rights. The right to exercise any Development Rights reserved in this Declaration.

8.1.4 Sales, Management and Marketing. The right to maintain sales offices, construction offices, management offices, model homes, and signs, flags and other on-site marketing and sales promotion materials on the Property. Declarant also has the right to relocate any sales offices, management offices, and model homes from time to time at its sole discretion. Declarant also has the right to remove any sales offices and management offices. No structure used by Declarant for a sales office, construction office, management office or model home is the property of any party other than Declarant, unless specifically assigned, conveyed or dedicated by Declarant to such other party. Declarant has the right to assign to Declarant's Affiliates and Builders the rights specified in this subsection 8.1.4.

8.1.5 Project Management. The right to select and hire a third-party manager for the management, administration and operation of the Property or any lesser portion thereof. In addition to Declarant, the Home Owners Association shall have the rights specified in this subsection 8.1.5.

8.1.6 Construction and Access Easements. The right to use easements through the Property for the purpose of making Improvements and providing access within the Property.

8.1.7 Alteration of Units and Lots. The right to alter any condition (including size and location of Improvements) on any Unit or Lot owned by Declarant, whether with respect to sales and marketing efforts or otherwise.

## Section 8.2 Additional Reserved Rights.

In addition to the Special Declarant Rights set forth above, Declarant reserves for itself and its successors and assigns the following additional rights (the "Additional Reserved Rights") during the Declarant Development Period:

8.2.1 Rules and Regulations. The right to adopt Rules and Regulations that are not inconsistent with the District's Rules and Regulations.

8.2.2 Amendment of Declaration. The right to amend this Declaration without Owner consent or approval in connection with the exercise of any Development Rights or in connection with the qualification or continued qualification for loan guarantees, and for compliance with the requirements of government financing programs. Declarant also shall have the right to amend this Declaration to comply with the requirements of Applicable Law if any provision contained in this Declaration does not comply with Applicable Law.

8.2.3 Errors. The right to amend this Declaration without Owner consent or approval in order to correct clerical, typographical or technical errors, or to clarify any of the Governing Documents or any provision of this Declaration.

8.2.4 Amendment of Plat/Re-Plats. The right to supplement plats in connection with the exercise of any Development Rights, the right to re-plat all or any portions of the Property, the right to create additional Lots and Units and the right to subdivide or combine Lots and Units.

8.2.5 Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Property for purposes including, without limitation, streets, paths, walkways, drainage, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Property for the benefit of Owners or the Home Owners Association.

8.2.6 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of the Property.

8.2.7 Irrigation Water. The right to use potable or non-potable water, from whatever source, for any of the following purposes: (i) dust control in connection with constructing and completing improvements within the Property, (ii) establishment of landscaping, (iii) establishment of grass on planned parks and trails, if any, and (iv) any other necessary use for the Development.

8.2.8 Review of Covenants. The right to review and approve, in its sole discretion, prior to recording in the Recorder's Office by any party other than a Benefitted Party, any Recorded Covenants affecting the Property or any portion thereof.

8.2.9 Additional Covenants. The right to subject portions of the Property owned by Declarant or its Affiliates to additional or different covenants, conditions, terms and restrictions, as Declarant may determine.

8.2.10 Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

### Section 8.3 Rights Transferable.

Any Special Declarant Right or Additional Reserved Right created or reserved under this Article 8 for the benefit of Declarant may be transferred to any Person in whole or in part by recording an instrument in the Recorder's Office describing specifically the rights transferred. Such instrument shall be executed by Declarant and the transferee.

## ARTICLE 9. RESERVATION OF DEVELOPMENT RIGHTS

### Section 9.1 Development Rights.

During the Declarant Development Period, Declarant reserves for itself and its successors and assigns the following rights (the "Development Rights"):

9.1.1 Expansion Rights. Declarant reserves the right (but is not required) to subject additional real property to the terms, conditions and restrictions of this Declaration. Furthermore, Declarant reserves the right to subject all or any portion of any such additional real property to such other covenants, conditions and restrictions as Declarant deems appropriate by recording a Supplemental Declaration with respect thereto; provided, however, that no such other covenants, conditions and restrictions may amend or be in conflict with this Declaration, unless approved as an amendment to this Declaration or, where approval is not required, executed by Declarant in accordance with the provisions of this Declaration. The consent of the existing Owners shall not be required for the exercise of these rights, and Declarant may proceed to exercise such rights without limitation, at its sole option.

9.1.2 Exercise of Rights. Declarant may exercise any Development Rights with respect to all or a portion of different parcels of real property at different times in whatever order and to whatever extent Declarant, in its sole discretion, may determine.

#### Section 9.2 Interpretation.

Upon the recording of a Supplemental Declaration, the real property subject thereto, or any part thereof as specifically stated therein, shall be added to and become a part of the Property for all purposes, or for such limited purpose as are set forth in the Supplemental Declaration, and, except as set forth in the Supplemental Declaration, the definitions in this Declaration will automatically extend to encompass and refer to all real property then comprising the Property. Reference to this Declaration in any instrument includes all supplements and amendments to this Declaration without specific reference thereto.

#### Section 9.3 Transfer of Development Rights.

Any right created or reserved under this Article 9 for the benefit of Declarant may be transferred to any Person by recording an instrument in the Recorder's Office specifically describing the rights transferred. Such instrument shall be executed by Declarant and the transferee.

### ARTICLE 10. ALTERNATIVE DISPUTE RESOLUTION

#### Section 10.1 Definitions Applicable to this Article 10.

For purposes of this Article 10 only, the following terms have the meanings set forth in this Section 10.1:

10.1.1 "JAG" means the Judicial Arbiter Group or any other Person agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of the Judicial Arbiter Group under this Declaration with a minimum of ten (10) years' experience in the subject matter of the dispute. In the event that the Judicial Arbiter Group becomes unwilling or unable to perform its functions under this Declaration, JAG shall refer to any organization in the Denver Metropolitan Area

designated by the Home Owners Association that specializes in the provision of impartial mediation and arbitration services and that has a minimum of ten (10) years experience in the provision of such services.

10.1.2 "Bound Party" means each of the Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article 10. Notwithstanding the foregoing, "Bound Party" does not include any of the parties identified in this subsection 10.1.2 if such parties have jointly entered into a separate written agreement providing for dispute resolution applicable to the Claim; in such circumstance, the dispute resolution mechanism set forth in such separate written agreement between such parties shall apply with respect to such Claim unless the parties mutually agree to submit such Claim to the provisions of this Article 10.

10.1.3 "Claimant" means any Bound Party having a Claim.

10.1.4 "Claim" means, except as exempted by the terms of this Article 10, any claim, grievance or dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Bound Party under any of the Governing Documents; or (ii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

10.1.5 "Notice" means the written notification given by a Claimant to a Respondent and which shall comply with the requirements of subsection 10.5.1

10.1.6 "Party" means the Claimant and the Respondent individually; "Parties" means the Claimant and the Respondent collectively.

10.1.7 "Respondent" means any Bound Party against whom a Claimant asserts a Claim.

10.1.8 "Termination of Mediation" means a period of time expiring thirty (30) days after submission of the matter to mediation (or within such other time as determined by the mediator or agreed to by the Parties) and upon the expiration of which the Parties have not settled the Claim.

10.1.9 "Termination of Negotiations" means a period of time expiring thirty (30) days after the date of the Notice (or such other period of time as may be agreed upon by the Parties) and upon the expiration of which the Parties have not resolved a Claim.

## Section 10.2 Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.

10.2.1 Each Bound Party agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit any Claims to the procedures set forth in Section 10.4.

10.2.2 By acceptance of a deed to a Lot, each Owner agrees to abide by the terms of this Article 10.

10.2.3 Any applicable statute of limitation shall apply to the alternative dispute resolution procedures set forth in this Article 10.

#### Section 10.3 Commencement or Pursuit of Claim Against Bound Party.

10.3.1 A Bound Party may not commence or pursue a Claim against any other Bound Party except in compliance with this Article 10.

10.3.2 Prior to any Bound Party commencing any proceeding to which another Bound Party is a party, the Respondent shall have the right to be heard by the Claimant, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

#### Section 10.4 Claims.

Unless specifically exempted below, all Claims between any of the Bound Parties are subject to the provisions of Article 10. Notwithstanding the foregoing, unless all Parties otherwise agree, the following are not Claims and shall not be subject to the provisions of this Article 10:

10.4.1 Any action or suit by the Home Owners Association, the ARC or Declarant to enforce any provisions of the Governing Documents, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary;

10.4.2 Any suit between or among Owners, which does not also include Declarant, Declarant's Affiliates, Home Owners Association, the ARC, or the Enforcement Committee as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

10.4.3 Any claim, grievance or dispute involving allegations of defects in the design or construction of any Improvements;

10.4.4 Any claim, grievance or dispute subject to the provisions of the Construction Defect Action Reform Act, Colo. Rev. Stat. § 13-20-801 to -808, as it may be amended from time to time; and

10.4.5 Any suit in which any indispensable party is not a Bound Party.

#### Section 10.5 Mandatory Procedure.

10.5.1 Notice. Prior to proceeding with any Claim against a Respondent, each Claimant shall give a Notice to each Respondent, which Notice shall state plainly and concisely:

10.5.1.1 The nature of the Claim, including all Persons involved and Respondent's role in the Claim;

**10.5.1.2** The legal basis of the Claim (i.e., the specific authority out of which the Claim arises); the proposed remedy; and

**10.5.1.3** The fact that Claimant will give the Respondent an opportunity to inspect all Property and Improvements potentially involved with the Claim, and that Claimant will meet with Respondent not later than thirty (30) days after such inspection to discuss in good faith ways to resolve the Claim.

## **10.5.2 Negotiation and Mediation.**

**10.5.2.1** The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, any Party may appoint a representative to assist the Parties in negotiation.

**10.5.2.2** Upon a Termination of Negotiations, Claimant has thirty (30) days to submit the Claim to mediation under the auspices of JAG in accordance with the rules of JAG in effect on the date of the notice that is provided for in subsection 10.5.1.

**10.5.2.3** If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant waives the Claim, and Respondent will be released and discharged from any and all liability to Claimant on account of such Claim.

**10.5.2.4** Any settlement of the Claim through mediation must be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator must issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

**10.5.2.5** Each Party will bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

**10.5.2.6** If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 10. In such event, the Party taking action to enforce the agreement will recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including attorneys' fees and court costs.

## **10.5.3 Binding Arbitration.**

**10.5.3.1** Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant may initiate final, binding arbitration of the Claim under the auspices of JAG in accordance with the rules of JAG in effect on the date of the Notice that is provided for in Section 10.5 of this Declaration. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by

the Parties, one arbitrator who has expertise in the areas of dispute, which may include legal expertise if legal issues are involved, will arbitrate the dispute.

10.5.3.2 Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non- contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

#### Section 10.6 Award.

The award of the arbitrator must be accompanied by detailed written findings of fact and conclusions of law. Except as required by Applicable Law or for confirmation of an award, neither Party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties.

### ARTICLE 11. GENERAL PROVISIONS

#### Section 11.1 Powers and Authority.

The Property is or will be located within the boundaries of the Home Owners Association. Declarant authorizes the Home Owners Association to perform covenant enforcement and design review services as set forth in this Declaration, and the Home Owners Association has agreed to perform covenant enforcement and design review services as set forth in this Declaration. The Home Owners Association may exercise with regard to the Property, all powers and authority reasonably necessary to administer the rights and duties of the Home Owners Association under this Declaration, including, without limitation: (a) the power to adopt and amend budgets for revenues, expenditures, and reserves; (b) the power to collect taxes and Fees from Owners to administer its duties and obligations provided in this Declaration; (c) the power to manage and enforce the Governing Documents; (d) the power to contract with a third-party property manager for the management of the Property and/or for all other duties and responsibilities related to the overall operation of the Property; and (e) all other rights, powers and authority necessary to enforce this Declaration. The Home Owners Association has the power to levy Fees, Fines and other penalties for Violations of the Governing Documents, as allowed by Applicable Law and as set forth in this Declaration.

#### Section 11.2 Delegation.

The duties, easements, responsibilities, and rights that are reserved and granted under this Declaration may be delegated in whole or in part by Declarant, Declarant's Affiliates, and the Home Owners Association to an agent or management company that is acting on behalf of Declarant, Declarant's Affiliates, or the Home Owners Association with respect to all or part of the Property. The right and authority of Declarant under this Declaration automatically ceases upon expiration of Declarant Development Period at which time the foregoing reserved rights vest solely in the Home Owners Association.

#### Section 11.3 Enforcement.

Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Rules and Regulations, the Guidelines and any other Governing Documents, as at any time amended, may be by any proceeding at law or in equity against any Persons violating or attempting to violate any such provision, and possible remedies include all of those available at law or in equity. Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), Declarant and the Home Owners Association have the right, but not the duty, to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), in any action instituted or maintained under this Declaration or any other such documents, the prevailing party shall be entitled to recover its costs and attorneys' fees incurred in asserting or defending the claim, as well as any and all other sums; except that, any Person who brings an action against the Declarant, any Builder, the Home Owners Association, or the ARC, regarding enforcement, or non-enforcement, of any provision of the Governing Documents, shall not be awarded their costs or any attorney fees. Failure by Declarant, the Home Owners Association, and/or ARC to enforce any covenant, restriction or other provision contained in this Declaration shall in no event give rise to any liability, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other provision of this Declaration.

11.3.1 Each Owner, by its acceptance of title to a Lot, assigns and delegates and consents to the assignment and delegation to the Home Owners Association, in their own name as an Owner of property within the Property, the authority, power, right, and responsibility to enforce the Governing Documents. The foregoing shall include the right of the Home Owners Association to send demand letters and notices, to charge interest and/or late charges, to levy and collect Fines, to impose liens (as provided in C.R.S. Section 32-1-1001(j)(1), as amended), to negotiate, settle and/or take any other actions, with respect to any violation(s), or alleged violation(s), of any of the Governing Documents.

#### Section 11.4 Severability.

All provisions of this Declaration are severable. Invalidation of any of the provisions, including any provisions of Article 10 of this Declaration (Alternative Dispute Resolution), by judgment, court order or otherwise, shall in no way affect or limit any other provisions, which remain in full force and effect.

#### Section 11.5 Duration, Revocation and Amendment.

11.5.1 Each and every provision of this Declaration runs with and binds the land, perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration, and except for provisions of this Declaration regarding the rights and obligations of Declarant or Declarant's Affiliates, which may not be amended without Declarant's prior written consent, this Declaration may be amended by a vote or agreement of Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration at the time notice is provided to Owners of a vote on the proposed amendment, as determined by the Home Owners Association in its discretion; provided that, until the expiration of the Declarant Development Period, no amendment of this Declaration shall be effective without the prior, written consent of Declarant and the Home Owners Association.

**11.5.2** During the Declarant Development Period, this Declaration may be amended in whole or in part, at any time, by Declarant without the consent or approval of any other Owner or any other Person, in order to correct clerical, typographical, or technical errors, or any provision to clarify this Declaration.

#### **Section 11.6 Subdivision or Replatting of Lots.**

Declarant reserves for itself and its successors and assigns the right to subdivide or replat any Lot owned by Declarant. Each such subdivision or replatting may change the number of Lots in the Property. The foregoing reservation includes the right to move any lot lines on Lots for the purpose of accommodating Improvements which are, or may be constructed. The rights provided for in this Section 11.6 shall terminate 25 years after recording of this Declaration in the Recorder's Office.

#### **Section 11.7 Withdrawal.**

During the Declarant Development Period, Declarant reserves for itself and its successors and assigns the right to withdraw the Property, or any portion thereof, including one or more Lots, on a Lot by Lot basis, from this Declaration, so long as Declarant owns the portion of the Property to be withdrawn, effective upon the recordation of a Supplemental Declaration, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion be withdrawn from the Property under this Declaration. Declarant will provide a copy of the Supplemental Declaration to the Home Owners Association. The recording of any such written instrument and the withdrawal of any portion of the Property does not require the consent or ratification of any Owner or other owner of any portion of the Property other than Declarant, but shall require the written consent of an Owner of the portion of the Property being withdrawn, if and only if at the time such portion of the Property then being withdrawn from the Property is not then owned by Declarant.

#### **Section 11.8 Annexation.**

During the Declarant Development Period, Declarant may annex to the Property additional property, including any property which may previously have been withdrawn from the Property and such additional property will be made subject to this Declaration. Each annexation, if any, may be accomplished by recording of an annexation document that shall be considered a Supplemental Declaration under this Declaration that expressly and unequivocally provides that the property described therein shall be subject to this Declaration and all terms and provision hereof.

#### **Section 11.9 Supplements to this Declaration.**

If Declarant elects to submit any additional real property to this Declaration, such additions shall be described in and effected by a Supplemental Declaration. The recording of any such Supplemental Declaration and the resulting expansion of the Property shall not require the consent or ratification of any Owner other than Declarant. A Supplemental Declaration may impose on the real property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions other than those set forth in this Declaration, taking into account the unique and particular aspects of the real property covered thereby. Upon Recordation of a Supplemental Declaration, the portion of the real property subject to the Supplemental Declaration shall become part

of the Property and shall be subject to all covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration. Any additional use restrictions contained in a Supplemental Declaration only apply to the real property subject to that Supplemental Declaration. Nothing in this Declaration may be construed to obligate Declarant to make any real property, other than the Property, subject to this Declaration. The withdrawal of any portion of the Property shall be effective upon the recordation of a Supplemental Declaration, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion be withdrawn from the Property under this Declaration. The recording of any such written instrument and the withdrawal of any portion of the Property does not require the consent or ratification of any Owner or other owner of any portion of the Property other than Declarant, but shall require the written consent of an Owner of the portion of the Property being withdrawn, if and only if at the time such portion of the Property then being withdrawn from the Property is not then owned by Declarant.

#### Section 11.10 Notice.

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

#### Section 11.11 Limitation on Liability.

Benefited Parties shall not be liable to any Person for any action or for any failure to act arising out of the Governing Documents, if any, unless the action or failure to act was not in good faith and was done or withheld with malice. Further, neither the Home Owners Association nor the ARC nor the Enforcement Committee waives, and no provision of this Declaration is a waiver of, the immunities and limitations to which the Home Owners Association the ARC and the Enforcement Committee have as a matter of law, including the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S., as amended. Any releases and waivers in this Declaration apply to this Section 11.11.

#### Section 11.12 No Representations, Guaranties or Warranties.

To the fullest extent permitted by Colorado law, the Benefitted Parties disclaim all warranties of any kind, express or implied, including, without limitation, any implied warranties or habitability, suitability, or fitness for a particular purpose, and no representations, guaranties or warranties of any kind, express or implied, including, without limitation, any implied warranties of habitability, suitability, or fitness for a particular purpose are given or made by any Benefitted Parties, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects in design or construction, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as specifically set forth in writing.

Section 11.13 Disclaimer Regarding Safety.

THE BENEFITTED PARTIES DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT THE BENEFITTED PARTIES ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.

Section 11.14 Waiver of Trial.

BY ACCEPTING A DEED TO ANY LOT, EACH OWNER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY A JURY OR TO A JUDGE WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY THEM AGAINST DECLARANT OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION OR ANY DOCUMENT, OR ANY CLAIM ARISING OUT OF ALLEGATIONS OF DEFECTIVE CONSTRUCTION.

Section 11.15 Development Within and Surrounding the Property.

Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Property, views of or from the Property, the Lots or the Units, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot or a Unit, each Owner accepts title to such Lot or Unit, as applicable, subject to the foregoing, and waives and releases any claim against the Benefited Parties, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 11.18 (Waiver) shall apply to this Section 11.15.

Section 11.16 Home Owners Association May Assign.

The Home Owners Association may engage one or more third party independent contractors to carry out and enforce all or a portion of the provisions of the Declaration, the Guidelines, the Rules and Regulations and any supplemental documents and agreements related to the provision of covenant enforcement and design review services within the Property. Any such contractors shall be engaged under the sole direction and of control of the Home Owners Association.

Section 11.17 Waiver.

By acceptance of a deed to a Lot, each Owner releases, waives, and discharges the Benefited Parties from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or Property Risks set forth in this Declaration.

#### Section 11.18 Headings.

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

#### Section 11.19 Gender.

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

#### Section 11.20 Action.

Any action that has been or may be taken by Declarant, the Home Owners Association, the ARC the Enforcement Committee, or any other Person, may be taken "at any time, from time to time." Each provision that authorizes, directs or permits action shall be deemed to include such language.

#### Section 11.21 Sole Discretion.

All actions which are to be taken by, or on behalf of, Declarant, the Home Owners Association, the ARC, or the Enforcement Committee, or any other Person, shall be deemed to be taken "in the sole discretion" of such Person.

#### Section 11.22 Use of "Include," "Includes," and "Including."

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

#### Section 11.23 No Waiver.

No term or condition of this Declaration shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq. afforded to the Home Owners Association, the Enforcement Committee and/or the ARC.

#### Section 11.24 Exemption.

Notwithstanding anything in this Declaration to the contrary, (a) neither Declarant, Declarant's Affiliates, nor any of their activities shall in any way be subject to the control of, or under the jurisdiction of the Home Owners Association, the ARC or the Enforcement Committee (including any Guidelines or Rules and Regulations), nor shall Declarant or Declarant's Affiliates be required to seek the approval or consent of the Home Owners Association, the ARC or the Enforcement Committee for any construction or other work to be performed by or on behalf of Declarant in the Property and (b) nothing contained in this Declaration shall be construed to prevent or limit (i) Declarant's exercise or enjoyment of any Special

Declarant Right, Additional Reserved Right, Development Right or any other right of Declarant under this Declaration or (ii) the conduct by Declarant, Declarant's Affiliates or their respective employees or agents, as applicable, of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of the Property or any other property. Declarant, in its sole discretion, may also exempt a Builder from the provisions of Article 3, (a) as long as the Builder has received written design approval under the Design Guidelines from Declarant, and/or (b) for activities which Declarant deems to be incidental to the Builder's development activities, in Declarant's sole and absolute discretion. This exemption terminates upon expiration of Declarant Development Period.

#### Section 11.25 Runs with the Land; Binding Upon Successors.

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

### ARTICLE 12. DISCLOSURES

#### Section 12.1 No Liability for Condition of the Property/Nuisances/Hazards Associated with Adjacent Lands.

By purchasing a Lot or Unit, or any portion thereof, each Owner acknowledges that the Lot or Unit may be located adjacent to or in relatively close proximity to property utilized for commercial and other non-residential uses (collectively the "Adjacent Properties") and further the Lot or Unit may be built on land affected by amendment to the land or soil conditions (including expansive soils corrections) resulting from construction, engineering, grading, and soil preparation. Owners recognize and assume the risks of owning property adjacent to or within relatively close proximity to the Adjacent Properties and the risks of the condition of the land and soils. Such risks include, without limitation: (i) expansive soils conditions and drainage issues on or under the Property and (ii) injury to person and property arising out of, or resulting from, the operation, maintenance and use of the Adjacent Properties, noise associated with the Adjacent Properties, noise, odors, and attractive nuisances to children (all of the above being collectively referred to as the "Property Risks"). The Benefitted Parties have no liability for any personal injury or property damage resulting from the Property Risks. By virtue of taking title to a Lot or Unit subject to this Declaration, each Owner for itself and its heirs, personal representatives, executors, tenants, successors, assigns, invitees and licensees: (i) assumes the risk of loss, injury or damage to property or persons resulting from the Property Risks; (ii) agrees to obtain such policies of insurance as may be necessary to insure such Owner and Occupant from injury or damage to property or person resulting from the Property Risks; (iii) releases and holds harmless the Benefitted Parties and discharges from any liability for any personal injury or property damage resulting from the Property Risks, including, without limitation, arising from the negligence of Declarant and/or Declarant's agents, contractors, subcontractors, employees, officers, successors, assigns, guests, or invitees, and (iv) indemnifies (including the payment of reasonable costs and attorneys' fees) the Benefitted Parties from and against any claims, actions, suits, demands and compensations, either at law

or in equity, brought against or incurred by the Benefitted Parties for or on account of any damage, loss, or injury either to person or property, or both, resulting directly or indirectly from the Property Risks.

#### Section 12.2 Land Use Documents.

The Property is being developed in accordance with the land use regulations of the County. Declarant, for itself, its successors and assigns, reserves the right to obtain modifications and amendments to all land use documents, subject to the approval of the County. Such modifications and amendments could change the uses of the Property and adjacent and nearby land from the uses which are set forth in the land use documents. Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the Development can or will be carried out, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that such use will continue in effect.

#### Section 12.3 Future Development and Views.

Owners acknowledge that existing views, if any, of the immediate and surrounding areas and mountains may be subject to change or elimination as a result of future development of non-residential and residential uses, road construction, tree growth and landscaping. Declarant, Declarant's Affiliates or Builders may charge premium prices for similar houses or lots depending on a variety of factors, which may include location, lot size, cul-de-sac frontage, solar orientation or proximity to open space. The market value of these factors may be subjective. No Builder is authorized to represent a premium price as a "view" premium. Neither Declarant nor Declarant's Affiliates assume any responsibility for any representation or promise made by a Builder, sales counselor, independent broker or other agent or employee of a homebuilder with regard to premium prices. Each Owner acknowledges that development within and surrounding the Development may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Development, views of or from the Development, the Lots or the Units, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot or a Unit, each Owner accepts title to such Lot or Unit, as applicable, subject to the foregoing, and waives and releases any claim against the Benefitted Parties arising out of or associated with any of the foregoing.

#### Section 12.4 Separate Ownership of Surface and Subsurface Rights.

Ownership of subsurface rights, including mineral rights, oil, gas, and other hydrocarbons, underlying the Property are separate from surface rights. The owners of such mineral rights, oil, gas and other hydrocarbons and their successors, assignees and lessees reserve the right to exercise all rights of exploration, extraction and removal of the same as allowed by Applicable Laws.

#### Section 12.5 Safety and Security.

Each Owner and Occupant is responsible for their own personal safety and the security of their property in the Development. The Home Owners Association may, but shall not be obligated to, maintain or support certain activities designed to enhance the level of safety or security in accordance with Applicable Law.

None of the Benefitted Parties shall in any way be considered insurers or guarantors of safety or security within the Development, nor be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

#### Section 12.6 Disruption from Development and Construction.

Declarant makes no warranties or representations whatsoever that construction and development will not cause certain disruptions and inconveniences to Owners or Occupants. In that regard, each Owner acknowledges and agrees that construction and development is likely to cause noise, dirt, dust, odors, traffic disruption, temporary closure of facilities and other inconveniences associated with construction and development.

#### Section 12.7 View Impairment.

Neither Declarant, Declarant's Affiliates, the Home Owners Association or ARC guarantee or represent that any view over and across the Lots, Units or other Improvements, or that any open space will be preserved without impairment, nor is there any obligation to relocate, prune, or thin trees or other landscaping. Declarant has the right to add trees, walls, fences, berms, or other structures, signs, lighting, water features and other landscaping from time to time, without regard to any view impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

IN WITNESS WHEREOF, Declarant, as the Owner of the Property, has hereunto set its hand and seal on the Effective Date.

DECLARANT:

LIBERTY SAVINGS BANK, FSB, an Ohio for profit corporation

By: [Signature]  
Name: JOSEPH C. HOSKINS  
Title: CHIEF ADMINISTRATIVE OFFICER

STATE OF Ohio )  
COUNTY OF Columbiana ) ss.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of June '2015, by Jessica C. Phillips, as CEO of Liberty Savings Bank, FSB

Witness my hand and official seal.

{SEAL}

[Signature]  
Notary Public  
My Commission expires: Aug 5, 2016  
OWEN U. O'BRIEN, Notary Public  
Inm: t mrtbe Silllte of Ohio  
My Commission es: Aug. 5, 2016



**EXHIBIT A**

**THE PROPERTY**

TRACT 3, SADDLER PLANNED UNIT DEVELOPMENT, CITY OF FORT LUPTON, COUNTY OF WELD, STATE OF COLORADO.