

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF BERKLEY SHORES**

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EXHIBIT A – Lots

EXHIBIT B – District Property

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF BERKLEY SHORES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BERKLEY SHORES is made and entered into by HDC 6300 Lowell Boulevard, LLLP, a Colorado limited liability limited partnership (the “**Declarant**,” as hereinafter more fully defined).

RECITALS

A. Declarant owns that certain real property situated in the County of Adams (the “**County**”), State of Colorado, which is described on **Exhibit A** and **Exhibit B** attached hereto and incorporated herein by this reference (the “**Property**”) as hereinafter more fully defined.

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 is exempt from the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. (“**Act**”) because there are no mandatory assessments created under this Declaration, and there is no obligation created under this Declaration to pay for real estate taxes, insurance premiums, maintenance, or improvements for other real estate or District Property and, accordingly, no common interest community is created.

D. Pursuant to C.R.S. § 32-1-1004 and other provisions of Title 32 of C.R.S., the Declarant, in imposing this Declaration on the Property, intends to empower the District (as defined in **Section 1.10** below) with the authority to provide governmental services, including but not limited to the provision of covenant enforcement and architectural review services and trash collection services, to the Community and to use revenues that are derived from the Community for such purposes.

DECLARATION

NOW, THEREFORE, the Declarant hereby declares that all of the property described on the attached **Exhibits A** and **B**, as supplemented and amended (including by all annexations to this Declaration), shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

ARTICLE 1. DEFINITIONS

Section 1.1 *Architectural Review Committee or ARC.*

“**Architectural Review Committee**” or “**ARC**” means the committee appointed by the Declarant or by the Board, as provided in Section 4.1 of this Declaration. The ARC shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

Section 1.2 *Board of Directors or Board.*

“**Board of Directors**” or “**Board**” means the body, regardless of name, designated in this Declaration, to act on behalf of the District.

Section 1.3 *Builder.*

“**Builder**” means any Owner other than the Declarant who acquires one or more Lots for the purpose of constructing one or more residential structures thereon, and who is designated as a “**Builder**” by the Declarant in its sole discretion from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument Recorded.

Section 1.4 *Community.*

“**Community**” means all real estate and Improvements described on the attached **Exhibits A** and **B**, as supplemented and amended; all such real estate and Improvements are, by the recording of this Declaration, made subject to the provisions of this Declaration. Community also means all real estate and Improvements that are hereafter annexed to the Community pursuant to Section 12.2; any such property is not part of the Community until it is annexed pursuant to Section 12.2. There is no assurance that any property or any specific property will be annexed to the Community. All real estate and Improvements that are hereafter annexed to the Community are then subject to this Declaration. The name of the Community is Berkley Shores.

Section 1.5 *Crestview.*

“**Crestview**” means the Crestview Water and Sanitation District, as more specifically identified in Section 13.2 hereof

Section 1.6 *Declarant.*

“**Declarant**” means HDC 6300 Lowell Boulevard, LLLP, a Colorado limited liability limited partnership, as well as any other Person(s) to whom the Declarant (or any subsequent Declarant), by Recorded document, expressly assigns one or more rights of the Declarant under this Declaration (which shall be the extent of the Declarant’s rights to which such assignee succeeds). Use of the word “**Declarant**” in the Governing Documents denotes the aforesaid entity or their designated assignee(s), as provided in the preceding sentence.

Section 1.7 Declaration.

“**Declaration**” means this Declaration of Covenants, Conditions and Restrictions of Berkley Shores, as supplemented and amended.

Section 1.8 Development Rights.

“**Development Rights**” means the following rights, or combination of rights, hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to:

- 1.8.1 add real estate to this Community and make such real estate subject to the Governing Documents;
- 1.8.2 create Lots and/or District Property;
- 1.8.3 subdivide or replat Lots; and
- 1.8.4 withdraw real estate from this Community.

The Declarant may exercise its Development Rights in all or any portion of the Community or real estate proposed to be added to the Community, subject to and in accordance with the terms and conditions of this Declaration, and no assurances are made that any Development Rights will be exercised or, if exercised, as to the boundaries or order of exercise of any Development Rights. The Declarant’s rights to exercise Development Rights shall terminate automatically as provided in Section 1.25 of this Declaration (Use Rights).

Section 1.9 District.

“**District**” means the Berkley Shores Metropolitan District, created pursuant to §32-1-101, *et seq.*, C.R.S., and/or any other metropolitan district or other governmental entity to which the then-District may transfer or assign any or all of the rights and duties of the District under this Declaration. Each assignment or transfer, if any, shall be effective upon recording in Adams County, Colorado, of a document of transfer or assignment, duly executed by the then-District. In addition to the authority granted to the District in this Declaration, the District has such other authority with respect to the exercise of such authority, 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 to undertake enforcement actions.

Section 1.10 District Property.

“**District Property**” means any property located within the Community now or hereafter owned or leased by the District. District Property shall be open to Owners and their Permittees and shall be open to the general public, subject to rules, regulations and closure by the District. Those areas described on **Exhibit B** are, or are anticipated to become, District Property.

Section 1.11 *Enforcement Committee.*

“**Enforcement Committee**” means a committee appointed by the Board to enforce the Governing Documents, as provided in Section 11.1.

Section 1.12 *Fees.*

“**Fees**” means, collectively, (i) any type of charge for any services or facilities provided by or through the District, or (ii) any charges imposed by the District for the fulfillment of any of its rights or obligations hereunder.

Section 1.13 *Fines*

“**Fines**” means any monetary penalty imposed by the District against an Owner due to a violation of the Governing Documents.

Section 1.14 *Governing Documents.*

“**Governing Documents**” means this Declaration and any Rules and Regulations (as hereinafter defined), and any policies and procedures and other documents now or hereafter adopted by the District, as amended or supplemented from time to time relating to design review and/or covenant enforcement.

Section 1.15 *Improvements.*

“**Improvements**” means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, all landscaping features and hardscaping features, including but not limited to buildings, outbuildings, car ports, solar equipment, hot tubs, satellite dishes, antennae, tree houses, gazebos, garages, sheds, signs, patios, patio covers, awnings, solar collectors, yard art (including but not limited to statues, fountains, bird baths, and decorative pieces), paintings or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, dog runs, fences, including gates in fences, basketball backboards and hoops, swing sets and other play structures, screening walls, retaining walls, walkways, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, groundcover, excavation and site work, removal of trees or plantings, exterior light fixtures, poles, signs, exterior tanks, exterior air conditioning, cooling, heating and water softening equipment, if any. The term “Improvements” includes both original Improvements and all later changes, modifications, and replacements of Improvements.

Section 1.16 *Lot*

“**Lot**” means each platted lot shown on any Recorded subdivision map of the Property described on the attached **Exhibit A**, which is subject to this Declaration, as the same may be resubdivided or replatted from time to time (subject to the restrictions contained in this Declaration); and any other lot platted and subsequently annexed into the Community and subjected to this

Declaration pursuant to Section 12.2 with the exception of any property publicly dedicated on a Recorded plat. Lots do not include any District Property or any other property that has been dedicated to any other governmental authority.

Section 1.17 *Owner.*

“**Owner**” means each fee simple title holder of a Lot, including Declarant, each Builder, and each other Person who owns a Lot, but does not include a Security Interest Holder. There may be more than one (1) Owner of a Lot.

Section 1.18 *Permittees.*

“**Permittees**” means any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors, of an Owner.

Section 1.19 *Person.*

“**Person**” means a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other legal entity or any combination thereof and includes each Owner, the Declarant, any Builder, the ARC, and the District.

Section 1.20 *Property.*

“**Property**” means the real estate and Improvements described on the attached **Exhibits A** and **B**.

Section 1.21 *Records.*

“**Records**” means the official real property records of Adams County, Colorado; “**to Record**” or “**to be Recorded**,” means to file for recording in the Records; and “**of Record**” and “**Recorded**” means having been recorded in the Records.

Section 1.22 *Rules and Regulations.*

“**Rules and Regulations**” means rules and regulations concerning, without limitation, (i) the appointment of members to the ARC and any Enforcement Committee, (ii) the use of the Property, (iii) certain use restrictions on the Lots, and/or (iv) other restrictions governing the conduct of Owners, as such rules and regulations are adopted by the Declarant or the Board and as may be amended from time to time. The Rules and Regulations are binding upon all Owners and Permittees. The Declarant and the District shall have the authority to enact, issue promulgate, modify, amend, repeal, and re-enact Rules and Regulations during the period set forth in Section 1.25 hereof. Thereafter, only the District shall have such authority.

Section 1.23 *Security Interest.*

“**Security Interest**” means an interest in one or more Lots, real estate or personal property, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.24 *Security Interest Holder.*

“**Security Interest Holder**” means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest or any successor to the interest of any such Person under such Security Interest.

Section 1.25 *Use Rights.*

“**Use Rights**” means the following rights, which rights are hereby reserved for the benefit of the Declarant or, as applicable, the District and which rights may be further described in this Declaration: to build and complete Improvements; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and/or Lots; to use easements through the Community for the purpose of making Improvements within the Community or within real estate which may be added to the Community. All of the Use Rights may be exercised by the Declarant or the District with respect to any portion of the real estate and Improvements now or hereafter within the Community. The Declarant or the District may exercise any or all of these Use Rights at any times. The District’s right to exercise the Use Rights does not expire. The Declarant’s right to exercise the Use Rights shall terminate automatically either twenty (20) years after the date of Recording of this Declaration or at such time as neither the Declarant nor any Builder owns any portion of the property described on the attached **Exhibit A** or **C**, whichever occurs first.

ARTICLE 2. DISTRICT

Section 2.1 *Authority of the District to Appoint ARC.*

Except as provided in Section 4.1, the District (through the Board) shall appoint all members of the ARC and may remove all or any of the members of the ARC which have been appointed by the District as provided in Sections 4.1.1 and 4.1.2. The foregoing agreement of the District to appoint members of the ARC shall be enforceable by the Owners pursuant to Section 11.5 below.

Section 2.2 *Cooperation and/or Delegation.*

The Board of Directors shall have the right and authority to cooperate with, contract with and/or delegate to, any community, or other district(s), the County and other units of state and local

government, and/or any other Person(s), in order to increase consistency or coordination, reduce costs, or as may otherwise be determined by the Board of Directors.

Section 2.3 *Trash Collection Services.*

Trash removal services may be subscribed to by the District on behalf of the residents of the Community and, if so: the Board may determine the scope, frequency, and all other matters, with regard to such trash removal services; and the Owners shall pay their proportionate share of such trash removal services, as determined by the Board or, if arranged by the Board with the vendor, each Owner shall pay the vendor directly for trash collection services provided to each Owner.

Section 2.4 *Rules and Regulations and Policies and Procedures.*

From time to time, the District (through the Board of Directors) may adopt, amend, repeal and enforce rules and regulations (“**Rules and Regulations**”) and policies and procedures concerning and governing the Community and may establish penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such Rules and Regulations or policies and procedures. The foregoing agreement of the District to promulgate Rules and Regulations shall be enforceable by the Owners pursuant to Article 11 below. The Rules and Regulations and policies and procedures may include: procedural requirements; interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications; and covenants, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, including vehicles and animals. Such rules and regulations and policies and procedures may be different for different types or prices of Lots, construction or homes. No Rules and Regulations or policies and procedures that are adopted shall be contrary to this Declaration.

Section 2.5 *Notice of Meetings and Other Matters of the District.*

Notices of any meetings, newsletters and other correspondence or documents concerning the ARC shall be sent to the Declarant at the same time that such notices, newsletters, and other correspondence or documents are sent to the Owners. However, the foregoing shall expire upon automatic termination of the Declarant’s right to exercise the Use Rights as provided in Section 1.25 of this Declaration (Use Rights).

Section 2.6 *Authenticated Electronic Representation.*

Notwithstanding anything to the contrary contained in the Governing Documents, to the extent not prohibited by applicable law, the District may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

ARTICLE 3. FINES

Section 3.1 *Personal Obligation for Fines.*

Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees, and shall be personally obligated, to pay to the District any and all fines and penalties, as provided in this Declaration; with such fines and penalties to be established and collected as hereinafter provided. All Owners of each Lot shall be jointly and severally liable to the District for the payment of all fines and penalties attributable to their Lot.

Section 3.2 *Purpose of Fines and Penalties.*

The fines and penalties levied by the District are used to protect and maintain the health, safety and welfare of the residents of the Community through enforcement of this Declaration, the Rules and Regulations and the Guidelines.

Section 3.3 *Liens.*

The District has the right and authority to levy and collect fines, to impose liens (as provided in C.R.S. Section 32-1-1001(1)(j)(I), as amended), to negotiate, settle and/or take any other actions with respect to any violation(s) or alleged violations(a) of the Governing Documents. No further Recordation of any claim of lien is required. However, the Board of Directors or any officer of the ARC or any managing agent of the District, may prepare and Record a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien notice is Recorded, the reasonable costs and expenses thereof shall be added to the due amount for the Lot against which it is Recorded and collected as part and parcel thereof. The District's lien may be foreclosed as provided by law. Notwithstanding anything to the contrary set forth herein, in no event shall any transfer or other fee or charge be levied upon the sale of a Lot.

Section 3.4 *Certificate of Status of Fines and Penalties.*

The District shall furnish to an Owner, or such Owner's designee, or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the District's registered agent, a written statement setting forth the amount of unpaid fines and penalties, if any, currently levied against such Owner's Lot. The statement shall be furnished within a reasonable time after receipt of the request and is binding on the District, the Board of Directors and every Owner. The District or its agents shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 3.5 *Other Charges.*

To the extent permitted by law, the District may levy and assess charges, costs and fees, for matters such as, but not limited to, the following, in such amounts(s) as the Board of Directors may determine, including: reimbursement of charges that are made to the District by its managing agent or other Person; copying of District or other documents; returned checks; telefaxes; long distance

telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the District.

ARTICLE 4. ARCHITECTURAL REVIEW

Section 4.1 *Composition of ARC; Authority of Representative.*

4.1.1 The Architectural Review Committee shall consist of three (3) or more natural persons. The Declarant shall have the authority to appoint the members of the ARC during the period set forth in Section 1.25 hereof; provided, that the Declarant may, during such period, relinquish the authority to appoint members of the ARC, but only by a written instrument signed by the Declarant that expressly relinquishes such authority. After the period set forth in Section 1.25, or if the Declarant earlier relinquishes its authority to appoint members of the ARC, the Board shall have the authority to serve as, or to appoint the members of, the ARC and/or to delegate some or all architectural authority, as provided in Section 4.1.2 hereof. The power to “**appoint**” the Architectural Review Committee shall include the power to: constitute the membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member(s) of the Architectural Review Committee, with or without cause, and appoint the successor(s) thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set by the Board.

4.1.2 Except as provided in Section 4.1.1, the District shall have the right and authority to: (a) delegate, in writing, some or all of the architectural authority to one or more other Persons, who shall be the ARC’s representative to act on its behalf. If the ARC delegates any authority, then the actions of such representative shall be the actions of the ARC, subject to the right of appeal as provided below. However, if such a representative is appointed, the District shall have the power to withdraw from such representative any of such representative’s authority, and shall also have the power to remove or replace such representative.

Section 4.2 *Required Review and Approval; Reimbursement for Expenses.*

4.2.1 Except as provided in Sections 4.10 and 4.13 of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot, unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, retaining walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Architectural Review Committee), shall have been first submitted to and approved in writing by the Architectural Review Committee.

4.2.2 The Architectural Review Committee shall endeavor to exercise its judgment to the end that Improvements generally harmonize with the existing surroundings, residences, landscaping and structures.

4.2.3 In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) reimburse the ARC for the actual expenses incurred, or reasonably anticipated to be incurred, by the ARC, in the review and/or approval process.

4.2.4 In addition to the required approvals by the Architectural Review Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the County, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in, any Improvement. The ARC shall not review or approve any proposed Improvements for compliance with governmental requirements.

4.2.5 In addition to the authority that is given to the ARC in this Declaration, as well as such authority as may be implied from any provision(s) of this Declaration, the ARC shall have all authority and power to receive and review complaints from one or more Owners, any Declarant, a Builder, or any other Person(s), alleging that a violation of any of the Governing Documents has occurred or is occurring.

Section 4.3 *Procedures.*

The Architectural Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of the application or request and all plans, specifications and other materials and information which the ARC may require in conjunction with such application or request. If the Architectural Review Committee fails to decide any application or request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then such application or request for approval shall be deemed to have been denied by the ARC.

Section 4.4 *Vote and Appeal.*

The affirmative vote of a majority vote of the Architectural Review Committee is required to approve a request for approval pursuant to this Article (which may be with conditions and/or requirements), unless the ARC has appointed a representative or committee to act for it, in which case the decision of such representative or committee shall control. In the event a representative or committee acting on behalf of the Architectural Review Committee denies a request for approval, then any Owner shall have the right to an appeal of such decision to the full ARC, upon a written request therefor submitted to the ARC within ten (10) days after such decision by the ARC's representative. The Owner may request a hearing before the ARC by including the request for a

hearing in or with such Owner's appeal request. If a hearing is requested within the ten (10) day period, the hearing shall be held before the full ARC. At the hearing, the Owner shall be afforded a reasonable opportunity to be heard. The ARC may adopt rules for the conduct of such hearings that may include, without limitation, rules that govern presentations. The minutes of the hearing shall contain a written statement of the results of the hearing. The decision of the ARC shall be final. No additional or further appeals are permitted, nor will any be recognized.

Section 4.5 *Prosecution of Work After Approval.*

After approval of any proposed Improvement by the ARC, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within ninety (90) days after the date of approval of the application, or failure to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval issued by the ARC and a violation of this Article; provided, however, that the ARC may grant extension(s) of time for completion of any Improvement(s). Upon the completion of an Improvement, the applicant for approval of the same shall give a written "**Notice of Completion**" to 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 on which approval (which may be with conditions and/or requirements) has been sought and granted as provided in this Article.

Section 4.6 *Inspection of Work.*

The ARC, or its duly authorized representative or committee, shall have the right to inspect any Improvement at any time, including prior to, during, or after completion during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance. Such inspections may be made in order 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 sixty (60) days after the ARC has received a Notice of Completion from the applicant.

Section 4.7 *Notice of Noncompliance.*

If, as a result of inspections or otherwise, the ARC determines that any Improvement has been done without obtaining the required approval (which may be with conditions and/or requirements), or was not done in substantial compliance with the approval that was granted, or has not been completed within ninety (90) days after the date of approval, subject to any extensions of time granted pursuant to Section 4.5 hereof, then the ARC shall notify the applicant in writing of the noncompliance. Such notice of noncompliance shall be given not later than sixty (60) days after the ARC receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance.

Section 4.8 *Correction of Noncompliance.*

If the ARC determines that a noncompliance exists, the Person responsible for such noncompliance shall remedy or remove the same within not more than forty-five (45) days from the date of receipt of the notice of noncompliance. If such Person does not comply with the ruling within such period, the District may, at its option, record a notice of noncompliance against the Lot on which the noncompliance exists, may impose fines, penalties and interest, may remove the noncomplying Improvement, or may otherwise remedy the noncompliance, and the Person responsible for such noncompliance shall reimburse the District, upon demand, for all costs and expenses, as well as anticipated costs and expenses, with respect thereto.

Section 4.9 *Standards/Guidelines.*

The District has the authority to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, rules and regulations (collectively, “**Guidelines**”) to interpret and implement the design review provisions of this Declaration. Thereafter, except as provided in the last sentence of this Section, the Architectural Review Committee shall have such authority. Such provisions of the Guidelines may include: clarifying the types of designs and materials that may be considered in design approval; requirements for submissions in order to obtain review by the ARC, procedural requirements, and acceptable Improvement(s) that may be installed without the prior approval of the ARC; architectural standards, design guidelines, requirements, and/or other provisions pertaining to architectural design and approvals; provisions that are different for different types, sizes or prices of Lots, construction or residences (including garages, porches and overhangs); and permitting the ARC, with respect to any violations or alleged violations of any of the Governing Documents, to send demand letters and notices, levy and collect fines and interest, and negotiate, settle and take any other action. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration. However, after appointment of the ARC by the District, any architectural standards, guidelines, rules and regulations, or any modifications to existing architectural standards, guidelines, rules and regulations, proposed by the Architectural Review Committee, shall not be effective until the same have been approved by the Board of Directors.

Section 4.10 *Variance.*

The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 7 of this Declaration (Restrictions) of 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 shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof. 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 4.11 *Waivers; No Precedent.*

The approval or consent of the Architectural Review Committee or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ARC, or any representative thereof, 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.

Section 4.12 *No Liability.*

Neither the ARC, nor any members, employees, agents or representative or committee thereof, nor any Declarant, Builder or District, nor any owners, officers, partners, members, managers, employees or agents thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove. In reviewing any matter, neither the ARC, nor any Declarant, Builder or District, shall be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an Improvement by the ARC, District, or the Declarant, shall not be deemed an approval of any such matters. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by, the ARC, District or the Declarant.

Section 4.13 *Declarant's and District's Exemption; Builder's Exemption.*

4.13.1 Notwithstanding anything to the contrary, the Declarant and the District are exempt from all provisions of this Article and all other provisions of the Governing Documents and any other matters that require ARC review and/or approval, except the requirements to obtain approval of the governmental entities (other than the District or any other governmental entity that enforces any of the Governing Documents) with jurisdiction thereover as provided in Section 4.2.4 of this Declaration.

4.13.2 Notwithstanding anything to the contrary, each Builder is exempt from the provisions of this Article and all other provisions of the Governing Documents and any other matters that require ARC review and/or approval, except for the requirements to obtain approval from the governmental entities (other than the District or any other governmental entity that enforces any of the Governing Documents) with jurisdiction thereover as provided in Section 4.2.4 of this Declaration.

ARTICLE 5. INSURANCE

Section 5.1 *Insurance.*

The District may maintain insurance in connection with its functions. Such insurance to be maintained by the District may include property insurance, commercial general liability insurance, fidelity coverage and personal liability insurance to protect directors and officers of the District from personal liability in relation to their duties and responsibilities in acting as directors and/or officers on behalf of the District. In addition, the District may maintain insurance against such other risks as the Board of Directors may determine. Nothing herein shall be construed or interpreted as a waiver of the District's governmental immunity as provided by law.

Section 5.2 *Insurance to be Maintained by Owners.*

Insurance coverage on each Owner's Lot, and the Improvements thereon, as well as on personal property belonging to an Owner to provide for replacement cost coverage, and public liability insurance coverage on each Lot, is the responsibility of the Owner of such Lot.

ARTICLE 6. EASEMENTS

Section 6.1 *Access Easement.*

The Declarant hereby reserves, and each Owner hereby grants, to the District, the ARC, and the Enforcement Committee, if any, including the agents, representatives, employees and contractors of the District, the ARC and the Enforcement Committee, if any, and each such Person an access easement on, over, under and across each Lot, excluding any habitable structure and the interior of any residence thereon, for performing any of the actions contemplated in the Governing Documents, including maintenance, repair and replacement referred to in Section 10.1 and inspections and enforcement of each of the terms and provisions of the Governing Documents. 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. Each Owner hereby grants to the District, and to its agents, employees and contractors, a right and easement on, over, under, across and through such Owner's Lot for and incidental to inspection and/or enforcement, incidental to any term or provision of any of the Governing Documents. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive entry. The interior of any residence shall not be subject to the easements provided for in this Section.

Section 6.2 *Utilities Easements.*

The Declarant and the District hereby grant and reserve a blanket easement upon, across, over and under the District Property for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, cable, and television

antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the District Property and to affix, repair, maintain and replace water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters, regardless of whether the aforesaid constitute portions of main distribution systems or individual services. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Declarant and the District reserve and are each hereby given the right and authority to grant such easement upon, across, over and/or under any part or all of the District Property without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Declarant's right to exercise the Use Rights terminate as provided in Section 1.25 of this Declaration. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other Recorded easement(s) on the District Property.

Section 6.3 *Drainage Easement.*

The Declarant hereby reserves, and the District and each Owner hereby grants, to the District and its agents, representatives, employees and contractors an easement on, over, under and across each Lot, excluding any habitable structure and the interior of any residence thereon, for drainage and drainage facilities, including, without limitation, installation, construction, maintenance, repair, enlargement, and replacement of drainage channels, swales, pipes and other drainage facilities across each Lot. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear, front and side yard drainage easements. The Declarant reserves to itself and to the District the right to enter in and upon each such drainage easement to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as the Declarant or the District may deem necessary or desirable; provided, however, that such right and authority in the Declarant shall cease at such time as the Declarant's right to exercise the Use Rights automatically terminate as provided in Section 1.25. Nothing in this Section 6.3 in any way limits the County's rights with respect to the drainage easements.

Section 6.4 *Additional Easements.*

If the Declarant withdraws any portion of the Property from this Declaration, Declarant shall retain whatever easements are reasonably necessary or desirable across the Property for access to and utility services for the portion of the Property withdrawn.

Section 6.5 *Easement for Unannexed Property.*

The Declarant and the District hereby reserves, for the use and benefit of any property owned by Declarant and located proximately to the Community which may be annexed pursuant to Section 12.2 (“**Annexable Area**”), a non-exclusive, perpetual easement for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, alleys, sidewalks, access ways and similar District Property, now or hereafter constructed, erected, installed or located in or on the

Community, and on, over, across and under the District Property for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement, reading, and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein collectively the “**Annexable Area Easement**”). By virtue of this Annexable Area Easement, Declarant and the District generally intends to provide for pedestrian and vehicular access and for utilities services to those portion(s) of the Annexable Area which have not been included in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after Recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration; and expiration of the Declarant’s right to withdraw such portion of the Annexable Area from this Declaration.

ARTICLE 7. RESTRICTIONS

Section 7.1 *Restrictions Imposed.*

The Community shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and transferred, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

Section 7.2 *Compliance with Law.*

All Owners, all Permittees, and all other Persons, who reside upon or use any Lot or any other portion of the Community, shall comply with all applicable statutes, ordinances, laws, regulations, rules and requirements of all governmental and quasi-governmental entities, agencies and authorities with jurisdiction over the Community.

Section 7.3 *Residential Use; Certain Permitted Business Activities.*

Subject to Section 12.3 of this Declaration (Declarant’s and Each Builder’s Use), Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied, as determined by the Board:

7.3.1 The business conducted is clearly secondary to the residential use of the residence on the Lot and is conducted entirely within the residence;

7.3.2 The existence or operation of the business is not detectable from outside of the residence by sight, sound, smell or otherwise, or by the existence of signs;

7.3.3 The business does not result in an undue volume of traffic or parking that affects the Community;

7.3.4 The business conforms to all zoning provisions and is lawful in nature; and

7.3.5 The business conforms to all Rules and Regulations and policies and procedures.

Section 7.4 Nuisances.

No nuisance shall be permitted which is visible within or otherwise affects the Community or any portion thereof, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of the Lots in the Community or any portion thereof. As used herein, the term “**nuisance**” shall include each violation of any of the Governing Documents or law, but shall not include any activities of the Declarant or District which are incidental to the development and construction of, and promotion, marketing, and sales activities in, the Community. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is a nuisance.

Section 7.5 Animals.

No animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Community; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Community. All pets shall be reasonably controlled by the pet’s owner whenever outside a structure and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owner of the pet shall be responsible for all of the pet’s actions and shall promptly clean up after the pet. The District shall have, and is hereby given, the right and authority to do the following, as well as take such other action(s) with regard to these matters as the Board of Directors may determine: set a maximum number of household pets; regulate the type(s) of pets that are permitted to be kept; determine that any animals or pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other governmental laws, ordinances, or other provisions related to animals or pets; or determine that an Owner is otherwise in violation of any provision of the Governing Documents. If the District determines that any of the foregoing have been or are being violated, the District may take any action(s) to correct the same, including requiring removal of the animal. An Owner’s right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the District as a result of such pets. In addition to the foregoing, the Board may, but is not obligated to, adopt Rules and Regulations to address dangerous animals or animals that are a nuisance or repeated barking by a particular dog.

Section 7.6 Miscellaneous Improvements.

7.6.1 No advertising or signs of any character shall be erected, placed, permitted or maintained other than: a name plate of the occupant and a street number; and a “**For Sale**,” “**Open House**,” “**For Rent**” or security sign(s) of not more than a total of six (6)

square feet posted only for the purpose of selling, renting or evidencing the existence of a security system on such Lot; and political signs and other signs, in conformance with all other laws and regulations; and such other signs, for such length(s) of time, which have the prior written approval of the Board or are otherwise expressly permitted by the Rules and Regulations or Guidelines or by law; provided, however, that any and all such advertising or signs shall be subject to any and all specifications and/or Rules and Regulations adopted by the Board of Directors. Notwithstanding the foregoing, any signs, advertising, or billboards may be used by the Declarant, the District, or a Builder, without regard to any specifications or any Rules and Regulations, and without the prior written approval of the Board, the ARC, or any other Person.

7.6.2 Any wood piles must be stored inside the Owner's garage.

7.6.3 Except as may otherwise be permitted in writing by the ARC, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence (including garages, porches and overhangs) or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant, the District, or a Builder during its development, sales or construction; and provided further, however, that the requirements of this subsection are subject to the Telecommunications Act of 1996 and applicable regulations, as amended from time to time.

7.6.4 No fences shall be permitted without the prior written approval of the ARC, except such fences as may be constructed, installed or located, in the Community, by the Declarant, the District, or a Builder.

7.6.5 This Section 7.6 shall be construed and applied in accordance with all applicable laws.

Section 7.7 *Vehicular Parking, Storage and Repairs; Use of Garages.*

7.7.1 No house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding, except as hereinafter provided, pickup trucks that are rated 1 ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Lot, unless such parking or storage is entirely within the garage area of such Lot or will be suitably screened from view in accordance with the Rules and Regulations or prior written approval of the Board. A "**commercial vehicle**" means a vehicle that: is used to transport cargo or passengers for profit or hire, or otherwise to further the purposes of a business or commercial enterprise; and may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle. However, any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any

Improvements located thereon. “**Recreational vehicle**” includes, but is not limited to, motor homes, pick-up trucks with camper shells, trailers, self-contained recreational vehicles, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation.

7.7.2 No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community. An “**abandoned or inoperable vehicle**” shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles may be parked for such length(s) of time as determined by the Board and/or as provided in the Rules and Regulations and/or policies and procedures of the District.

7.7.3 In the event the District shall determine that a vehicle is parked or stored in violation of Section 7.7 hereof, then a written notice describing such violation may be conspicuously placed upon the vehicle, and if the vehicle is not removed within a reasonable time thereafter, as determined by the District, the District shall have the right to remove the vehicle at the sole expense of the owner thereof.

7.7.4 No maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community, except that changing of oil or batteries and washing and polishing of vehicles, trailers or boats, may be performed, provided that any such activity must be conducted on the Owner’s Lot and may not be conducted on any driveway, alley or street.

7.7.5 Section 7.7 shall be construed and applied in accordance with all applicable laws.

Section 7.8 *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted on any Lot, or within Improvements constructed on any Lot, which are unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be permitted on any Lot. Gas-fired barbeques are permitted; charcoal barbeques are not permitted. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 7.9 *No Annoying Lights, Sounds or Odors.*

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Further, no annoying light,

sound or odor shall be permitted in any portion of the Community that may be seen, heard or smelled from any other Lot.

Section 7.10 *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate, except inside a suitable, tightly-covered container inside the Owner's garage, on any Lot, nor shall any such items be deposited on a street or sidewalk, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any other portion of the Community. No trash, garbage or other refuse shall be burned in outside containers, barbecue pits or the like. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or other trash receptacles shall be maintained in an exposed or unsightly manner.

Section 7.11 *Sightly Condition of Lots.*

Each Lot shall at all times be kept, maintained, repaired and replaced in a good, clean and sightly condition by the Owner thereof.

Section 7.12 *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, Improvements thereon, or any portion thereof, and shall specifically include month-to-month rentals and subleases and short term rentals (such as, without limitation, those available through Airbnb, VRBO and similar services) according to local ordinances and regulations; provided, however, that reference to month-to-month and short term rentals does not mean that such month-to-month and short term rentals are permitted; in fact, month-to-month and short term rentals may be prohibited by the Rules and Regulations and/or by local ordinances and regulations. Subject to the Rules and Regulations and local ordinances and regulations, any Owner shall have the right to lease his Lot, or any portion thereof, under the following conditions:

7.12.1 All leases shall be in writing; and

7.12.2 All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the Governing Documents; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

Section 7.13 *Non-Interference with Grade and Drainage.*

Each Owner agrees, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property. Except as to the Declarant, the District, and each Builder, in the event that it is necessary or desirable to change the established drainage over any Lot or District Property, then the

party responsible for the maintenance of such real property shall submit a plan to the ARC for its review and approval, in accordance with Article 4 of this Declaration (Architectural Review), and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities. For purposes of this Section, “**established drainage**” is defined as the drainage which exists at the time final grading is completed by the Declarant, District, or a Builder.

Section 7.14 *Restrictions on Mining or Drilling.*

No portion of the surface of any property within the Community 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, earth or water.

ARTICLE 8. PROPERTY RIGHTS

Section 8.1 *Use of District Property by the Declarant.*

An easement is hereby reserved by the Declarant on, over, across and through the District Property, and each portion thereof, as may be desirable for the purpose of exercising or discharging any of the Declarant’s rights or obligations, or exercising any Use Rights, and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant’s easements on, over, across and through the District Property.

ARTICLE 9. DISPUTE RESOLUTION

Section 9.1 *Resolution of Disputes Without Litigation; Intent and Applicability of Article and Statutes of Limitation.*

9.1.1 Bound Parties. The Declarant, all Owners, and any person or organization not otherwise subject to this Declaration who agrees to submit to this chapter (collectively, “**Bound Parties**”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees to resolve all Claims by using the procedures in this Article 9 and not by litigation, and each Bound Party agrees not to file suit in any court with respect to a Claim. If a Bound Party commences any action in a court of law or equity against any person or organization that is not a Bound Party, such Bound Party shall nevertheless be required to comply with the provisions of this Article 9 with respect to any Claim it wishes to assert against a Bound Party, even if such Claim is the same or substantially the same, or arises from the same or similar facts, as the claim against the non-Bound Party. Each Bound Party agrees that the procedures in this Article 9 are and shall be the sole and exclusive remedy that each Bound Party shall have for any Claim. The provisions of this Article 9 shall be deemed a contract between and among all Bound Parties, as well as covenants and equitable servitudes that run with the Property. EACH OWNER BY ACCEPTANCE OF A DEED OR OTHER INSTRUMENT OF CONVEYANCE FOR A HOME AGREES TO HAVE ANY AND ALL CLAIMS RESOLVED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE 9,

WAIVES HIS/HER RIGHTS TO PURSUE ANY CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 9, AND ACKNOWLEDGES THAT, BY AGREEING TO RESOLVE CLAIMS AS PROVIDED IN THIS ARTICLE 9, HE/SHE IS GIVING UP HIS/HER RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A COURT OR JURY.

9.1.2 Claims. As used in this Article 9, the term “Claim” shall refer to any claim, grievance, or dispute arising out of or relating to:

9.1.2.1 the interpretation, application, or enforcement of this Declaration;

9.1.2.2 the rights, obligations, and duties of a Bound Party under this Declaration; or

9.1.2.3 the physical condition and/or the design and/or construction of one or more residences. Any Claim described in this Section 9.1.2.3 is referred to below as a “Defect Claim.”

9.1.3 Exempt Claims. The following suits (“Exempt Claims”) shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in this Article 9:

9.1.3.1 Any suit by the District to collect fines or other sums from any Owner, or to obtain relief against any Owner on account of any violation(s) or alleged violations(a) of the Governing Documents or to foreclose any lien in favor of the District described in Section 3.3;

9.1.3.2 any suit or action by an Owner that involves the protest of real property taxes;

9.1.3.3 any suit to challenge condemnation proceedings;

9.1.3.4 any suit by an Owner or the Declarant to enforce the provisions of Article 7;

9.1.3.5 any suit to compel mediation or arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article 9;

9.1.3.6 any suit to enforce a settlement agreement reached through negotiation or mediation pursuant to this Article 9; and

9.1.3.7 any dispute in which a party to the dispute is not a Bound Party and has not agreed to submit to the procedures set forth in this Article 9.

9.1.4 Amendment. This Article 9 shall not be amended unless such amendment is consented to in writing by not less than 75% of the Owners and by not less than 75% of all first lien priority Security Interest Holders, and by the Declarant if such amendment is proposed less than 20 years after the date of recordation of this Declaration. Any amendment to this Article 9 shall not apply to Claims based on alleged acts or omissions or circumstances that predate the recording of the amendment.

9.1.5 Reformation. All Bound Parties agree that reliance upon courts of law and equity can add significant costs and delays to the process of resolving Claims. Accordingly, they recognize that one of the essential purposes of this Article 9 is to provide for the submission of all Claims to mediation and final and binding arbitration. Therefore, if any court concludes that any provision of this Article 9 is void, voidable or otherwise unenforceable, all Bound Parties understand and agree that the court shall reform each such provision to render it enforceable, but only to the extent absolutely necessary to render the provision enforceable and only in view of the express desire of the Bound Parties that the merits of all Claims be resolved only by mediation and final and binding arbitration and, to the greatest extent possible and permitted by law, in accordance with the principles, limitations, procedures and provisions set forth in this Article 9.

9.1.6 Dispute Resolution Procedures. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) by mail or personal delivery to each Respondent, and if the Claim is a Defect Claim involving a Lot and/or the residence or other Improvements on such Lot, then to the first lien priority Security Interest Holder, if any, with a lien against such Lot, and to the Declarant if such Defect Claim is asserted less than 15 years after the date of recordation of this Declaration, stating plainly and concisely:

9.1.6.1 The nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

9.1.6.2 If the Claim is a Defect Claim, (i) a list of all alleged design and/or construction defects or other physical conditions that are the subject of the Defect claim and a detailed description thereof specifying the type and location of such defects or conditions (identified by the specific room or room where the alleged defects or conditions exist if contained within a structure or identified on a plat plan or map where the defects or conditions exist outside a structure, in either case with a legend that identifies the type of defect), (ii) a description of the damages claimed to have been caused by the alleged defects or conditions, and (iii) a list of the Persons involved and a description of the Respondent’s role in the Defect Claim;

9.1.6.3 The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

9.1.6.4 The Claimant’s proposed resolution or remedy; and

9.1.6.5 The Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

9.1.7 Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

9.1.8 Right to Inspect. If the Claim is a Defect Claim, the Claimant shall permit each Respondent, its employees, agents, contractors and consultants to enter the Claimant's Lot and the residence and other Improvements on such Lot at reasonable times, to permit each Respondent to inspect the matters identified in the Defect Claim. Declarant hereby reserves for itself and grants to each Respondent, an easement to enter the Claimant's Lot and the residence and other Improvements on such Lot for the purposes of making inspections pursuant to this Section 9.1.8. Each Respondent shall make reasonable efforts to schedule convenient times with the Claimant for such inspections, but the Claimant's refusal to schedule such times shall not relieve the Claimant of its obligations set forth in this Section 9.1.8. If the Claimant refuses to allow each Respondent, its employees, agents, contractors and consultants to enter the Claimant's Lot and the residence and other Improvements on such Lot in order to make such inspections, the Claimant shall be deemed to be in breach of its obligations set forth in this Section 9.1.8 and shall be liable to each Respondent that has been denied access, and each such Respondent shall be entitled to recover from the Claimant, liquidated damages in the amount of \$300.00 per day for each day after the Claimant's receipt of the Respondent's written request for access to the Lot and/or the residence and other Improvements on such Lot, until the Claimant provides such access; provided that the amount of liquidated damages shall increase by five percent (5%) on each January 1 beginning with January 1, 2021. For example, but without limitation, on January 1, 2021, the amount of liquidated damages required by this Section 9.1.8 shall be \$315 per day. Liquidated damages provided in this 9.1.8 are separate from and independent of liquidated damages provided in Section 9.1.9 and a Respondent that is in breach of its obligations under each Section will be liable for liquidated damages under each Section. By acquiring ownership of any Lot, each Owner acknowledges and agrees that the actual damages to a Respondent arising from a Claimant's breach of its obligations set forth in this Section 9.1.8 would be extremely difficult and impractical to ascertain, including, without limitation, loss of reputation and goodwill, and that the liquidated damage amount referenced in the preceding sentence is a fair and reasonable estimate thereof.

9.1.9 Right to Remedy. If the Claim is a Defect Claim, if a Respondent informs the Claimant in writing that the Respondent intends to repair, remedy or otherwise cure one or more matters described in the Claim, the Claimant shall provide access to its Lot and the residence and other Improvements on such Lot to such Respondent, its employees, agents, contractors and consultants for the purpose of making such repair, remedy or cure. The Declarant hereby reserves for itself, and grants to each Respondent, an easement to enter the Claimant's Lot and the residence and other Improvements on such Lot for the

purposes of making any repair, remedy or cure pursuant to this Section 9.1.9. The Respondent shall make reasonable efforts to schedule convenient times with the Claimant for the performance of such work, but the Claimant's refusal to schedule such times shall not relieve the Claimant of its obligations set forth in this Section 9.1.9. The Claimant agrees that each Respondent has an absolute right to attempt to repair, remedy or otherwise cure one or more matters described in the Claim. The Claimant further agrees that nothing contained in this Section 9.1.9 creates any obligation upon any Respondent to attempt to repair, remedy or otherwise cure any matters described in the Claim and each Respondent's obligations in that respect are limited to those obligations, if any, imposed by any written express warranty separately provided to the Claimant (and which, by its terms, may not run to the benefit of succeeding owners of the property) and by applicable law. If the Claimant refuses to allow each Respondent, its employees, agents, contractors and consultants to enter the Claimant's Lot and the residence and other Improvements on such Lot in order to perform such work, the Claimant shall be deemed to be in breach of its obligations set forth in this Section 9.1.9 and shall be liable to such Respondent, and such Respondent shall be entitled to recover from the Claimant, liquidated damages in the amount of \$300.00 per day for each day after Claimant's receipt of Respondent's written notice that it intends to repair, remedy or otherwise cure one or more matters described in the Claim until the Claimant provides such access; provided that the amount of liquidated damages shall increase by five percent (5%) on each January 1, beginning with January 1, 2021. For example, but without limitation, on January 1, 2021, the amount of liquidated damages required by this Section 9.1.9 shall be \$315 per day. Liquidated damages provided in this Section 9.1.9 are separate from and independent of liquidated damages provided in Section 9.1.8 and a Respondent that is in breach of its obligations under each Section will be liable for liquidated damages under each Section. By acquiring ownership of any Lot, each Owner acknowledges and agrees that the actual damages to a Respondent arising from a Claimant's breach of its obligations set forth in this Section 9.1.9 would be extremely difficult and impractical to ascertain, including, without limitation, loss of reputation and goodwill, and that the liquidated damage amount referenced in the preceding sentence is a fair and reasonable estimate thereof.

9.1.10 Enforcement. Without limiting any other remedy available to a Respondent (including, without limitation, the liquidated damages provided for in this Sections 9.1.8 and 9.1.9), if the Claimant fails to perform or observe any provision of this Section 9, each Respondent shall be entitled to enforce such provision by specific performance or injunction, as may be applicable. The Claimant's obligations set forth in this Section 9 may not be waived, except only by a written instrument signed by each Respondent and identifying in detail in what respects provisions of this Section 9 have been waived.

9.1.11 Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within any other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an organization (a "Dispute Resolution Service") that is not controlled by or affiliated with

the Claimant or any Respondent and which provides, and has experience in providing, dispute resolution services in the Denver, Colorado metropolitan area, including, without limitation, the American Arbitration Association, the Judicial Arbitrator Group and JAMS, Inc. Each Bound Party shall present the mediator with a written summary of the Claim.

9.1.11.1 If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant on account of such Claim.

9.1.11.2 If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (a "Termination of Mediation") indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to commence binding arbitration on the Claim, pursuant to and as provided in Section 9.1.13.

9.1.11.3 Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

9.1.12 Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

9.1.13 Arbitration. After receiving a Termination of Mediation, if the Claimant wants to pursue the Claim and the Claim is not otherwise barred as provided elsewhere in this Article 9, the Claimant shall initiate final, binding arbitration of the Claim under the auspices of a Dispute Resolution Service (which does not necessarily have to be the same Dispute Resolution Service that provided mediation with respect to the Claim), and the Claimant shall provide to the Respondent(s) a "Notice of Intent to Arbitrate," all within 20 days after the Termination of Mediation. If the Claimant does not initiate final, binding arbitration of the Claim and provide a Notice of Intent to Arbitrate to the Respondent(s) within 20 days after the Termination of Mediation, then the Claimant shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant on account of such Claim. In addition, if a Claim is a Defect Claim, the

Claimant shall promptly disclose the Defect Claim and its details to his/her prospective purchasers and prospective mortgagees. If a Claim is a Defect Claim, an Owner shall not join any other Owner or other person complaining of the same or similar defects in other property without the prior written consent of all Respondents. The Claimant and each Respondent shall have the right to join any contractors or other design professionals that the Claimant alleges are responsible, in whole or in part, for the Claim, if such contractor or other design professional is, or agrees to become, a Bound Party. The term "Party" when used in this Section 9.1.13 shall mean a party to an arbitration proceeding to resolve a Claim and the term "Parties" shall mean all the parties to such arbitration proceeding. The following arbitration procedures shall govern each Claim submitted to arbitration:

9.1.13.1 The arbitration shall be presided over by a single arbitrator.

9.1.13.2 The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

9.1.13.3 No person shall serve as the arbitrator where that person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator with fourteen (14) days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

9.1.13.4 The arbitrator shall have the exclusive authority to, and shall, determine all issues about whether a Claim is covered by this Article 9. Notwithstanding anything herein to the contrary (including, but not limited to, Section 9.1.13.9 below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court 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.

9.1.13.5 The arbitrator shall hold at least one (1) hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitrator is not required to hold more than one (1) hearing. The arbitration proceedings shall be conducted in Adams County, Colorado unless the Parties otherwise agree.

9.1.13.6 No formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

9.1.13.7 Unless directed by the arbitrator, there shall be no post hearing briefs.

9.1.13.8 The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than fourteen (14) days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

9.1.13.9 The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, consequential damages, exemplary damages, treble damages, indirect or incidental damages, attorneys' fees, expert's fees and/or costs to the prevailing Party. Each Party is responsible for any fees and costs incurred by that Party, including, without limitation, the fees and costs of its attorneys, consultants and experts. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction.

9.1.13.10 The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator.

9.1.13.11 With respect to a Defect Claim, the arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants and may require that the results of any such inspections and testing and the reports of independent consultants be submitted to the arbitrator and to the other Parties, whether or not the Party that ordered such inspections or testing or engaged the consultant intends to present such results or reports to the arbitrator as evidence.

9.1.13.12 Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

Notwithstanding any other provision of this Article 9 or this Declaration, arbitration with respect to a Claim must be initiated within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings in a court based on such Claim would be barred by the applicable statute of limitations or statute of repose, except that any claim based on breach of a written express warranty must be made within the time specified in the express warranty document. If any Claim is not timely submitted to arbitration, or if the Claimant fails to appear and participate in good faith for the arbitration proceeding when scheduled, then the Claimant shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant on account of any such Claim.

Section 9.2 *Liability for Certain Failures of District or District.*

No director or officer of the District or ARC or the Enforcement Committee shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation,

arbitration, or other dispute resolution, if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent.

Section 9.3 *Waiver of Right to Trial by Jury*

In the event that a court finds that the dispute resolution procedures in Section 9.1 requiring mediation and binding arbitration are unenforceable and as a result a Bound Party is allowed to bring a claim in court, the Bound Parties agree that any lawsuit, whether claim or counterclaim, brought in court shall be tried only by a judge and not by a jury; **AND EACH BOUND PARTY (INCLUDING, WITHOUT LIMITATION, ANY OWNER THAT ACCEPTS A DEED TO A LOT) HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT.**

ARTICLE 10. MAINTENANCE

Section 10.1 *General.*

The maintenance, repair and replacement of the landscaping (but not including any potted plants, which is the responsibility of the Owner), irrigation systems, and sidewalks constructed on each Lot (up to the riser of the first step nearest the street) and located outside of the building footprint of the residence on the Lot (which footprint shall include any patios, porches, which include the stairs leading to such porches, and/or decks constructed as part of the residence) shall be performed by the District. The District shall also maintain all perimeter fencing and fencing separating Lots, except that the Owner, rather than the District, shall maintain modifications, if any, to such fencing that have been approved by the ARC and made by such Owner. The Board of the District shall determine the specifications, scope, extent, nature and parameters of the District's maintenance obligations. For purpose of performing such obligations, the District has been granted an access easement pursuant to Section 6.1.

The maintenance, repair and replacement of all other Improvements on each Lot, including exterior building surfaces, roofs, patios, porches, decks, utilities and the interiors of the residence on the Lot, shall be performed by the Owner thereof at such Owner's sole cost and expense. Any Improvements constructed or erected upon the Lot by any Owner after the initial construction of the residence on the Lot by the Declarant or a Builder shall be maintained, repaired and replaced by the Owner of the Lot.

Section 10.2 *District's Right to Repair, Maintain and Reconstruct.*

In the event any Owner shall fail to perform his or her maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board, the District may, if said failure continues for a thirty (30) day period after written notice to said Owner by the District, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such

maintenance, repair or reconstruction. The cost of such maintenance, repair or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed.

Section 10.3 *Owner's Acts or Omissions.*

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any property owned and/or maintained by the District or of a Lot, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado. A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be made by the Board of the District at a hearing after notice to the Owner.

ARTICLE 11. COVENANT ENFORCEMENT

Section 11.1 *Enforcement Committee.*

The District (through the Board) shall have the right to establish a committee to enforce the Governing Documents (the "**Enforcement Committee**") and, upon its establishment, the members of the Enforcement Committee will be appointed and removed by the Board and shall have the same rights as the District under this Article 11 and as elsewhere set forth in this Declaration in relation to the enforcement of the Governing Documents. The District 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 11.2 *Purpose and General Authority.*

The District or the Enforcement Committee, if any, shall review all complaints and notifications provided by the Declarant, a Builder, an Owner, a resident within the Property, or the ARC regarding any alleged violation of the Governing Documents. The District or the Enforcement Committee, if any, also has the right to make an investigation on its own regarding potential violations. The District or the Enforcement Committee, if any, has the authority to determine whether a violation has occurred by any Owner or Occupant, 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 11.4.3.

Section 11.3 *Fees and Expenses.*

All expenses of the District or the Enforcement Committee, if any, must be paid by the District with revenues derived from that portion of the Property with respect to which the District's or the Enforcement Committee's services are required or performed. The District 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 District from time to time.

Section 11.4 *General Inspections; Violation Identified by Another Owner; Notice and Hearing; Remedies.*

11.4.1 Any member or authorized agent or consultant of the Enforcement Committee or the ARC, or any authorized officer, director, employee or agent of the District may enter upon any Lot, at any reasonable time after notice to Owner, as more fully provided in Section 6.1, 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.

11.4.2 If (i) an investigation or inspection reveals that any part or portion of a Lot is not in compliance with the Governing Documents or any action is being taken in violation of the Governing Documents, (ii) the ARC has submitted a notice of noncompliance with respect to a Lot, or (iii) another Owner or Occupant has submitted a complaint in accordance with the Rules and Regulations, the District or the Enforcement Committee, if any, may send a notice of alleged violation (a "**Notice of Alleged Violation**") to the Owner of such Lot in accordance with the Rules and Regulations.

11.4.3 If, after receipt of the Notice of Alleged Violation the Owner fails to remedy the violation within the time period specified in the Notice of Alleged Violation or thereafter violates the same covenant or rule, the District shall have all remedies available to it at law or in equity, including, without limitation, the following remedies and any other remedies set forth herein:

11.4.3.1 the District may record a notice of violation against the Lot on which the violation exists;

11.4.3.2 the District has the right to remove, correct or otherwise remedy any violation in any manner the District deems appropriate;

11.4.3.3 the District may file an action for injunctive relief to cause an existing violation to be brought into compliance with the Governing Documents and the District shall recover all costs and attorneys' fees associated with bringing the action;

11.4.3.4 the District may levy and collect Fees, charges, penalties and Fines for the violation of any provisions of the Governing Documents. Prior to the imposition of any Fines, the District or the Enforcement Committee, if any, shall give the Owner to be subject to the Fine notice and the opportunity for a hearing before the Board of the District or the Enforcement Committee, if any. The Rules and Regulations may further define the process by which such Fines may be imposed, including, but not limited to, establishing the schedule of Fines to be imposed.

11.4.3.5 the District may collect, and shall have a statutory perpetual lien pursuant to § 32-1-1001(1)(j)(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 District 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 District 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.

Section 11.5 *Enforcement.*

11.5.1 This Section 11.5 is subject to Article 9 of this Declaration (Dispute Resolution).

11.5.2 Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in any of the Governing Documents, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Remedies shall be cumulative and no remedy shall be exclusive of other remedies that may be available. The District shall enforce the provisions of the Governing Documents and such covenant shall be enforceable by the Owners pursuant to this Section 11.5.2. Declarant and any aggrieved Owner shall have the right, but not the duty, to institute, maintain and prosecute any such proceedings. For each claim, including counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions of any of the Governing Documents, the prevailing party shall be awarded its reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim; except that, any Person who brings an action against any Declarant, any Builder, the District, or the ARC, regarding enforcement, or non-enforcement, of any provision(s) of the Governing Documents, shall not be awarded their costs or any attorney fees. Failure by Declarant, the District or any Owner to enforce any covenant, restriction or other provision contained in any of the Governing Documents, shall in no event give rise to any liability for damages, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other

provision of the Governing Documents, regardless of the number of violations or breaches that may occur.

11.5.3 The foregoing right of enforcement shall include the right of the District, 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(i)(j)(I), 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. Prior to collection of any fines, the District or the ARC shall mail a notice or demand to the Person(s) alleged to be in violation of any provision of the Governing Documents and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated, within fourteen (14) days after the notice of violation has been mailed or such other time as the District or the ARC may decide; failure of a notified Person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

Section 11.6 *No Liability.*

Neither the District, the ARC, any representative appointed by the ARC, nor the Enforcement Committee, if any, 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 District, the ARC, and/or the Enforcement Committee, if any, 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 District, the ARC, and/or the Enforcement Committee, if any. Each Owner (i) waives and releases the District, the ARC, and the Enforcement Committee, if any, from all claims related to the actions of the District, the ARC, and/or the Enforcement Committee, if any and (ii) waives and releases all claims against the District, the ARC, and/or the Enforcement Committee, if any. 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 members of the Board of the District, the ARC, and 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 members of the Board of the District, the ARC, and 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 District, the ARC and/or the Enforcement Committee, if any.

ARTICLE 12. GENERAL PROVISIONS

Section 12.1 *Severability.*

All provisions of this Declaration are severable. Invalidation of any of the provisions of this Declaration or any of the Governing Documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 12.2 *Annexation; Withdrawal.*

12.2.1 The Declarant may annex to the Property additional property, including, without limitation, any or all of the property described on **Exhibit C** attached hereto and incorporated herein by this reference, and including any property which may previously have been withdrawn from the Property. Each such annexation, if any, shall be accomplished by recording of an annexation document that expressly states that the property described therein shall be subject to this Declaration and all terms and provisions hereof.

12.2.2 The Declarant hereby reserves the right to Record one or more documents in order to clarify the effect of any annexation(s). Each such document(s), if any such document(s) are Recorded by the Declarant, may state the legal description(s) of any property which has been annexed, and may include such other provisions as the Declarant may determine.

12.2.3 The Declarant reserves the right to withdraw the Property, or any portion thereof, including one or more Lots, from this Declaration, so long as the Declarant owns the portion of the Property to be withdrawn. Each withdrawal, if any, may be effected by the Declarant recording a withdrawal document in the Records. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn property from this Declaration so that, from and after the date of Recording a withdrawal document, the property so withdrawn shall not be part of the Property or the Community, or in any way subject to the terms hereof.

Section 12.3 *Declarant's and Each Builder's Use.*

Notwithstanding anything to the contrary herein, it shall be expressly permissible for the Declarant and each Builder, and their respective employees, agents, and contractors, to perform all activities, and to maintain Improvements, tools, equipment, and facilities, on the portion of the Property owned by them and also on public property, incidental to development, construction, use, rental, sale, occupancy, and/or advertising. The foregoing includes locating, maintaining and relocating management offices, signs, sales offices, model Lots and construction offices and trailers, in such numbers, of such sizes, and at such locations as the Declarant or Builder determines, and for access to, from, and incidental to such uses. Nothing contained in this Declaration shall limit the rights of the Declarant or a Builder to conduct all construction, promotion, sales, and marketing activities as the Declarant or such Builder determines, and to use the easements provided in this Declaration for those and other purposes. Further, nothing contained in this Declaration shall limit the rights of the Declarant or a Builder, or require the Declarant or a Builder to seek or obtain any approvals:

12.3.1 to excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Improvements;

12.3.2 to use any Improvements on any property as sales offices, management offices, model Lots and/or construction offices; and/or

12.3.3 to conduct any other activity.

Section 12.4 *Duration, Revocation, and Amendment.*

12.4.1 Each and every provision of this Declaration shall run with and bind the land perpetually from the date of Recording of this Declaration. Except as otherwise provided in this Declaration, this Declaration may be amended by the affirmative vote or agreement of Owners owning at least sixty-seven percent (67%) of the Lots; provided, however, prior to the termination of the Declarant's right to exercise the Use Rights as provided in Section 1.25, no amendment of this Declaration shall be effective without the prior written approval of the Declarant. Further, amendments shall be applicable only to disputes, issues, circumstances, events, claims or causes of action that arose out of circumstances or events that occurred after the Recording of such amendment; and no amendment shall be applied retroactively to any earlier occurring disputes, issues, events, circumstances, actions, claims or causes of action.

12.4.2 Notwithstanding anything to the contrary, any of the Governing Documents may be amended, in whole or in part, by the Declarant without the consent or approval of any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, including the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, and the federal national mortgage association. Such right of amendment shall terminate automatically upon the termination of the Declarant's right to exercise the Use Rights as provided in Section 1.25 of this Declaration.

12.4.3 Notwithstanding anything to the contrary, any of the Governing Documents, or any map or plat, may be amended in whole or in part, by the Declarant without the consent or approval of any other Person in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically upon the termination of the Declarant's right to exercise the Use Rights as provided in Section 1.25 of this Declaration.

12.4.4 Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, Recorded, and certified by any officer of the District designated for that purpose. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the District has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration may be signed by the Declarant and shall require no other signatory.

Section 12.5 *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the District, and all statements, demands and other notices intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest shall, subject to Section 2.6 of this Declaration (Authenticated Electronic Representation), 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 District of a registered address, then any statement, demand or other notice may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All statements, demands, or other notices intended to be served upon the Board of Directors also shall be sent by U.S. mail, postage prepaid, to the Declarant if the Declarant then owns any portion of the Property at its registered address.

Section 12.6 *Limitation on Liability.*

The Declarant, any Builder, the District, the ARC, and their respective directors, officers, shareholders, members, managers, partners, agents and employees, shall not be liable to any Person for any action or for any failure to act arising out of any of the Governing Documents, unless the action or failure to act was not in good faith and was done or withheld with malice. Further, the District does not waive, and no provision of this Declaration shall be deemed a waiver of, the immunities and limitations to which the District is entitled as a matter of law, including the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S., as amended. The release and waiver set forth in Section 12.10 (Waiver) shall apply to this Section.

Section 12.7 *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, any Builder, the District, the Board of Directors, the ARC, or their respective owners, officers, directors, members, managers, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, 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 shall be specifically set forth in writing. The release and waiver set forth in Section 12.10 (Waiver) shall apply to this Section.

Section 12.8 *Disclaimer Regarding Safety.*

THE DECLARANT, EACH BUILDER, THE DISTRICT, THE BOARD OF DIRECTORS, THE ARC, THE ENFORCEMENT COMMITTEE, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, OWNERS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, EACH BUILDER, THE BOARD OF DIRECTORS, THE ARC, AND THEIR

RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE GOVERNING DOCUMENTS, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 12.10 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 12.9 *Development Within and Surrounding the Community.*

Each Owner acknowledges that development within and surrounding the Community 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 Community, views of or from the Community or the Lots, 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, each Owner waives and releases any claim against the Declarant, any Builder, the District, the Board of Directors, the ARC, and their respective owners, officers, directors, members, managers, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 12.10 (Waiver) shall apply to this Section.

Section 12.10 *Waiver.*

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges Declarant, each Builder, the District, the Board of Directors, the ARC, and their respective owners, officers, directors, members, managers, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including those contained in Sections 12.6, 12.7, 12.8 and 12.9.

Section 12.11 *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 12.12 *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 12.13 Use of “Include,” “Includes” and “Including”.

All uses in the Governing Documents of the words “include,” “includes” and “including” shall be deemed to include the words “**without limitation**” immediately thereafter.

Section 12.14 Action.

Any action that has been or may be taken by the Declarant, the District, a Builder, the Board, the ARC, any Member, any director, any 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 12.15 Sole Discretion.

All actions which are taken by the Declarant, the District, a Builder, the Board, the ARC, any Member, any director, any committee, or any other Person, shall be deemed to be taken “**in the sole discretion**” of each of such parties.

Section 12.16 Run with Land; Binding Upon Successors.

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

ARTICLE 13. DISCLOSURES.

Section 13.1 Berkley Shores Metropolitan District.

13.1.1 The District is a unit of government formed pursuant to Colorado Revised Statutes Title 32, Article 1. Specifically, the District is a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized and existing as a metropolitan district under the constitution and laws of the State of Colorado. **It is extremely important for Buyer to understand how metropolitan districts, such as the District, operate and their powers. Seller hereby advises Buyer to obtain legal counsel or other professional advice concerning the operation and powers of the District.**

13.1.2 **THE DISTRICT IS NOT A HOMEOWNER’S ASSOCIATION. THE TAXES, FEES, RATES, TOLLS, PENALTIES AND CHARGES LEVIED OR IMPOSED BY THE DISTRICT ARE NOT HOMEOWNER ASSOCIATION DUES OR ASSESSMENTS.**

13.1.3 The District operates pursuant to its Service Plan (the “**Service Plan**”), which was approved by the Adams County Board of County Commissioners. Pursuant to the Service Plan, the District has the power to issue bonds in an amount not exceeding the maximum amount of bonds authorized in the Service Plan. If the maximum amount of bonds have not been issued by the District as of the date of Recording of this Declaration, the Board of the District may cause the District to issue more bonds, up to the maximum amount allowed pursuant to the Service Plan. Interest on the bonds and the principal amount of the bonds is payable from property taxes collected by the District from Owners of the Lots, from fees imposed and collected by the District and from other legally available revenues of the District. The Board of County Commissioners has the legal power to approve changes to the Service Plan.

13.1.4 The District has the power to impose and collect property taxes against the Lots, as more fully described in the Service Plan for the District. The Service Plan for the District was approved by the Board of County Commissioners of the County. The Board of County Commissioners has the legal power to approve changes to the Service Plan.

13.1.5 Pursuant to the Service Plan, the District is authorized to construct and maintain the streets, alleys, curbs, gutters and sidewalks within the Property, except that streets may, after construction, be dedicated to the County and after acceptance of such dedication by the County, the County will be responsible for maintenance of such streets (“County Maintained Streets”). It is anticipated that 63rd Avenue will be a County Maintained Street, but 63rd Avenue will not become a County Maintained Street if the County does not accept dedication of 63rd Avenue; other streets could become County Maintained Streets if the County accepts dedication; all streets and alleys in the Community for which the County does not accept a dedication will be owned and maintained by the District.

13.1.6 The District is governed by a Board of Directors consisting of five (5) directors. The Board of Directors are elected by owners of property located within the District.

Section 13.2 *Water and Sanitary Sewer Service.*

13.2.1 Water and sanitary sewer service to the Community is provided by the Crestview Water and Sanitation District (“**Crestview**”), which is a Colorado public body. Crestview sets the rates for water and sanitary sewer service.

13.2.2 The District does not provide water and/or sanitary sewer service and is not responsible for the quality and quantity of water provided. The District does not set rates for water and sanitary sewer service.

Section 13.3 *Lake Access.*

The Property includes a small body of water (the “*Lake*”) that is located south of the residences in the Community. The Lake will be owned by the District and there is no assurance that the District will permit use of the Lake for recreational activities or for any other purpose, nor is there any assurance that if such permission is granted, the District will not discontinue such permission to use the Lake at a later time. Until and unless authorized by the District, use of the Lake for recreational purposes is not permitted. Without limitation, (i) use of the lake for ice skating or other winter recreational activities, and (ii) use on the lake of motorized vehicles, watercraft, and other devices, such as, without limitation, jet skis and powerboats, is not permitted. In addition, by accepting a deed to a Lot, the Owner of such Lot acknowledges and understands that owners of homes located to the south of the Lake, in the Aloha Beach subdivision, may or may not have, or may be granted by the Declarant, the right to a pedestrian walk way around the Lake.

Section 13.4 *No Liability for Condition of the Property/Nuisances/Hazards Associated with Adjacent Lands.*

By accepting a deed to a Lot, or any portion thereof, each Owner acknowledges that the Lot may be located adjacent to or in relatively close proximity to property utilized for commercial and other non-residential uses (collectively the “**Adjacent Properties**”); commercial and retail uses may or may not exist now or in the future, and there is no assurance that any particular commercial or retail use (for example, without limitation, a grocery store, coffee shop or church) presently or in the future will exist in the vicinity of the Community, and further the Lot 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) risks that an Owner’s use and enjoyment of his/her residence may be subject to or impacted by matters associated with commercial and retail uses, such as, without limitation: (A) higher traffic volume, both vehicular and pedestrian; (B) frequent deliveries, including deliveries by truck, and deliveries occurring during the evening and early morning hours; (C) increased levels of activity, noise, light and similar impacts; (D) limited on-street parking availability; and (E) security issues; (ii) expansive soils conditions and drainage issues on or under the Property and (iii) 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 Declarant and the District shall have no liability for any personal injury or property damage resulting from the Property Risks. By accepting a deed to a Lot, each Owner for him/herself and his/her 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 Permittee from injury or damage to property or person resulting from the Property Risks; (iii) releases and holds harmless the Declarant and the District 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 the Declarant

and/or the 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 Declarant and the District from and against any claims, actions, suits, demands and compensations, either at law or in equity, brought against or incurred by the Declarant or the District for or on account of any damage, loss, or injury either to person or property, or both, resulting directly or indirectly from the Declarant or the District.

Section 13.5 *Land Use Documents.*

The Property is being developed in accordance with the land use regulations of the County. The 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. The Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the Property 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 13.6 *Future Development and Views.*

By accepting a deed to a Lot, each Owner acknowledges 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 nonresidential and residential uses, road construction, tree growth and landscaping. Neither the Declarant nor the District guarantee or represent that any view over and across the Lots 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. The 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. The Declarant and/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 the Declarant nor the District assumes 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 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, 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, and waives and releases any claim against the Declarant or the District arising out of or associated with any of the foregoing.

Section 13.7 *Separate Ownership of Surface and Subsurface Rights.*

Ownership of subsurface rights, including mineral rights, oil, gas, and other hydrocarbons, underlying the Property may be 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 13.8 *Safety and Security.*

Each Owner and Permittee is responsible for their own personal safety and the security of their property in the Property. The District 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. Neither the Declarant nor the District shall in any way be considered insurers or guarantors of safety or security within the Property, nor be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Section 13.9 *Disruption from Development and Construction.*

Each Owner agrees that there are inconveniences which will accompany the construction of Improvements within the Property, 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 accepting a deed to a Lot, waives and releases any claim against the Declarant and the District associated with the inconveniences, nuisance and hazards associated with such construction.

Section 13.10 *Noise Transmission.*

By accepting a deed to a Lot, each Owner acknowledges that: (i) in close living situations, such as in townhomes, one commonly hears noises from other homes or outside noises; (ii) sound tends to carry through pipes, air-conditioning, heating, wood studs and flooring; (iii) perceptions of sound is highly subjective and variable; (iv) the Community is located near public and private streets so that Owners may hear the noise generated thereby; (v) Owners may hear noise from commercial and retail uses located nearby; (vi) some or all residences in the Community may have some tile or other hard flooring which transmits more impact noise than a carpeted floor; and (vii) even with sound insulation, Owners will hear certain noises from adjoining residences, including, without limitation, the sound of plumbing, televisions, stereos and impact sounds (like footfalls). **Residences in the Community are not “soundproof.”** By accepting a deed to a Lot, each Owner waives and releases any claim against the Declarant and the District from any and all claims arising from or related to the transmission of noise.

Section 13.11 *Soils.*

Soils within Colorado consist of both expansive soils and low density soils which may result in some degree of shifting or other movement of the foundation or otherwise result in damage to the

structural or other parts of residences in the Community. By accepting a deed to a Lot, each Owner waives and releases any claim against the Declarant and the District arising from the soil conditions of such Owner's Lot and the foundation design and floor slabs and footings installed thereon.

Section 13.12 *NORM.*

The Colorado Department of Health and the United States Environmental Protection Agency have detected elevated levels of naturally occurring radon gas in certain residences throughout Colorado. These agencies have expressed concern that prolonged exposure to high levels of radon gas may result in adverse effects on human health. By accepting a deed to a Lot, each Owner waives and releases any claim against the Declarant and the District arising from the presence or absence of radon gas.

Section 13.13 *Electric Transmission Lines.*

There are high voltage overhead electric transmission lines adjacent to or near the Community. Electric transmission lines cause electric fields and magnetic fields, commonly referred to as electromagnetic fields ("EMF"). Neither the District nor the Declarant owns the electric transmission lines, and they have no control over the operation of the lines, the flow of electricity, the locations of the lines or the EMFs they cause. By accepting a deed to a Lot, each Owner waives and releases any claim against the District and the Declarant for personal injury, property damage or death, arising from or associated with the existence of EMFs or other effects of electrical transmission lines, known or unknown.

Section 13.14 *Mold.*

Certain types of mold and fungus have been discovered in residences in Colorado. Such organisms may or may not be toxic, and may have different adverse health effects. Typically, mold and fungus result from, or are caused by, the accumulation of water, condensation or moisture. By accepting a deed to a Lot, each Owner acknowledges that mold and fungus and their growth can be caused by both natural and unnatural conditions throughout a building or the Community, and may be introduced through soils, building materials, or other sources over which the Declarant has no control. The Declarant makes no representation or warranty, express or implied, concerning whether mold or fungus is present, or is likely to develop for any reason at the Community. By accepting a deed to a Lot, each Owner waives and releases any claim against the Declarant and the District arising from the presence or development of mold or fungus at the Community, irrespective of cause or source.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 9TH day of SEPTEMBER, 2020.

DECLARANT:

HDC 6300 LOWELL BOULEVARD, LLLP, a Colorado limited liability limited partnership

By: 
Name: Paul Malone
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 9th day of September, 2020 by PAUL MALONE as MANAGER of HDC 6300 Lowell Boulevard, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.
My Commission Expires: 10/15/2023

(SEAL)


Notary Public

BOBBIE BRICENO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194039307
MY COMMISSION EXPIRES 10/15/2023

CONSENT OF DISTRICT

The undersigned, Berkley Shores Metropolitan District, hereby consents to the foregoing Declaration of Covenants, Conditions and Restrictions of Berkley Shores.

THE DISTRICT:

Berkley Shores Metropolitan District,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Name: Paul Malone
Title: President

Attest: _____
Secretary

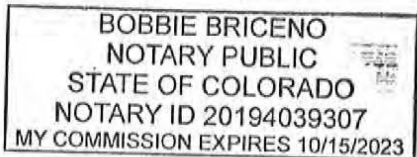
STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 9th day of September, 2020 by Paul Malone as PRESIDENT of Berkley Shores Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

(S E A L)

Notary Public Bobbie Briceno
My Commission Expires: 10/15/2023



LENDER CONSENT

The undersigned, the beneficiary under that certain Deed of Trust and Security Agreement dated November 15, 2019, and recorded November 18, 2019 at Reception No. 2019000100025 in the office of the Clerk and Recorder for the County of Adams, Colorado, as the same may be amended or supplemented from time to time (collectively, the "**Deed of Trust**"), and is the secured party under that certain Colorado UCC-1 Financing Statement recorded n/a at Reception No. n/a in the office of the Clerk and Recorder for the County of Adams, Colorado, as the same may be amended or supplemented from time to time (collectively, the "**Financing Statement**"), and is the lender under that certain Assignment of Rents and Other Rights recorded November 18, 2019 at Reception No. 2019000100026 in the office of the Clerk and Recorder for the County of Adams, Colorado (the "**Assignment of Rents**") which Deed of Trust, Financing Statement and Assignment of Rents encumber a portion of the Property subject to this Declaration, hereby consents to and approves, but does not subordinate its lien or any rights or interests in the Property to, the Declaration; provided that the Declaration shall not be extinguished, limited or affected to any extent by any foreclosure of the Deed of Trust.

MOUNTAIN WEST REIT, LLC
a Delaware limited liability company

By: [Signature]
Name: ANDREW MENLOVE
Title: AUTHORIZED AGENT

STATE OF ~~COLORADO~~ Nevada)
) ss.
COUNTY OF Clark)

The foregoing instrument was acknowledged before me this 2nd day of September, 2020, by Andrew Menlove, as Authorized Agent of MOUNTAIN WEST REIT, LLC, a Delaware limited liability company.

Witness my hand and official seal.
My commission expires: 8/8/2021

[Signature]
Notary Public



**EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF BERKLEY SHORES**

Lots 1-52, inclusive, Block 1
Lots 53-89, inclusive, Block 2
Lots G-1 – G-12, inclusive, Block 2
Berkley Shores
Adams County, Colorado

**EXHIBIT B
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF BERKLEY SHORES**

(Tracts owned or to be owned by District)

Tracts A, B, C, D, E, I, J, K, L, M, N, O, P, Q, and R
Berkley Shores,
Adams County, Colorado