

After recording, return to:
Rebecca W. Dow, Esq.
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, Colorado 80202

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
WHISPERING PINES**

ARAPAHOE COUNTY, COLORADO

75821492



TABLE OF CONTENTS

1. **DEFINITIONS**..... 1

 1.1 **General**..... 1

 1.2 **Builder**..... 1

 1.3 **City**..... 2

 1.4 **Community** 2

 1.5 **Covenant Enforcement Committee**..... 2

 1.6 **Declarant**..... 2

 1.7 **Declaration**..... 2

 1.8 **Design Review Committee** 2

 1.9 **Development Period**..... 2

 1.10 **Fines**..... 2

 1.11 **Governmental Mortgage Agencies** 2

 1.12 **HUD**..... 2

 1.13 **Improvements** 2

 1.14 **Lot or Lots**..... 3

 1.15 **Metropolitan District**..... 3

 1.16 **Metropolitan District Property**..... 3

 1.17 **Mortgage**..... 3

 1.18 **Mortgagee** 3

 1.19 **Mortgagor** 3

 1.20 **Owner or Lot Owner**..... 3

 1.21 **Person**..... 3

 1.22 **Planned Development Documents**..... 4

 1.23 **Plat** 4

 1.24 **Property**..... 4

 1.25 **Purchaser**..... 4

 1.26 **Records** 4

 1.27 **Residence** 4

 1.28 **Restrictions** 4

 1.29 **Rules and Regulations**..... 4

 1.30 **Special Declarant Rights**..... 4

2. **DEVELOPMENT OF THE PROPERTY**..... 4

 2.1 **Subdivision and Development by Declarant**..... 4

 2.2 **Conveyance and Acceptance of Metropolitan District Property** 5

 2.3 **Merger**..... 5

 2.4 **No Annexation Required; Contraction of Property** 5

3. **COMMUNITY** 5

 3.1 **Name**..... 5

 3.2 **Community** 5

 3.3 **County**..... 5

 3.4 **Legal Description**..... 5

 3.5 **Boundaries of Units** 6

4.	METROPOLITAN DISTRICT.	6
4.1	Powers and Authority	6
4.2	Cooperation with the Metropolitan District.	6
5.	MAINTENANCE.	6
5.1	Lots and Metropolitan District Property	6
5.2	Metropolitan District's Right to Perform Work.	6
5.3	Metropolitan District's Easement to Perform Work.	7
5.4	Perimeter Fencing	7
5.5	Damage by Owner	7
6.	DESIGN REVIEW COMMITTEE.	7
6.1	Committee and Design Guidelines	7
6.2	Landscaping Responsibilities.	8
6.3	DRC Membership and Organization	9
6.4	Purpose and General Authority.	9
6.5	DRC Approval	9
6.6	Notice of Completion.	10
6.7	Inspection of the Work.	10
6.8	Notice of Noncompliance	10
6.9	Discretion and Variances	10
6.10	Changes to Approved Plans	11
6.11	Binding Effect.	11
6.12	Expenses and Fees	11
6.13	Limitation of Liability.	11
6.14	Enforcement.	12
6.15	Access Easement.	13
6.16	Exemption for Declarant and Builder	13
7.	COVENANT ENFORCEMENT COMMITTEE.	13
7.1	Committee.	13
7.2	CEC Membership and Organization.	13
7.3	Purpose and General Authority.	13
7.4	Expenses	13
7.5	Enforcement.	14
8.	USE RESTRICTIONS.	15
8.1	General Restriction	15
8.2	Use of Lots	15
8.3	Declarant's and Builder's Use	15
8.4	Household Pets.	16
8.5	Temporary Structures; Unsightly Conditions	16
8.6	Miscellaneous Improvements	16
8.7	Vehicular Parking, Storage and Repairs	17
8.8	Unsightly Articles	18
8.9	Nuisances	18
8.10	No Hazardous Activities; No Hazardous Materials or Chemicals.	18

8.11	Violation of Restrictions.....	18
8.12	Lights and Noise.....	19
8.13	Restrictions on Trash and Materials; Trash Collection.....	19
8.14	Minor Violations of Setback Restrictions.....	19
8.15	Conditions for Design Control.....	19
8.16	Lots to be Maintained.....	19
8.17	Leases.....	19
8.18	Assignment by Declarant/Transfer of Rights.....	20
8.19	Covenants Run with Land.....	20
8.20	Maintenance of Grade and Drainage.....	20
8.21	Subdivision of Lots or Lot Line Adjustments.....	20
8.22	Encroachments.....	20
8.23	Emergency Access Easement.....	20
8.24	Sidewalks.....	20
8.25	Parking Restrictions; Use of Garage.....	21
8.26	Damage or Destruction.....	21
8.27	Rules and Regulations.....	21
8.28	Easement Areas.....	21
9.	DRAINAGE AND SOILS CONDITIONS.	21
9.1	Acknowledgment.....	21
9.2	Moisture.....	21
9.3	Water Flow.....	22
9.4	Actions by Owners.....	22
9.5	Radon Gas.....	23
10.	SPECIAL DECLARANT RIGHTS.	23
10.1	Special Declarant Rights.....	23
10.2	Additional Reserved Rights.....	24
10.3	Utilities Easement.....	25
10.4	Withdrawal of Property From Declaration.....	25
10.5	Rights Transferable.....	25
11.	PARTY WALLS.	25
11.1	General Rules of Law to Apply.....	25
11.2	Sharing of Repair and Maintenance.....	26
11.3	Destruction by Fire or Other Casualty.....	26
11.4	Damage and Repair.....	26
11.5	Right to Contribution Runs with Unit.....	26
11.6	Arbitration.....	26
12.	MISCELLANEOUS PROVISIONS.	26
12.1	Enforcement.....	26
12.2	Severability.....	27
12.3	Duration.....	27
12.4	Amendment.....	27
12.5	Waiver.....	27

12.6	Limited Liability.....	27
12.7	Retention Ponds and Detention Ponds.....	27
12.8	Disclaimer Regarding Safety.....	28
12.9	No Representations, Guaranties or Warranties.....	28
12.10	Waiver.....	28
12.11	Arbitration of Disputes.....	28
12.12	WAIVER OF TRIAL TO A JURY OR TRIAL TO A JUDGE.....	29
12.13	No Presumption of Unobserved Construction Defects.....	29
12.14	Rights and Remedies.....	30
12.15	Run with Land; Binding Upon Successors.....	30
12.16	Acknowledgment of Inconvenience.....	30

Exhibit A – Legal Description of the Property

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
WHISPERING PINES**

This Declaration of Covenants, Conditions and Restrictions for Whispering Pines (this "Declaration") is made by The Ryland Group, Inc., a Maryland corporation (the "Declarant").

RECITALS

A. Declarant owns that real property described on Exhibit A, attached and incorporated by reference (as more particularly defined below, the "Property").

B. The community created by this Declaration is exempt from the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq.* because there is no mandatory association or assessments created under this Declaration.

C. Pursuant to C.R.S. § 32-1-1004, the Declarant, in imposing this Declaration on the Property, intends to empower the Whispering Pines Metropolitan District No. 1, a body politic and political subdivision of the State of Colorado, that governs the Property (the "Metropolitan District"), to furnish covenant enforcement and design review services in the Property and to use revenues therefor that are derived from the Property.

D. Declarant now desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property is hereby made subject to this Declaration and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained and altered subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations liabilities, and other provisions.

1. **DEFINITIONS.**

1.1 **General.** The following Sections define words and phrases which, as used in this Declaration, have the meaning set forth below. Other terms in this Declaration may be defined in specific provisions of the Declaration and shall have the meaning assigned by such definition. Defined words and phrases are indicated in this Declaration by capitalizing the first letter of a defined word or of each word in a defined phrase.

1.2 **Builder.** "Builder" shall mean and refer to a party that acquires a vacant portion of the Property for purposes of constructing residential structures or other structures or Improvements on such Lot that has been designated by Declarant as a Builder in a document recorded in the Records.

1.3 City. "City" means the City of Aurora, Colorado.

1.4 Community. "Community" means, at any time, the Property.

1.5 Covenant Enforcement Committee. "Covenant Enforcement Committee" or "CEC" means the committee established by the Metropolitan District for the purposes set forth in Article 7 and any other applicable provisions of this Declaration.

1.6 Declarant. "Declarant" means The Ryland Group, Inc., a Maryland corporation, and any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

1.7 Declaration. "Declaration" means this Declaration, together with any amendments or supplements to this Declaration.

1.8 Design Review Committee. "Design Review Committee" or "DRC" means the committee established by the Metropolitan District for the purposes set forth in Article 6 and any other applicable provisions of this Declaration.

1.9 Development Period. "Development Period" means the period of time beginning upon the date of recording of this Declaration in the Records and expiring twenty (20) years after recording of this Declaration.

1.10 Fines. "Fines" means any monetary penalty imposed by the Metropolitan District against a Lot Owner of a portion of the Property due to a violation of this Declaration or the Rules and Regulations by such Lot Owner, a member of the Lot Owner's family or a tenant or guest of the Lot Owner or a member of the family of a tenant of a Lot Owner.

1.11 Governmental Mortgage Agencies. "Government Mortgage Agencies" means the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase Mortgage loans.

1.12 HUD. "HUD" means the United States Department of Housing and Urban Development.

1.13 Improvements. "Improvements" means the following located or occurring on any portion of the Community: Residences, buildings, structures, pools, trampolines, basketball backboards, outdoor play structures, gazebos, hot tubs, tree houses, fences, walls, hedges, plantings, landscaping, "yard art" (including, without limitation, all statues, decorative pieces and other pieces of art located in the yard area of any Lot which are intended to remain in place longer than typical holiday period decorations; holiday period decorations which are in place for less than six weeks are specifically excluded from this definition of Improvements), lighting, poles, driveways, parking areas, sidewalks, patios, decks, signs, changes in any exterior color or shape, excavation and site work, removal of trees or plantings, and any new exterior construction or exterior improvement on a Lot which may not be included in the foregoing. The term

“Improvements” includes both original improvements and all later changes and improvements on a Lot.

1.14 Lot or Lots. “Lot” or “Lots” means a physical portion of the Property which is designated for separate ownership or occupancy, and the boundaries and identifying number of which are described in or determined from the Plat. As used herein, the definition of a Lot shall include a lot or other portion of the Property designated for separate fee ownership other than property owned by the Metropolitan District or other governmental entity.

1.15 Metropolitan District. “Metropolitan District” means the Whispering Pines Metropolitan District No. 1 its governing board and/or any other association or governmental entity, to whom the Metropolitan District may, from time to time, transfer or assign any or all of the rights and duties of the Metropolitan District under this Declaration. Each such assignment or transfer, if any, shall be effective upon recording in the Records a document of transfer or assignment, duly executed by the then Metropolitan District.

1.16 Metropolitan District Property. “Metropolitan District Property” means any real property within the Community now or hereafter owned or leased by the Metropolitan District, together with all landscaping improvements, trails, open space, irrigation systems, entry monuments and other improvements now or hereafter located on such Metropolitan District Property.

1.17 Mortgage. “Mortgage” means any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term “Deed of Trust” when used herein shall be synonymous with the term “Mortgage.” “First Mortgage” means a Mortgage which has priority over all other security interests in a Lot, other than statutory liens for taxes and special assessments, and shall include an executory land sales contract wherein the Administrator of Veterans Affairs (the “Veterans Administration”) is the seller, whether such contract is owned by the Veterans Administration or its assigns, and whether recorded or not.

1.18 Mortgagee. “Mortgagee” means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee. “First Mortgagee” means any Person named as the mortgagee or beneficiary under any First Mortgage, or any insurer or guarantor of a First Mortgage, including the Veterans Administration.

1.19 Mortgagor. “Mortgagor” means the Person who mortgages any portion of the Property to another (i.e., the maker or grantor of a Mortgage). The term “Mortgagor” shall include a trustor or grantor under a Deed of Trust.

1.20 Owner or Lot Owner. “Owner” or “Lot Owner” means the Declarant or other Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation.

1.21 Person. “Person” means any natural person, corporation, partnership, limited liability company, governmental entity, association, trust, or any other entity or combination thereof.

1.22 **Planned Development Documents.** "Planned Development Documents" means the final documents on file with the City related to the development of the Property, including, but not necessarily limited to, the Framework Development Plan, the Plat, construction drawings, utility plans, engineering plans, drainage plans, and subdivision or development improvements agreements.

1.23 **Plat.** "Plat" or "Plats" mean collectively the plats of the Property entitled Whispering Pines Subdivision Filing Nos. 1 through 4, recorded in the Records, and all recorded amendments, corrections and replats, together with any subsequently recorded plats of the Property or other real estate which becomes part of the Property.

1.24 **Property.** "Property" means and refers to the real property which is owned by the Declarant as described on Exhibit A attached hereto, or any portion thereof.

1.25 **Purchaser.** "Purchaser" means a Person, other than the Declarant and other than a Builder, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

(a) A leasehold interest in a Lot of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

(b) A party holding a security interest on any portion of the Property.

1.26 **Records.** "Records" means the official real property records of Arapahoe County, Colorado.

1.27 **Residence.** "Residence" means a single-family residential dwelling constructed within the Community, specifically including, but not limited to, a detached home, an attached home, or other multi-family home.

1.28 **Restrictions.** "Restrictions" means (i) this Declaration as amended from time to time, and (ii) the "Rules and Regulations" from time to time in effect.

1.29 **Rules and Regulations.** "Rules and Regulations" means any instruments, however denominated, which are adopted by the Metropolitan District for the regulation and management of the Community, including any amendment to those instruments. The term "Rules and Regulations" specifically includes the Metropolitan District's Design Guidelines.

1.30 **Special Declarant Rights.** "Special Declarant Rights" means rights which Declarant has the right to exercise as enumerated in this Declaration.

2. **DEVELOPMENT OF THE PROPERTY.**

2.1 **Subdivision and Development by Declarant.** Declarant has designated or intends to designate all or a portion of the Property into Lots for single-family residential development and/or multi-family residential development, and related uses. The intended development of, and restrictions upon, each portion of the Property is intended to benefit each other portion and the whole thereof.

2.2 Conveyance and Acceptance of Metropolitan District Property. Declarant expressly reserves the right in the course of planning the Community to convey to the Metropolitan District certain areas which may include open space, parks, recreational facilities, sidewalks, bridges, tree lawns, fences, roads and drainage ways, detention facilities, sanitary sewer facilities, stormwater outfall facilities, and/or other property or facilities which are deemed by Declarant to be most suitable for ownership, maintenance and administration by the Metropolitan District. The Declarant contemplates that ownership and maintenance of certain open space, parks, sidewalks and roads may be assumed by the Metropolitan District or other governmental entity. Conveyance of real property from the Declarant, a Builder or other Owner to the Metropolitan District shall be made by a separate conveyance deed whereby the Metropolitan District shall accept such real property and all duties and responsibilities provided and assumed by the Metropolitan District in this Declaration.

2.3 Merger. The properties, rights and obligations of the Metropolitan District may, by operation of law, be transferred to another surviving governmental entity or consolidated association similar in nature and purposes. The surviving governmental entity or consolidated association may administer the covenants and restrictions established upon any other basis as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Project except as hereinafter provided.

2.4 No Annexation Required; Contraction of Property. Notwithstanding any other provision of this Declaration to the contrary, nothing in this Declaration shall be construed to obligate the Declarant to make any property other than the Property subject to this Declaration. Declarant expressly reserves the right, in its sole discretion, from time to time to remove or withdraw any portion of the Property effective upon the recordation of a written instrument, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion shall thereafter be withdrawn from the Property under this Declaration. The recording of any such written instrument and the withdrawal of any portion of the Property shall not require the consent or ratification of any Lot Owner or other owner of any portion of the Property other than the Declarant, but shall require the written consent of the owner of the portion of the Property being withdrawn if, at the time such portion of the Property then being withdrawn from the Property, it is not then owned by the Declarant.

3. COMMUNITY.

3.1 Name. The name of this Community is Whispering Pines.

3.2 Community. The Community may include single family detached Residences, attached duplex Residences, and multi-family housing, such as townhomes, Metropolitan District Property, and other related uses.

3.3 County. The Community is situated in Arapahoe County, Colorado.

3.4 Legal Description. The legal description of the Property that has been made subject to this Declaration and included in the Community is set forth in attached Exhibit A or will be set forth on the Plat(s), as amended.

3.5 Boundaries of Lots. The boundaries and identifying number of each existing Lot are or will be set forth in the Plat(s), as amended.

4. METROPOLITAN DISTRICT.

4.1 Powers and Authority. The Metropolitan District shall have and may exercise with regard to the community all powers and authority reasonably necessary to administer its rights and duties under this Declaration (specifically including without limitation: (i) the power to adopt and amend budgets for revenues, expenditures, and reserves and collect taxes and fees for expenses from the Owners of Lots within the Community to administer its duties and obligations provided in Articles 5, 6 and 7 of this Declaration; (ii) the power to manage and enforce the Restrictions provided herein; (iii) the power to contract with a third-party property manager for the management of the Community and/or for all other duties and responsibilities of the Metropolitan District as provided herein related to the overall operation of the Community; and (iv) all other rights, powers and authority necessary to enforce this Declaration for the benefit of the Community). The Metropolitan District may adopt Rules and Regulations. Additionally, the Metropolitan District, acting through its governing board, shall have the power to levy reasonable fees, Fines and penalties for violations of any provision of this Declaration and Rules and Regulations. The remedies for collection of any such fees, Fines and penalties shall be as provided in Article 6 below.

4.2 Cooperation with the Metropolitan District. The Metropolitan District shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any community associations, and/or any other districts.

5. MAINTENANCE.

5.1 Lots and Metropolitan District Property. Subject to the Section 5.2 provisions below regarding Metropolitan District services, each Owner shall maintain, keep in good repair and replace as necessary all Improvements on the Owner's Lot. Such maintenance and repair shall be performed in a manner considered acceptable to the Metropolitan District and/or the Design Review Committee, and in a manner which complies with this Declaration and the Metropolitan District's Rules and Regulations. The Metropolitan District shall be responsible for maintaining, repairing and replacing all Improvements on the Metropolitan District Property.

5.2 Metropolitan District's Right to Perform Work. In the event any Lot Owner fails to satisfactorily perform any maintenance, repair or replacement obligations of such Lot Owner, the Metropolitan District may give written notice to the Lot Owner of the work required to be performed, and, if such failure to perform the work continues for a period of thirty (30) days after such notice has been given, the Metropolitan District may enter upon the Lot and perform the necessary maintenance, repairs or replacements. The cost of any such maintenance, repair or replacement shall be the obligation of the Lot Owner and shall be added to and become a part of the fee to which the Lot is subject and the Metropolitan District shall have a lien to secure such fee as provided by this Declaration. Such fees shall be payable by the Lot Owner upon demand by the Metropolitan District.

5.3 Metropolitan District's Easement to Perform Work. The Metropolitan District shall have an easement over, across and upon each Lot (and to the extent necessary, any Improvements on such Lot, excluding the interior of any Improvements) permitting the Metropolitan District, its agents, employees and independent contractors to enter upon the Lot as reasonably necessary and with reasonable notice in order to perform the work to be performed on the Lot by the Metropolitan District pursuant to the Declaration. All persons performing such work shall use their best efforts to minimize interference with the Lot Owners' use and enjoyment of the Lot when performing such work.

5.4 Perimeter Fencing. The Metropolitan District, Declarant and/or Builders may install perimeter fencing along exterior portions of the Property. Perimeter fencing will be constructed pursuant to applicable governmental requirements, in accordance with the Planned Development Documents and the Guidelines, as defined below. Some portions of such fencing may be constructed on Lot lines, and other portions may be constructed adjacent to said Lots. In addition, Owners of Lots with perimeter fencing shall be responsible for maintaining the portion of said fence that faces the Owner's Lot, to the extent such Owner is also responsible for landscaping and maintaining its Lot. Owners of Lots adjacent to South Sampson Gulch way shall be required to comply with requirements of the City code restriction the ability to build a fence along that street or the types and sizes of fences that can be built along that street. The Metropolitan District shall be responsible for maintaining any perimeter fencing located on Metropolitan District Property.

5.5 Damage by Owner. Notwithstanding anything to the contrary contained in this Declaration, in the event the need for the Metropolitan District to maintain, repair or replace any portion of the Metropolitan District Property is caused by the willful act, negligence or other misconduct of an Owner, or a member of such Owner's family or a guest, invitee or tenant of an Owner, or a member of such tenant's family, the cost of such repair, replacement or maintenance shall be the personal obligation of such Owner, and the costs, expenses and fees incurred by the Metropolitan District for the same shall be levied to such Owner as part of such Owner's taxes and fees to be collected by the Metropolitan District. The Metropolitan District shall have a lien against such Owner's Lot to secure such taxes and fees.

6. DESIGN REVIEW COMMITTEE.

6.1 Committee and Design Guidelines. There is hereby established a Design Review Committee, which members shall be appointed by the governing board of the Metropolitan District, which shall be responsible for the ministerial administration and application of the Design Guidelines (the "Guidelines") consistently among the Lots to facilitate the purposes and intent of this Declaration. The Guidelines shall be prepared and adopted by the Metropolitan District and administered by the DRC and the Metropolitan District, as necessary. The Metropolitan District may promulgate, amend, vary, repeal and augment the Guidelines from time to time, in its sole discretion (with the input of the DRC) based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of the Community, or other factors considered necessary or desirable to fulfill the intent of the Guidelines. The Guidelines shall be binding on all Lots within the Community as to the location, dimensions and appearance or screening of any Improvements allowed pursuant to this Declaration. In the event

of any conflict between the Guidelines and this Declaration, the Declaration shall control. The Guidelines may include, among other things, those restrictions and limitations set forth below:

- (a) Standards establishing an architectural theme and requirements pertaining to building style and design, construction materials and site planning.
- (b) Procedures for making application to the DRC for approval, including the documents to be submitted and the time limits in which the DRC must act to approve or disapprove any submission.
- (c) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Guidelines.
- (d) Designation of building setbacks.
- (e) Minimum and maximum square foot areas of living space that may be developed on any Lot.
- (f) Limitations on the height of any Residence or other Improvement
- (g) Landscaping regulations.
- (h) General instructions for the construction, reconstruction, refinishing or alteration of any Improvement.
- (i) Rules for constructions activities, as well as maintaining construction sites and adjacent areas.

6.2 Landscaping Responsibilities.

(a) To the extent landscaping has not been installed by Declarant or a Builder, the Lot Owner (other than Declarant and Builder) of each Lot shall, within the time frames as hereinafter provided, install landscaping on all of the Lot which is not covered by a building or building Improvement. As more fully provided in the Guidelines, the owner of each Lot (other than Declarant and Builder) shall install landscaping on such Lot within ninety (90) days after closing of acquisition of such Lot ("Closing") by such Owner if such Closing occurs between March 31 and September 1 of any year and ninety (90) days after the April 1 immediately following Closing if such Closing occurs between September 1 and March 31 of any year (e.g., if Closing occurs on March 31, the ninety (90) day period shall commence running the following day, which is April 1); provided, however, such time frames are subject to any applicable governmental requirements. If any Owner fails to install landscaping within such ninety (90) day period, the Metropolitan District may impose a Fine on such Owner in the amount of Fifty and No/100 Dollars (\$50.00) per day until the earlier of completion of the landscaping or thirty (30) days after the end of the initial ninety (90) day period. If such Owner fails to complete the landscaping within such additional thirty (30) day period, the Metropolitan District may enter upon such Lot and install landscaping, the cost of which shall be the personal obligation of the Owner(s) of the Lot on which such work is performed to the Metropolitan District, including, without limitation, interest, and late charges and the and the Metropolitan District shall have a

lien upon the Lot to secure such cost. Landscaping of a Lot must be completed within thirty (30) days after an Owner commences such landscaping.

(b) Landscaping plans and other required documents shall be professionally done, shall be in accordance with the Guidelines and applicable governmental landscape standards, if any, and shall be submitted to the DRC for review, and the approval of the same shall be obtained prior to the installation of landscaping, except where installed by the Declarant or Builder. Each owner shall maintain all landscaping on such Owner's Lot in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. If any Owner fails to comply with this Subsection (b), the Metropolitan District may, at its direction, enter upon such Lot and maintain landscaping for which the Owner of such Lot shall be obligated to pay the cost of such maintenance and the Metropolitan District shall have a lien upon the Lot to secure such cost.

6.3 DRC Membership and Organization. The DRC shall be composed of at least one (1) person and not more than five (5) persons. The DRC may include one or more design professionals, provided that if the DRC consists of only one person, that person shall be a licensed architect. All members of the DRC shall be appointed, removed and replaced by the Metropolitan District, in its sole discretion.

6.4 Purpose and General Authority. The DRC shall review, study and either approve or reject proposed Improvements, including landscaping, on the Property, all in compliance with this Declaration and as further set forth in the Guidelines and such Rules and Regulations as the Metropolitan District may establish from time to time to govern its proceedings. If any Owner is applying for a variance to the Restrictions or the Guidelines, such application must be submitted to the Metropolitan District, not the DRC, for review and consideration. No Improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the DRC; provided, however, that Improvements that are completely within a building may be undertaken without such approval, provided such Improvements do not affect the structural integrity of a building, or impact any party walls of other common or shared areas between Lots. All Improvements shall be constructed only in accordance with approved plans.

6.5 DRC Approval. The DRC, by majority vote, shall approve plans and specifications submitted to it only if it determines that the construction, alteration, and additions contemplated thereby, and in the location as indicated, will comply with this Declaration, the Guidelines, and the Planned Development Documents and will serve to preserve the values of the Lots within the Community and will maintain a harmonious relationship among structures, vegetation, topography, and the overall design of the Community. All plans and specifications submitted to the DRC shall be drawn to scale and include such detail necessary for the DRC to make an informed review of such plans and specifications. The DRC may reject any plans and specifications it deems to be insufficient, in its sole and absolute discretion. The DRC shall consider the quality of workmanship, type of materials, and harmony of exterior design with other Residences located in the Community in determining whether to approve any submitted plans and specifications. Furthermore, unless otherwise allowed in writing by the DRC, an Owner shall not apply for any building permit for any Improvements from the City or other governmental authority having jurisdiction over the Community until DRC approval for such

Improvements has been obtained. Approval by the DRC shall be in writing or indicated by endorsement on the plans and specifications submitted for approval. No building, other structure or landscaping shall be erected or allowed to remain on any Lot which violates this Declaration. The issuance of a building permit shall not prevent or prohibit the DRC or a Lot Owner from enforcing the terms and provisions of this Declaration. The approval by the DRC of any plans and specifications shall not be deemed a waiver of any right to withhold approval of any similar plans and specifications, or other matters subsequently or additionally submitted for approval by the same Owner or by another Owner. Furthermore, any approval granted shall not be considered a permit to build under applicable governmental regulations. Compliance with the Community design review process is not a substitute for compliance with the governmental building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction of Improvements. Furthermore, DRC approval does not approve or guarantee engineering design or compliance with applicable laws and governmental ordinances or regulations (such as zoning, building, health and fire ordinances and codes), and does not reflect any representation by the DRC as to such matters. The Owner is solely responsible for all such compliance. By approving plans and specifications, neither the DRC, its members, the Metropolitan District nor the Declarant or a Builder assumes any liability or responsibility for engineering design or compliance with applicable laws and governmental ordinances or regulations.

6.6 Notice of Completion. Upon completion of any Improvement, the applicant for approval shall submit a written "Notice of Completion" to the Metropolitan District and/or the DRC requesting final approval. Owner shall not seek a certificate of occupancy until receipt of final approval of the Owner's work from the Metropolitan District and/or the DRC.

6.7 Inspection of the Work. The Metropolitan District and/or the DRC shall have the right to inspect any Improvement prior to completion 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 Section 6.5; provided, however, that the right of inspection shall terminate ninety (90) days after the Metropolitan District's and/or the DRC's receipt the applicant's written request for final approval as provided in Section 6.6.

6.8 Notice of Noncompliance. If, as a result of the Metropolitan District's and/or the DRC's inspection of the Improvement, the Metropolitan District and/or the DRC determines that the Improvement has been performed without obtaining the Metropolitan District's and/or the DRC's approval, or was not performed in substantial compliance with the approval that was granted, the Metropolitan District and/or the DRC shall notify the applicant in writing of the noncompliance within thirty (30) days of inspection. The notice of noncompliance shall specify the details of the noncompliance. Enforcement of such notice of noncompliance shall include the powers and remedies described in Section 6.14 below.

6.9 Discretion and Variances. The Metropolitan District and/or the DRC shall exercise their reasonable judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Guidelines and this Declaration. The Metropolitan District, in its sole discretion, based on concerns for good planning and design, the aesthetic, architectural and

environmental interests of the Community, or other factors as necessary or desirable to fulfill the intent of the Guidelines and this Declaration, may grant variances from compliance with this Declaration and the Guidelines. Such variances must be in writing and shall become effective when signed by at least a majority of the governing board of the Metropolitan District. If any such variance granted, no violation of the provisions of this Declaration or the Guidelines shall be deemed to have occurred with respect to the matter for which the variance is granted. However, the granting of a variance shall not operate to waive any provisions of this Declaration or the Guidelines for any purpose except as to the particular Lot and the particular provision of the Declaration or Guidelines covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations.

6.10 Changes to Approved Plans. Any and all changes or alterations whatsoever to plans previously approved by the Metropolitan District and/or the DRC must be reviewed and approved by the Metropolitan District and/or the DRC.

6.11 Binding Effect. The actions of the Metropolitan District and/or the DRC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

6.12 Expenses and Fees. Except as provided in the next sentence, all expenses of the DRC shall be paid by the Metropolitan District. The DRC shall have the right to charge fees and deposits for each application submitted to it for review, in an amount which may be established by the DRC from time to time, and such fees shall be collected by the DRC and remitted to the Metropolitan District to help defray the expenses of the DRC's operation. The Metropolitan District or the private management company hired by the Metropolitan District shall provide the DRC with staff for the recording of committee meeting minutes and assistance with other administrative needs, at the Metropolitan District's cost and expense as it deems reasonably necessary.

6.13 Limitation of Liability. Neither the DRC nor any individual DRC member shall be liable to any person for any official act of the DRC in connection with submitted plans and specifications, except to the extent the DRC or any individual DRC member acted willfully or in bad faith. The DRC, its members and the Metropolitan District shall not be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of plan approval or disapproval, or the construction of Improvements whether or not pursuant to any approved plans. Neither the Metropolitan District, the DRC, nor any agent thereof, nor Declarant, nor any of its managers, members, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved, nor for any structural or other defects in any work done according to such plans and specifications. To the extent not prohibited by law, in all events the DRC shall be defended and indemnified by the Metropolitan District in any such suit or proceeding which may arise by reason of the DRC's decision. The Metropolitan District, however, shall not be obligated to indemnify each member of the DRC to the extent any such member of the DRC is adjudged to be liable for bad faith or willful misconduct in the performance of his or her duty as a member of the DRC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite

the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

6.14 Enforcement.

(a) Inspection. Any member or authorized consultant of the DRC, or any authorized officer, director, employee or agent of the Metropolitan District may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot, and to determine whether the Improvements have been or are being built in compliance with the Guidelines, the Declaration and the plans and specifications approved by the Metropolitan District and/or the DRC.

(b) Construction and Certificate of Compliance. All Improvements constructed upon a Lot shall be constructed in strict accordance with the plans and specifications approved by the Metropolitan District and/or the DRC. Upon written request of any Owner or his agent, or a prospective grantee, and upon payment of a reasonable fee established from time to time by the Metropolitan District and/or the DRC, the Metropolitan District and/or the DRC shall issue a certificate setting forth generally whether, to the best of the Metropolitan District's and/or the DRC's knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Guidelines and this Declaration.

(c) Deemed Nuisances. Every violation of this Declaration and the Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against the violating Owner shall be applicable. Without limiting the generality of the foregoing, these remedies include the following:

(i) Fines for Violations. The Metropolitan District may levy reasonable Fines for such violations.

(ii) Removal of Nonconforming Improvements. The Metropolitan District, upon request of the DRC, shall have the right to obtain a court order from a Colorado court of competent jurisdiction to remove any Improvement constructed, reconstructed, refinished, altered or maintained upon a Lot in violation of this Declaration or the Guidelines.

(iii) Correction of Noncompliance. If the Metropolitan District and/or the DRC provide notice to the applicant of noncompliance, the Person responsible for the noncompliance shall remedy or remove (and return the property or structure to its original condition) the same on or before forty-five (45) days following delivery of the notice of noncompliance. If such Person fails to comply within such a remedy period, the Metropolitan District may, at its discretion, record a notice of noncompliance against the Lot on which the noncompliance exists, may remove the noncomplying Improvement or may otherwise remedy the noncompliance. The Metropolitan District shall have a lien against each such Lot to secure payment of any remedial work required to correct the noncompliance, plus interest and/or any late charges as provided in this Section, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees.

The lien may be foreclosed in any manner for foreclosure of mortgages in the State of Colorado.

6.15 Access Easement. Each Lot is subject to an easement in favor of the Metropolitan District, including its agents and representatives, for performing any of the actions contemplated by this Article, including without limitation Sections 6.7 and 6.14 hereof. All persons performing such work shall use their best efforts to minimize interference with the Lot Owners' use and enjoyment of the Lot when performing such work.

6.16 Exemption for Declarant and Builder. Notwithstanding anything in this Declaration to the contrary, neither the Declarant nor any Builder, nor any of Declarant's or Builders' activities shall in any way be subject to the control of, or under the jurisdiction of, the Metropolitan District or the Design Review Committee (including any design guidelines, rules and regulations, or landscape requirements), nor shall the Declarant or any Builder be required to seek the approval or consent of the Metropolitan District or the Design Review Committee for any construction or other work to be performed by or on behalf of Declarant or any Builder in the Project.

7. COVENANT ENFORCEMENT COMMITTEE.

7.1 Committee. There is hereby established a Covenant Enforcement Committee, whose members shall be appointed by the governing board of the Metropolitan District, which shall be responsible for the ministerial administration and enforcement of the Restrictions imposed by this Declaration consistently among the Lots. The CEC shall have the right to: (i) accept complaints for violations of the Restrictions; (ii) submit complaints to the Metropolitan District regarding violations of the Restrictions; (iii) inspect the Community for violations of the Restrictions; (iv) issue various notices to Owners regarding the Restrictions; and (v) provide all ministerial administration and enforcement of the Restrictions as permitted by the Metropolitan District and this Declaration. Notwithstanding anything to the contrary herein, at all times a member of the Metropolitan District's governing board shall be appointed as the "Chairman" of the CEC.

7.2 CEC Membership and Organization. The CEC shall be composed of not less than one (1) nor more than five (5) Persons. All members of the CEC shall be appointed, removed and replaced by the Metropolitan District, in its sole discretion.

7.3 Purpose and General Authority. The CEC shall review all complaints and notifications provided by the Declarant, an Owner, or the Metropolitan District regarding any alleged violation of the Restrictions contained in this Declaration. The CEC shall also have the right to make an investigation on its own regarding potential violations. The CEC shall have the authority to determine whether a violation of a Restriction has occurred by any Owner, and upon such determination, may issue to an Owner a notice to correct the violation ("Notice to Correct").

7.4 Expenses. All expenses of the CEC shall be paid by the Metropolitan District. The Metropolitan District or the private management company hired by the Metropolitan District shall provide the CEC with staff for the recording of committee meeting minutes and assistance

with other administrative needs, at the Metropolitan District's cost and expense as it deems reasonably necessary.

7.5 Enforcement.

(a) **Inspection.** Any member or authorized consultant of the CEC, or any authorized officer, director, employee or agent of the Metropolitan District may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect the property alleged to be in violation of the Restrictions.

(b) **Notice to Correct.** If the CEC determines that the property is in violation of the Restrictions, the CEC shall issue a Notice to Correct to the Owner of the applicable Lot. The Notice to Correct shall contain a specific description of the violation of the Restrictions and a time period during which the Owner shall have to correct the violation.

(c) **Deemed Nuisances.** Every violation of this Declaration and the Restrictions is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against the violating Owner shall be applicable. Without limiting the generality of the foregoing, these remedies include the following:

(i) **Fines for Violations.** The Metropolitan District may levy reasonable Fines for such violations.

(ii) **Removal of Violation.** The Metropolitan District shall have the right to obtain a court order from a Colorado court of competent jurisdiction to remove or correct any violation of the Restrictions, which might include any Improvement to the Property or an injunction prohibiting a restricted use of the Property.

(iii) **Correction of Noncompliance.** If the CEC provides Notice to Correct, the Owner responsible for the noncompliance shall remedy and remove the violation on or before the time period stated in the Notice to Correct. If such Person fails to comply with such a remedy, the Metropolitan District may, at its discretion, record a notice of noncompliance against the Lot on which the violation exists, may remove a violating Improvement, or may otherwise remedy the violation. The Metropolitan District shall have a lien against each such Lot to secure payment of any remedial work required to correct the violation, plus interests and/or any late charges as provided in this Section, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in any manner for foreclosure of mortgages in the State of Colorado.

(d) **Access Easement.** Each Lot is subject to an easement in favor of the CEC and the Metropolitan District, including their agents and representatives, for the performance of any actions contemplated by this Article, including, without limitation, Section 7.5. All Persons performing such work shall use their best efforts to minimize interference with the Lot Owner's use and enjoyment of the Lot when performing such work.

8. USE RESTRICTIONS.

8.1 General Restriction. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lot all in order to enhance the value, desirability, and attractiveness of the Lots and promote the sale thereof. The Lots shall be used only for the purposes set forth in this Declaration, as permitted by the applicable laws, regulations and ordinances, and as set forth in this Declaration or other specific Recorded covenants affecting all or any part of the Property. The Community is subject to the recorded easements, licenses and other matters of record. In addition, the Declarant declares that all of the Lot shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

8.2 Use of Lots. Subject to Sections 8.3 and 10.1(b) below, 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; provided, however, that a Lot may be used for professional or home occupation(s) so long as the applicable zoning permits such use, there is no material external evidence thereof, and no unreasonable inconvenience to other residents of the Lots is created thereby. No timeshare estates shall be created or permitted within the Community.

8.3 Declarant's and Builder's Use. Notwithstanding anything to the contrary contained in this Declaration, neither the Declarant nor any Builder, nor any of Declarant's nor any Builder's activities, including without limitation the construction of Improvements, shall in any way be subject to the control of, or under the jurisdiction of, the Metropolitan District, the DRC, or the CEC and it shall be expressly permissible and proper for Declarant and any Builder, and their respective employees, agents, and contractors to perform such reasonable activities, and to maintain upon portions of the Lots and Metropolitan District Property such facilities as they deem reasonably necessary or incidental to the development, construction and sale of Residences on the Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model units, construction offices, trailers and sales offices, in such numbers, of such sizes, and at such locations as they determine in their reasonable discretion from time to time. Further, nothing contained in the Declaration shall limit the right of the Declarant or any Builder or require Declarant or any Builder to seek or obtain approvals from the DRC or CEC: (a) to excavate, cut, fill or grade any property owned by the Declarant or such Builder or to construct, alter, demolish or replace any Improvements; and (b) to use any structure on any property owned by Declarant or such Builder as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; or (c) to require Declarant or any Builder to seek or obtain the approval of the Metropolitan District, the DRC, or the CEC for any such activity or Improvement by Declarant or any Builder. Notwithstanding the foregoing, the Declarant shall not perform any activity or maintain any facility on any portion of the Lots in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees, of and to the Owner's Lot and to a public right-of-way. When the Declarant or Builder, as

applicable, ceases to be an Owner, such Declarant or Builder will cease to have any rights with regard to any real estate used as its respective sales office, management office, or model home.

8.4 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots for commercial purposes; provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats or other domestic animals which are bona fide household pets, 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 Lots. In no event shall the number of pets exceed the number permitted by the ordinances of the governmental entity having jurisdiction over the Community. The CEC shall have, and is hereby given, the right and authority to determine, that dogs, cats or other household 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, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Metropolitan District as a result of such pets.

8.5 Temporary Structures; Unsightly Conditions. No structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by a Person doing such work. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

8.6 Miscellaneous Improvements.

(a) No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot except for the following: (i) a name plate of the occupant and a street number; (ii) a "For Sale," "Open House" or "For Rent" sign, subject to the Rules and Regulations; (iii) two (2) security system signs no larger than one hundred (100) square inches each; and (iv) and "political signs" (as defined in Section 38-33.3-106.5(c), C.R.S.) which are displayed on an Owner's Lot. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant or Builder in connection with the sale or rental of the Lots, or otherwise in connection with development of the Community or construction on the Lots, are permissible.

(b) No drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot, except to the extent otherwise provided in the Rules and Regulations.

(c) Except as may otherwise be permitted by the DRC, 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 or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction in the Community. Notwithstanding

the foregoing, neither the restrictions nor the requirements of this Section shall apply to those antennae (which may include some satellite dishes and other devices) that are specifically covered by the Telecommunications Act of 1996, as amended from time to time. As to antennae which are specifically covered by the Telecommunications Act of 1996, as amended, the Metropolitan District shall be empowered to adopt Rules and Regulations governing the types of antenna that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

(d) No fences shall be permitted except with the prior approval of the DRC, and in conformance with any Guidelines, Rules and Regulations regarding the permitted types, locations, materials, and other matters having to do with fences previously approved by the DRC.

(e) Any exterior lighting installed or maintained on the Lots shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

(f) Notwithstanding any provision in this Declaration, the Rules and Regulations or Guidelines renewable energy generation devices or the installation or use of energy efficient measures shall not be effectively prohibited.

8.7 Vehicular Parking, Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (rated larger than one [1] ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored in the Community, unless such parking or storage is within a garage or is suitably screened from view in accordance with the Rules and Regulations, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery or emergency. This restriction, however, shall not restrict (i) trucks or other commercial vehicles which are necessary for construction or for the maintenance of any portion of the Community or any Improvements located thereon or (ii) fire and emergency service vehicles.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community in such a manner as to be visible from any portion of 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 one (1) week or longer, or which does not have an operable propulsion system installed therein, or which is not then currently licensed and registered; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not be deemed to be abandoned.

(c) If the Metropolitan District determines that a vehicle is parked or stored in violation of subsections (a) or (b) of this Section or Section 8.25 below, then a written notice describing said vehicle shall be delivered personally or by certified mail to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if

the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Metropolitan District in its discretion from time to time, the Metropolitan District shall have the right to remove the vehicle at the sole expense of the owner thereof.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent, on a Lot, washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

8.8 Unsightly Articles. No unsightly article shall be permitted to remain on any Lot or any other portion of the Community if it is visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, service areas, storage areas, compost piles shall be appropriately screened from view. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view.

8.9 Nuisances. No nuisance shall be permitted in 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 Community or any portion thereof. As used herein, the term "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities in, the Community; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Owner's use and enjoyment of the Owner's Lot, or with any Owner's ingress and egress to or from a Residence and a public way.

8.10 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 lighted or permitted on any Lot except in a contained exterior barbecue unit while attended and in use for cooking purposes or within an interior fireplace. 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.

8.11 Violation of Restrictions. If any Owner or its respective family, guests, licensees, lessees, invitees, agents or employees violates the Restrictions, the Metropolitan District may invoke any one or more of the following remedies: (i) impose a fine upon such Owner for each violation; (ii) cause the violation to be cured and charge the cost thereof to such Owner; and (iii) obtain injunctive relief against the continuance of such violation. Before invoking any such remedy, the Metropolitan District shall give such Owner notice.

8.12 Lights and Noise. 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. Lot Owners and occupants shall not install exterior Christmas lighting and decorations before December 1 and shall remove such lighting and decorations by January 15. Other exterior holiday decorations displayed by Lot Owners and occupants shall be removed not later than one (1) month after the date of the holiday.

8.13 Restrictions on Trash and Materials; Trash Collection. 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 on any Lot, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage, trash or recycling pickup. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

8.14 Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than one (1) foot beyond the required setback lines or lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

8.15 Conditions for Design Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot or Improvements located thereon from its natural or improved state existing on the date such property was first subject to this Declaration shall be made or done without compliance with the procedures set forth in Article 6 of this Declaration regarding the Metropolitan District and/or the Design Review Committee.

8.16 Lots to be Maintained. The exterior grounds of each Lot, including the landscaping thereon, shall at all times be well kept in a clean and sightly condition. Owners and occupants shall not permit any trash, litter, junk, boxes, containers, bottles, cans, implements or machinery to remain upon their Lot except as necessary during the period of active construction or as provided in Section 8.13 of this Article.

8.17 Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, but all leases shall be in writing, shall have a minimum term of 30 days and 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 provisions of this Declaration.

8.18 Assignment by Declarant/Transfer of Rights. Notwithstanding any other provision of this Declaration to the contrary, Declarant may delegate, transfer or assign in whole or in part any of its privileges, exemptions, development rights and duties under this Declaration to any other party and may permit the participation in whole or in part by any other party in any of its privileges, exemptions rights and duties hereunder. Without in any way limiting the generality of the preceding sentence, Declarant may in its sole discretion exempt from the control and jurisdiction of the Metropolitan District or the Design Review Committee any Builder, or any assignee and successor in interest of all or substantially all of Declarant's interests, rights, and responsibilities in and to the Property.

8.19 Covenants Run with Land. All covenants, conditions, and restrictions contained herein are intended to and shall run with the land, and Declarant hereby agrees, for itself and its successors and assigns, that such covenants, individually and collectively, touch and concern the land and shall be binding, fully and in all respects, upon Declarant's successors in title to the land, regardless of how succession of title may be accomplished.

8.20 Maintenance of Grade and Drainage. Each Owner shall maintain the grading upon such Owner's Lot at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. Owners will not in any way interfere with the established drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. If it is necessary or desirable to change the established drainage over any Lot which an Owner has a duty to maintain, then the party responsible for the maintenance of such real property shall submit a plan to the DRC for its review and approval, in accordance with the provisions of Article 6 of this Declaration. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Lot is completed.

8.21 Subdivision of Lots or Lot Line Adjustments. The Declarant reserves the right to subdivide or replat any Lot(s) or other property owned by Declarant. The Declarant hereby reserves the right to move any lot line(s) with the consent of the Owner(s) of each Lot whose lot line is being moved. Such lot line adjustments may be done by the Declarant, if at all, for the purpose of accommodating Improvements which are constructed or are to be constructed.

8.22 Encroachments. To the extent that Improvements on any Lot or Metropolitan District Property encroaches on any other Lot or Metropolitan District Property, a valid easement for the encroachment exists; to the extent any utility service extension line providing service to an individual Lot encroaches on any other Lot or Metropolitan District Property, a valid easement for the encroachment exists.

8.23 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all driveways and Metropolitan District Property in the proper performance of their duties.

8.24 Sidewalks. Sidewalks may be constructed throughout the Community along and adjacent to Lots or connecting properties and streets within the Community for the purpose of access in and through the Community. To the extent sidewalks are constructed upon any Lot that are intended to connect properties and streets within the Community and which are not intended as entry sidewalks solely serving a single Lot, there is hereby established a right of

access, ingress and egress in and through the Community over and across such sidewalk as initially constructed by the Declarant, together with the right to inspect, maintain, repair, and replace such sidewalks.

8.25 Parking Restrictions; Use of Garage. Garages shall be used for parking automobiles and other motor vehicles only and shall not be converted for living or recreational activities or for storage which prevents the parking of an automobile therein. No Owner and no invitee of an Owner shall park or permit to be parked any vehicle upon a roadway or any driveway on a Lot or on any street in such a manner as to block, impair or impede access to any other Owner's garage, or otherwise in violation of the Rules and Regulations or posted parking regulations. Tandem parking is prohibited on driveways less than twenty feet (20') in length.

8.26 Damage or Destruction. In the event any Residence or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Residence or other structure shall be promptly rebuilt, repaired or remodeled to comply with this Declaration or all remaining portions of the damaged Residence or structure, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other structure.

8.27 Rules and Regulations. Rules and Regulations concerning and governing the use of Lots may be adopted, amended or repealed from time to time by the Metropolitan District. Such Rules and Regulations may address matters not appearing in this Declaration as well as matters appearing in this Declaration, provided that the Rules and Regulations shall not contradict the provisions of this Declaration. The Metropolitan District may establish and enforce penalties for the infraction of such Rules and Regulations including, without limitation, the levying and collecting of Fines.

8.28 Easement Areas. By taking title to any Lot in the Project, each Owner acknowledges that certain portions of the Property are subject to easement rights to governmental, quasi-governmental and other parties. Notwithstanding any other provision hereof, no Owner shall be allowed to use any portion of the Property or place any trees, structures, fences, or other improvements on any portion of the Property that would violate any use restrictions contained in any easement or other documents creating easement rights.

9. DRAINAGE AND SOILS CONDITIONS.

9.1 Acknowledgment. The soils within Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of a Residence or other Improvement (residential or commercial) if the Residence, the other Improvement and the Lot on which they are constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

9.2 Moisture. Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Improvements constructed thereon remain stable and shall not introduce excessive water into

the soils surrounding the Improvements. Owners should carefully consider the risk of planting of any vegetation within five (5) feet of the Residences or other Improvement, as watering of this vegetation could result in loss or damage to a Residence or other Improvement due to expansive or low-density soil.

9.3 **Water Flow.** The Owner of a Lot shall not impede or hinder in any way the water falling on or passing through the Lot from reaching the drainage courses established for the Lot and the Community.

9.4 **Actions by Owners.** By accepting title to a Lot, each Owner covenants and agrees:

(a) Not to install Improvements, including, but not limited to, landscaping, items related to landscaping, earth berms, walls, walks, driveways, parking pads, patios, fences, Residence, additions to a Residence, outbuildings, or any other item or improvement which will change the grading of the Lot.

(b) To fill with additional soil any back-filled areas adjacent to the foundation of a Residence and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.

(c) Not to water the lawn or other landscaping on the Lot excessively.

(d) Not to plant turf grass, flower beds (especially annuals) or vegetable gardens adjacent to or within five (5) feet of the foundation and slabs of a Residence.

(e) To minimize the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs.

(f) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

(g) Not to install a moisture barrier (such as polyethylene) under any gravel.

(h) To maintain all gutters and downspouts which discharge water into extensions or splash blocks by assuring that (1) the gutters and downspouts remain in the down position and are free and clear of all obstructions and debris; (2) the water flow from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (3) that splash blocks are maintained under sill cocks.

(i) To re-caulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

(j) Not to alter, obstruct, or obliterate, in any manner, any drainage swales, pans, easements, or channels located or installed, or required to be located or installed, upon the Property pursuant to established drainage plans.

(k) Not to alter, obstruct, or obliterate, in any manner, any drainage swales, pans, easements, or channels located or installed, or required to be located or installed, upon the Property pursuant to established drainage plans.

9.5 Radon Gas. Elevated levels of naturally occurring radon gas may be present in some residential and commercial structures in Colorado. Governmental authorities have voiced concerns about the possible adverse effects on human health from long term exposure to high levels of radon gas. Each Owner is responsible to conduct such Owner's own investigation and consult with such experts as such Owner deems appropriate with respect to the presence or absence of radon gas in the soil on that Owner's Lot. Furthermore, each Owner shall be solely responsible for the mitigation of radon gas on such Owner's Lot. The Declarant, its officers, directors and shareholders, and the builder of the initial Residence on a Lot shall not be liable for the existence of radon gas in any Residence or other Improvement, for any loss or damage to any Residence or other Improvement, or for any injury to any Person caused by, or resulting from, or in any way connected with the existence of radon gas on any Lot.

10. SPECIAL DECLARANT RIGHTS.

10.1 Special Declarant Rights. Declarant reserves the right during the Development Period to perform the acts and exercise the rights specified below (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to construct and complete improvements within the Community, including, without limitation, the Metropolitan District Property.

(b) Sales, Management and Marketing. The right within the Community to maintain sales offices, construction offices, management offices, model homes, and signs, flags and other on-site marketing and sales promotion materials advertising the Community. Specifically, Declarant may maintain a sales office within the Community. The Declarant shall have the right to determine the number of model homes and the size and location (including locating sales offices within the Community) of any sales offices, management office, and model homes. The Declarant shall also have the right to relocate any sales offices, management offices, and model homes from time to time at its discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales offices and management offices. No structure used by Declarant for a sales office, construction office, management office or model home shall be deemed the property of any party other than Declarant unless specifically assigned, conveyed or dedicated by Declarant to such other party.

(c) Project Management. The right to select and hire a third-party manager for the management, administration and operation of the Community or any lesser portion thereof.

(d) Construction and Access Easements. The right to use easements through the Community for the purpose of making improvements and to provide access within the Community.

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

10.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves the following additional rights ("Additional Reserved Rights") for the time period specified in Section 10.1:

(a) Amendment of Declaration. The right to amend the Declaration without Owner consent or approval in connection with the exercise of any Development Rights or in connection with the qualification or continued qualification for FHA or VA loan guarantees, and for compliance with FNMA, GNMA, FHLMC requirements or any other available financing programs. Declarant shall also have the right to amend this Declaration to comply with the requirements of Colorado or local law in the event any provision contained in this Declaration does not comply with Colorado or local law.

(b) Errors. The right to amend the Declaration without Owner consent or approval in order to correct clerical, typographical or technical errors, or to clarify any of the Restrictions or any provision hereof.

(c) Amendment of Plat/Re-Plats. With regard to the Property owned by Declarant, the right to supplement the Plat(s) in connection with the exercise of any Development Rights, the right to re-plat all or any portions of the Property, the right to create additional Lots up to the maximum number of Lots allowed by the City, the right to subdivide or combine Lots.

(d) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Property owned by Declarant for purposes including, but not limited to, streets, paths, walkways, drainage, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon such Property for the benefit of the Lot Owners.

(e) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of the Community, for the benefit of the Lot Owners.

(f) Irrigation Water. The right to use potable or non-potable water, from whatever source, for the following purposes:

(i) Dust control in connection with constructing and completing improvements within the Community; and

(ii) Initial establishment of grass on Lots (as a temporary dust and erosion control measure before such Lots are initially sold by Declarant) and Metropolitan District Property.

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

10.3 Utilities Easement. Declarant hereby reserves for itself and for the Metropolitan District a blanket easement upon, across, over and under the Property, specifically including the Metropolitan District Property, for utilities and the installation, use, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect, use and maintain the necessary facilities, equipment and appurtenances on the Property, specifically including the Metropolitan District Property, and to affix, use, repair and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. 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, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Property, specifically including the Metropolitan District Property, without conflicting with the terms hereof; provided, however, that such right and authority of the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Article 10 of this Declaration, at which time said reserved rights shall vest in the Metropolitan District. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Property, specifically including the Metropolitan District Property. Notwithstanding the foregoing, upon transfer of a Lot to a Builder, the blanket easement created by this Section 10.3 on such Lot shall be limited to the areas of such Lot dedicated as easement on a plat.

10.4 Withdrawal of Property From Declaration. Prior to conveyance to an Owner (other than Declarant), the Metropolitan District, or a Builder, Declarant reserves the right to withdraw any or all of the Property from this Declaration by recording a written instrument as provided in Section 2.4. Following the recording of such instrument in the Records, such Property shall no longer be subject to any of the terms, conditions, and restrictions of this Declaration. It is the intent of this provision that any portion of the Property is subject to a right of withdrawal by the Declarant, but only prior to conveyance to an Owner (other than Declarant), the Metropolitan District, or a Builder; Declarant shall not have any right of withdrawal following conveyance to an Owner (other than Declarant), the Metropolitan District, or a Builder.

10.5 Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by recording an instrument describing such rights transferred in the Records. Such instrument shall be executed by Declarant and the transferee.

11. PARTY WALLS.

11.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residences or other Improvements and placed between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply. No Owner shall materially alter or change a Party Wall, it being the intention of the Declarant that the Party Wall shall at all times remain in the same position as when constructed.

11.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be the joint and equal obligation of the Lot Owners who make use of the Party Wall, provided that each Owner shall have the sole responsibility of maintaining the finished surface of a Party Wall within that Owner's Residence.

11.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, the Owners of the Residences on each side of such Party Wall shall restore it and shall contribute to the cost of restoration thereof equally, however, subject to the right of any such Lot Owners to call for a larger contribution from the other Owner(s) under any rule of law regarding liability for negligent or willful acts or omissions.

11.4 Damage and Repair. Notwithstanding any other provision of this Article, an Owner who by his negligence or willful acts causes the Party Wall to be damaged shall bear the entire cost of repairing such damage. The Owner causing such damage shall, within forty-eight (48) hours, commence to repair or reconstruct the damaged Party Wall to its original condition and shall diligently complete all such repairs and reconstruction. If such Owner shall fail to do so, then the Owner of the Lot abutting such Party Wall may do so at the sole cost and expense of the Owner causing such damage.

11.5 Right to Contribution Runs with Lot. The right of any Lot Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

11.6 Arbitration. In the event of a dispute arising concerning the provisions of this Article, the parties shall resolve such dispute in accordance with the terms of Section 12.11.

12. MISCELLANEOUS PROVISIONS.

12.1 Enforcement. Enforcement of any provision of this Declaration, the Guidelines, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. Such proceedings may be instituted by an Owner or the Metropolitan District or its designated committee. In any such proceedings the prevailing party shall recover the costs and reasonable attorney's fees incurred in connection with such proceedings. In addition, the Metropolitan District may levy Fines against a Lot Owner, or such Owner's lessee, because of a violation of the terms of this Declaration. Reasonable notice and the opportunity for a hearing shall be provided to the affected Lot Owner, or such Owner's lessee, before any such Fines are assessed. The unpaid Fines shall be added to the taxes and fees assessed against the Lot of such Lot Owner by the Metropolitan District. The failure to enforce any provision of this Declaration, the Guidelines, and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision. The Metropolitan District shall not be liable to reimburse any Lot Owner for attorney's fees or costs incurred in any suit brought by a Lot Owner to enforce or attempt to enforce this Declaration.

12.2 Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration.

12.3 Duration. The covenants, conditions and restrictions of this Declaration shall run with the Property, shall be binding on all Lot Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration.

12.4 Amendment.

(a) Except as otherwise provided in this Declaration, this Declaration may be amended, modified, supplemented or terminated at any time by a written and recorded instrument containing the consents of the then record Owners of at least seventy-five percent (75%) of the Lots subject to this Declaration; provided, however, that at any time that the Declarant owns a Lot or any other Property subject to this Declaration, any amendment, modification, supplement to, or termination of, this Declaration shall be strictly conditioned on Declarant's written consent.

(b) Each Amendment to this Declaration enacted by the vote or agreement of Owners of Lots shall be applicable only to matters, disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred after the date of recording of such amendment in the Records, and no such amendment shall be applied retroactively (i) to any matters, disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred before the date of recording of such amendment in the Records, or (ii) to impair the rights or obligations of any Person, including Declarant, bound by the provisions of this Declaration. Notwithstanding any provision of this Declaration to the contrary, neither this subsection (b) nor Section 12.6 may be amended, nullified or modified without the written consent of the Declarant and the Metropolitan District.

12.5 Waiver. No provision in this Declaration is waived by reason of any failure to enforce the provision, regardless of the number of violations or breaches which may occur.

12.6 Limited Liability. Neither Declarant, the Metropolitan District, nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter in which the action taken or failure to act was in good faith and without malice. Such parties shall be reimbursed by the Metropolitan District for any costs and expenses, including reasonable attorney's fees, incurred by them with the prior approval of the Metropolitan District (which approval shall not unreasonably be withheld) as a result of the threatened or pending litigation in which they are or may be named as parties.

12.7 Retention Ponds and Detention Ponds. Retention ponds and/or detention ponds may be constructed within the Metropolitan District Property to hold and release storm water in accordance with storm water drainage plan(s) that have been or will be approved by the City. The Metropolitan District will be responsible for maintaining any retention ponds or detention ponds within the Project. With the presence of retention pond(s) or detention pond(s), there may be surface water that accumulates within the area of such ponds, and there may be periods of

time when the area immediately surrounding a retention pond or detention pond is subject to flooding. Additionally, there are certain risks and dangers of physical injury and property damage inherent in the physical configuration of a retention pond and a detention pond, and the location of such a pond relative to the Community. Neither the Metropolitan District nor the Declarant, its officers, directors or shareholders, shall be liable for any injury, loss or damage arising from such flooding or otherwise arising from the proximity of any retention ponds or detention ponds to the Community.

12.8 Disclaimer Regarding Safety. DECLARANT AND THE METROPOLITAN DISTRICT AND THEIR OFFICERS, DIRECTORS, MEMBERS, 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 AND THE METROPOLITAN DISTRICT AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE RULES AND REGULATIONS AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

12.9 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 Declarant, the Metropolitan District, or by any of their officers, directors, shareholders, members, partners, agents or employees in connection with any portion of the Community, or any Improvement, its 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 specifically set forth in writing or otherwise required by law. The release and waiver set forth in Section 12.10 shall apply to this Section.

12.10 Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives and discharges the Declarant and its respective officers, directors, members, partners, agents, 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.

12.11 Arbitration of Disputes. All Disputes (as defined below) shall be subject to binding arbitration, as follows:

(a) **Binding Arbitration.** Any action, dispute, claim or controversy (other than an action to enforce any provision of this Declaration, the Guidelines, and any Rules and Regulations against those Persons violating or attempting to violate any such provision or an action involving the imposition and collection of ad valorem taxation) between the Declarant and the Metropolitan District and Owners, or any of them, whether sounding in contract, tort or otherwise, and whether or not concerning an individual Lot or other portion of the Property (the "Dispute" or "Disputes"), shall be resolved by binding arbitration as set forth in this Section. Such Dispute shall be resolved by binding arbitration in accordance with the Colorado Uniform

Arbitration Act, C.R.S. § 13-22-201, et seq., as then in effect by a single arbitrator. The arbitrator's award shall be entered as a judgment in the appropriate court in the county in which the Community is located. In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceedings under this Section. The parties shall be entitled to conduct discovery as if the dispute were pending in a District Court in the State of Colorado. In any arbitration proceeding subject to these provisions, the arbitrator is specifically empowered to allow discovery and decide pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Any arbitrator selected under this Section shall be knowledgeable in the area of the subject matter of the Dispute and shall be selected by the parties to the Dispute, any court in which the Community is located or any private organization providing such services. In the event the parties to the Dispute cannot agree upon an arbitrator, they shall apply to the Chief Judge of the District Court where the Community is located for appointment of a qualified arbitrator.

(b) Stenographic Record. A stenographic record of the binding arbitration mandated by Section 12.11(a) shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and appeals. The arbitrator's decision shall contain findings of fact and conclusions of law to the extent applicable, and the arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the arbitrator upon all of the issues considered by the arbitrator is binding upon the parties, and upon filing of a statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the arbitrator shall be appealable as if rendered by a court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

(c) Procedure. If any claim regarding defects in construction is made, each claim shall be specified with particularity. Each location of any claimed defect must be identified, and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided in advance of any request for arbitration.

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

12.13 No Presumption of Unobserved Construction Defects. If any Person alleges that any Lot Residence or any portions thereof or Improvements thereon are subject to or alleged to be subject to a construction defect, then in any arbitration, mediation or other proceeding regarding such matters, there shall be no presumption that an alleged construction defect is

prevalent or consistently present in other Lots or other portions of the Property where such alleged construction defect has not been observed.

12.14 Rights and Remedies. Sections 12.11 and 12.12 are not intended to and do not affect or limit any substantive rights or remedies of any person under the Construction Defect Action Reform Act, C.R.S. 13-20-801 et seq. ("CDARA") and nothing in this Article 12 is intended to constitute a waiver of, or limitation on, any legal rights, remedies or damages provided to any person by CDARA, or on the ability to enforce such legal rights, remedies, or damages within the time allowed by applicable statutes of limitation or repose, but this Article and this Declaration do require that any Dispute be resolved by binding arbitration and not by litigation in a court or by jury trial.

12.15 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 this 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, the Builders, the Metropolitan District and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

12.16 Acknowledgment of Inconvenience. Each of the Lot Owners have acknowledged and agreed that there are inconveniences which will accompany the development of the Property, including but not limited to 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 Lot Owner, by taking title to any Lot, shall be deemed to have waived any claims associated with the inconveniences, nuisance and hazards associated with such construction.

By execution below, Whispering Pines Metropolitan District No. 1 hereby acknowledges and assumes its rights, duties and obligations as provided herein.

WHISPERING PINES METROPOLITAN DISTRICT NO. 1, a body politic and political subdivision of the State of Colorado

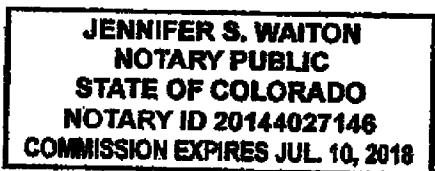
By: [Signature] Name: Jeffrey Cox Title: President

STATE OF COLORADO) COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 8th day of December, 2014, by Jeffrey Cox as President of Whispering Pines Metropolitan District No. 1, a body politic and political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: July 10, 2018



[Signature] Notary Public

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHISPERING PINES**

Legal Description of the Property

Lots 1 through 48, inclusive, Block 1;
Lots 1 through 12, inclusive, Block 2;
Lots 1 through 23, inclusive, Block 3;
Lots 1 through 21, inclusive, Block 4;
Lots 1 through 33, inclusive, Block 5;
Whispering Pines Subdivision Filing No. 1,
County of Arapahoe, State of Colorado

Lots 1 through 57, inclusive, Block 1;
Lots 1 through 29, inclusive, Block 2;
Lots 1 through 49, inclusive, Block 3;
Lots 1 through 19, inclusive, Block 4;
Lots 1 through 30, inclusive, Block 5;
Whispering Pines Subdivision Filing No. 3,
County of Arapahoe, State of Colorado

Lots 1 through 37, inclusive, Block 1;
Lots 1 through 19, inclusive, Block 2;
Lots 1 through 26, inclusive, Block 3;
Lots 1 through 13, inclusive, Block 4;
Lots 1 through 18, inclusive, Block 5;
Lots 1 through 16, inclusive, Block 6;
Lots 1 through 17, inclusive, Block 7;
Whispering Pines Subdivision Filing No. 4,
County of Arapahoe, State of Colorado

A PARCEL OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND ASSUMING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 32 TO BEAR SOUTH 89°24'29" WEST, 2642.24 FEET, WITH ALL BEARINGS CONTAINED HEREIN BEING RELATIVE THERETO;

THENCE NORTH 00° 05' 17" EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 32, A DISTANCE OF 951.92 FEET;

THENCE SOUTH 84° 45' 07" EAST, A DISTANCE OF 348.08 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 873.00 FEET, A CENTRAL ANGLE OF 38° 09' 20", AN ARC LENGTH OF 581.37 FEET, THE CHORD OF WHICH BEARS SOUTH 65° 40' 27" EAST, 570.68 FEET;

THENCE SOUTH 46° 35' 47" EAST, A DISTANCE OF 973.21 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 32;

THENCE SOUTH 89° 24' 29" WEST, A DISTANCE OF 254.13 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 32;

THENCE CONTINUING SOUTH 89° 24' 29" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 1321.12 FEET TO THE POINT OF BEGINNING,

SAID PARCEL CONTAINING A CALCULATED AREA OF 995,913 SQUARE FEET OR 22.863 ACRES, MORE OR LESS.

To be platted as Whispering Pines Subdivision Filing No. 2.