

DECLARATION OF COVENANTS

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
EAST BEND**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR EAST BEND**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAST BEND ("Declaration") is made as of 23rd day of September, 2021 by RICHMOND AMERICAN HOMES OF COLORADO, INC., a Delaware corporation ("Declarant"). Unless otherwise defined, all other initially capitalized phrases, terms, and words in this Declaration have meaning given them in Article 1.

BACKGROUND AND PURPOSE

A. Declarant is the owner of the real property located in Arapahoe County, Colorado described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Declarant desires to subject and place upon the Property certain covenants, conditions, and restrictions, for the development, improvement, use, operation, maintenance, repair and enjoyment of the Property, that run with the land.

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

D. Declarant imposes the covenants, conditions, restrictions and easements set forth in this Declaration on the Property, and pursuant to C.R.S. § 32-1-1004, Declarant empowers the East Bend Metropolitan District authority to furnish covenant enforcement and design review services for the Property using revenues that are derived from the Property.

E. Declarant reserves the right to add additional real property to this Declaration by recording one or more Supplemental Declarations.

F. Pursuant to the Colorado Constitution, Article XIV, Subsections 18(2)(a) and (b), and C.R.S. § 29-1-203, metropolitan districts may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt.

G. Declarant executes this Declaration (a) in furtherance of a common and general plan for the residential land located on the Property and to create the Community of East Bend ("Community"); (b) to protect and enhance the quality, value, desirability and attractiveness of the Property and Improvements (as hereafter defined) within the Community; (c) to provide for maintenance and repair services within the Community and arrange for other services benefiting residents in the Community; (d) to provide for design review of Improvements within the Community; (e) to enforce the provisions of this Declaration, the Rules and Regulations (as hereafter defined) adopted under the provisions of this Declaration; and (f) to define duties, powers and rights of Declarant, the District (as hereafter defined), and the Owners (as hereafter defined).

DECLARATION

NOW, THEREFORE, Declarant, for itself, and Declarant's successors and assigns, hereby incorporates the recitals contained hereinabove as though fully set forth, and declares that the Property is and shall hereafter be owned and conveyed subject to the following uniform covenants, conditions and restrictions in furtherance of a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Community, and to enhance the value, desirability and attractiveness of the Community. This Declaration is intended to and shall run with the land and shall be binding on all persons having or acquiring any interest in the Property or any part thereof; shall inure to the benefit of and be binding upon every part of the Property and every interest therein; and shall inure to the benefit of, be binding upon and be enforceable by Declarant, the District, their successors in interest, owners associations within the Community that have been delegated such enforcement authority, and each Owner and such Owner's successors in interest.

ARTICLE 1. DEFINITIONS

Section 1.1 Board shall mean the board of directors of the District.

Section 1.2 Declarant shall mean Richmond American Homes of Colorado, Inc., a Delaware corporation, as well as any Person to whom Declarant specifically assigns all or a portion of Declarant's rights or obligations as Declarant hereunder by written document recorded in the Records.

Section 1.3 Declaration shall mean this instrument as it may be amended from time to time by an instrument executed by Declarant or other parties authorized herein to amend the same, which instrument shall be recorded.

Section 1.4 Design Guidelines shall mean the architectural, construction, structural and/or aesthetic criteria, rules, or standards, if any, established by the District from time to time that will apply to Improvements within all or specified portions of the Property.

Section 1.5 Design Review Committee shall mean the committee created pursuant to Article 3 herein.

Section 1.6 Development Rights shall mean the right to: (a) add real estate to the Community; (b) create Lots within the Community; (c) subdivide or combine Lots; (d) withdraw real estate from the Community; (e) reserve, grant, create, modify and use easements over, across, under or through the Property; and (f) the right to move any Lot lines(s) on Lot(s) owned by Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed.

Section 1.7 District shall mean East Bend Metropolitan District, which entity will be formed as a special district in accordance with the Special District Act, C.R.S. § 32-1-101, *et seq.*, and the District's service plan, as it may be amended from time to time. The District is the entity authorized and empowered to perform certain maintenance and repair services, arrange for other services benefiting residents in the Community, enforce the covenants, conditions, and restrictions

contained herein, and to provide design review services for the Community. In the event that East Bend Metropolitan District is not formed, District shall mean the metropolitan district organized and existing pursuant to the Special Districts Act that, pursuant to the District's service plan, as it may be amended from time to time, serves as the entity authorized and empowered to perform certain maintenance and repair services, arrange for other services benefiting residents in the Community, enforce the covenants, conditions, and restrictions contained herein, and to provide design review services for the Community.

Section 1.8 District Properties shall mean all real and personal property, together with any Improvements and appurtenances and rights thereto, now or hereafter owned, leased or maintained by the District. District Properties may include, without limitation, when conveyed to the District, parks and open space within the Property, roads and alleys, landscaping and related structures along public rights of way, entry signage and features, public walkways and trails. Nothing in this Declaration, including but not limited to any provisions concerning the District's rights and obligations relating to the maintenance of any or all of the District Properties, shall be construed as a waiver in whole or in part of any of the rights, protections, privileges, limitations on damages, or governmental immunity provided to the District, or the directors, officers, employees, servants, agents, or authorized volunteers of the District, pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time.

Section 1.9 Duplex. A building in the Community consisting of two Dwelling Units sharing a Party Wall.

Section 1.10 Dwelling Unit. A building or structure or portion of a building or structure situated upon a Lot, which is intended for use and occupancy as a separate attached or detached dwelling unit for one or more persons, including the patio, deck, porch, basement, garage, and out buildings, if applicable.

Section 1.11 Improvement shall mean any of the structures now or hereafter located on a Lot and anything which alters the previously existing exterior appearance of any Lot, including but not limited to Dwelling Units, Duplexes, buildings, outbuildings, sheds, patios, swimming pools, garages, doghouses, pet enclosures, mailboxes, aerials, antennas, roads, driveways, sidewalks/walks, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), internet/broadband services, or other utilities.

Section 1.12 Lot shall mean a parcel of land designated as a lot in a recorded Plat within the Property, together with all appurtenances and Improvements associated therewith, now existing or subsequently created.

Section 1.13 Notice and Hearing shall have the meaning set forth in Section 4.3 of this Declaration.

Section 1.14 Owner shall mean the party, whether one or more Persons, including Declarant, holding fee simple title to a Lot as shown in the Records.

Section 1.15 Party Wall shall mean the common wall adjoining two Dwelling Units and shall be deemed to include the roofing over, the foundation under, and the utilities within the common wall.

Section 1.16 Person shall mean a natural individual, trust or any other legal entity.

Section 1.17 Plat shall mean a governmentally-approved and recorded subdivision plat creating a subdivision of land that is part of the Property which results in the creation of Lots, including any governmentally-approved and recorded amendments or modifications thereto. All such Plats are incorporated herein by reference and made a part hereof as though attached as an Exhibit.

Section 1.18 Property shall initially mean the real property described on Exhibit A attached hereto and, unless the context indicates the contrary, all real property that is made subject to this Declaration in the future pursuant to a document recorded in the Records pursuant to Section 6.5 of this Declaration; provided, however, that it shall not include any property that has been withdrawn by Declarant in accordance with this Declaration.

Section 1.19 Records shall mean the real estate records in the Office of the Clerk and Recorder of Arapahoe County, Colorado; and Recorded, without further reference, shall mean recorded in the real estate records in the Office of the Clerk and Recorder of Arapahoe County, Colorado.

Section 1.20 Rules and Regulations shall mean those rules and regulations, however, denominated, if any, adopted as provided in Section 4.1 of this Declaration, for the regulation and management of the Community, including Lots, as the same may be amended from time to time.

Section 1.21 Special Declarant Rights shall mean the rights reserved for the benefit of the Declarant as further described in Article 6.

ARTICLE 2.

COVENANTS TO PRESERVE THE CHARACTER OF THE COMMUNITY

Section 2.1 Purpose of Covenants. The following covenants are adopted in order to preserve the desirability, attractiveness and value of residential property in the Community. The following restrictions and conditions shall apply to all land that is now or may hereafter be subject to this Declaration.

Section 2.2 General. All Improvements, Dwelling Units, Duplexes, buildings and structures of any kind shall be constructed, installed, maintained and used in compliance with all applicable federal, state, and local statutes, ordinances, laws, regulations, rules and requirements of all governmental and quasi-governmental entities, agencies and authorities after obtaining all

required permits and licenses, and in accordance with any Design Guidelines and Rules and Regulations, as those may be amended from time to time.

Section 2.3 Improvements. Except as provided in Section 3.6 below, installation or modification of all Improvements placed on a Lot shall be subject to prior approval in writing by the Design Review Committee or as provided in the Design Guidelines.

Section 2.4 Construction.

(a) Construction Type. All construction shall be new. Any building previously constructed or used at another location or any building or Improvement originally constructed as a modular or mobile dwelling may not be moved onto a Lot except as expressly provided in Section 2.4(h) for temporary construction, sales or administration buildings or as approved by the Design Review Committee.

(b) Storage. Building materials may not be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, unless such building materials are stored in an enclosed area and fully screened; except that Declarant may store building materials, supplies and equipment on its own land in the Property.

(c) Construction Completion. All construction work shall be done diligently and continuously from the time of commencement of construction until fully completed. The exterior of all Dwelling Units, buildings or Improvements must be completed within twelve (12) months after the commencement of construction, or such other time as the Design Review Committee deems reasonable under the circumstances due to the nature of the project or other factors. "Commencement of construction" for a Dwelling Unit or building is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within the above time periods or such later time as approved by the Design Review Committee, the Design Review Committee may take further action as provided for in this Declaration.

(d) Occupancy. Any Dwelling Unit or building constructed on a Lot shall not be occupied in the course of original construction until the applicable building authority authorizes such occupancy.

(e) Landscaping. All landscaping will be initially installed by the Declarant. All portions of a Lot, including the front, back, and sides will be landscaped and maintained in accordance with the Design Guidelines. Except for the Front-Yard Landscaping (as defined below) of front yards of Dwelling Units, each Owner other than Declarant shall maintain landscaping on its Lot in accordance with the requirements of the Master Declaration. No landscaping on the Lots shall consist of or be replaced with sod. From time to time, the District shall have the right to change the landscaping and/or plantings approved for the Community.

(f) Installation, Maintenance, and Irrigation of Front-Yard Landscaping. The Declarant shall establish a landscaping plan (the "Front-Yard Landscape Plan") for the front yard

(“Front-Yard Landscaping”) of each Dwelling Unit that will general depict the location and type of Front-Yard Landscaping for Dwelling Units. At its cost and expense, Declarant shall install the Front-Yard Landscaping and irrigation system for such Front-Yard Landscaping. The District shall be responsible for the irrigation of the Front-Yard Landscaping of the Lots. Each Owner shall promptly pay invoices from the District for irrigation water used by a Dwelling Unit for Front-Yard Landscaping on such basis as the District determines for such irrigation. At its cost and expense, the District shall be responsible for the maintenance, repair, and replacement of the Front-Yard Landscaping and irrigation system on each Lot, provided that if an Owner or its occupants damage the Front-Yard Landscaping or the irrigation system for such Front-Yard Landscaping, then, upon the demand of the District, the Owner shall reimburse the District the cost and expense incurred by the District in such maintenance, repair, or replacement of the Front-Yard Landscaping and/or irrigation system, together with interest on such costs and expenses from the date of demand for payment until the date paid in full.

(g) Fences or Walls. Fences or walls other than those installed by Declarant are subject to approval by the Design Review Committee. All portions of the Lot where fences are permitted will be maintained in accordance with the Design Guidelines, and as initially installed.

(h) Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices and accompanying parking lots may be erected or maintained by the Declarant. Model homes may be used and exhibited by the Declarant. Temporary buildings shall be promptly removed when they cease to be used for construction or sales purposes.

(i) Utilities. All utilities serving a Lot will be placed underground. Declarant or District reserves the right to locate main transmission lines above ground if determined to be advisable. Declarant may grant approval for temporary above ground utility service during construction.

Section 2.5 Grading Patterns.

(a) Following the conveyance of a Lot by Declarant, each Owner shall maintain the grading on its Lot (including grading around the foundation of the building constructed thereon) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. For purposes of this Section, “established drainage” is defined as the drainage that exists at the time final grading by the Declarant is completed. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and to protect foundations and footings from excess moisture.

(b) Following the conveyance of the Lot by Declarant, any change in established drainage by an Owner is discouraged. However, if an Owner (other than Declarant) desires to change the established drainage on its Lot, it shall be the sole responsibility of such Owner to provide adequate alternative drainage for both the Owner’s Lot and all other property that may be affected by such change. To ensure that adequate alternative drainage is provided, the Owner desiring to change the established drainage on its Lot must submit to the Design Review Committee, for its review and approval, plans and specifications for alternative drainage which have been prepared and certified by a qualified, licensed professional. Any damages incurred by

another Owner, Declarant, the District, or any other Person due to a change in the established drainage of a Lot, shall be the sole liability of the Owner who changed, or who caused the change in, such established drainage.

(c) No approval of a proposed Improvement shall in any way imply that the District, the Design Review Committee, or Declarant has reviewed or approved any change in the established drainage of a Lot. Neither the District, nor the Design Review Committee, nor Declarant shall be liable for any damages incurred by any Owner or other Person due to a change in the established drainage.

(d) Following the conveyance of the Lot by Declarant, the Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens or other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot (other than Declarant) should water such shrubbery only by controlled hand-watering, and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls or slabs. Following the conveyance of the Lot by Declarant, any such flower beds, vegetable gardens, or other landscaping installed by Owner, for which Owner must obtain prior Design Review Committee approval, must be maintained by an Owner and will not be maintained by the District, notwithstanding any other landscaping obligations of the District contained herein.

Section 2.6 Grounds and Lot Maintenance.

(a) Except as required in this Declaration with respect to maintenance, repair and replacement responsibilities of Owners, the District shall be responsible for maintenance, repairs and replacement of Improvements on the District Properties. Without limiting the foregoing sentence, the District shall be responsible for maintenance, repair and replacement, including certain maintenance and services on the Lots, as follows:

1. Landscaping on the District Properties, seasonal tum on and clean out and, from time to time, necessary replacement of sprinkler system components on the District Properties;
2. Fences on the District Properties;
3. Entry monuments, parks and play equipment, cluster mailboxes, and retaining walls located on the District Properties;
4. Snow and ice removal from the District Properties, including sidewalks, streets and alleys, but not from driveway aprons or individual walks to the front doors of the Dwelling Units;
5. Graffiti removal and debris removal from the District Properties;

6. As provided above in Section 2.4(f), the Front-Yard Landscaping and irrigation system on each Lot;

7. Such portions of any additional property as may be required by this Declaration, any Supplemental Declaration, any Plat, development plan or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the District; and

8. All ponds, streams, and wetlands situated within the Community which serve as part of the Community's stormwater drainage system, including associated improvements and equipment, unless the same have been dedicated to and/or accepted and/or agreed to be maintained by a local governmental entity, a community association or other entity for the purpose of maintenance, repair and replacement. The District is responsible for maintenance, repair and replacement of the main line of the underdrain system and laterals up to the property lines of individual Lots, including any portion of the main line of the underdrain system underlying any Lot, but not including underdrain system laterals within a Lot.

(b) Except as provided herein as to maintenance of portions of certain Lots by the District, the exterior of all Improvements and grounds of a Lot must be maintained by the Owner in a state of good condition and repair, and adequately painted, or otherwise finished by such Owner, before the surfacing becomes weather-beaten or worn off. Such obligation includes, but is not limited to, maintaining the exterior materials and finishes of the Improvements, fencing, landscaping, drainage areas, driveways and sidewalks, underdrain system laterals within a Lot from the Lot property line, geogrids for retaining walls located on the Lot, and snow removal from driveways. Irrigation of landscaping will be in compliance with any applicable watering ordinance.

Section 2.7 Rebuilding or Restoration. If any Improvement is destroyed in whole or in part, the Owner is responsible for promptly rebuilding the Improvement to the condition as it existed before such destruction, or any modified condition subject to Design Review Committee approval, or the Owner shall promptly remove all debris and restore the Lot to a safe and attractive condition. Such rebuilding or restoration must be commenced within thirty (30) days after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed ten (10) months after the date the damage occurred or such longer period of time as may be approved by the Design Review Committee. If restoration or rebuilding is not completed within the above time periods or such later time approved by the Design Review Committee, or if the restoration or rebuilding shall cease for a period of twenty (20) days without permission of the Design Review Committee, the Design Review Committee may give written notice to the Owner that unless the restoration is diligently pursued within the ten (10) days following notice, the Improvement will be declared a nuisance and the Declarant or the Board shall have the right to take enforcement action pursuant to this Declaration.

Section 2.8 Insurance to be Maintained by Owners. Insurance coverage on each Owner's Lot, and the Improvements thereon, as well as on personal property, furnishings and fixtures belonging to an Owner and liability insurance coverage on each Lot, shall all be the responsibility of the Owner of such Lot. Each Lot shall be insured in an amount not less than the full replacement cost of the Improvements thereon, less applicable deductibles, and excluding items normally excluded from property policies such as land, foundations and excavations.

Section 2.9 Outside Storage. Equipment, tools and other items must be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets, except that Declarant may temporarily store materials as necessary in connection with construction on a Lot.

Section 2.10 Patio Covers, Swing Sets, Play Structures, and Other Similar Structures. Patio covers, swing sets, play structures and other similar structures or other similar facilities or equipment may only be installed on a Lot in accordance with the Design Guidelines or as approved by the Design Review Committee.

Section 2.11 Trash and Refuse. Unsightly objects or materials, including but not limited to ashes, trash, garbage, grass or shrub clippings, scrap material or other refuse, or containers for such items, must not be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during hours of refuse collection as specified in the Rules and Regulations. This Section shall not apply to Declarant. The District shall have the right to provide, or contract for and regulate the provision of services and facilities, including, without limitation, snow removal, trash collection and recycling, cable television and/or telecommunications services and facilities for all or any of the Owners and their Lots, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. Nothing in this Section shall be construed as a representation by Declarant or the District as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services or facilities in its sole discretion, unless the services or facilities are otherwise required by this Declaration.

Section 2.12 Nuisances. No activity or condition constituting a nuisance as contemplated by applicable legal authority may be carried on or present in or upon any Lot, Dwelling Unit or Improvement. No Lot may be used for the growing, sale or dispensing of marijuana or any of its compounds or derivatives.

Section 2.13 Lights, sounds and odors. Lights that are unreasonably bright or cause unreasonable glare, and sounds or odors that are unreasonably noxious or offensive to others are not permitted to emanate from any Lot.

Section 2.14 Noxious Weeds. All portions of a Lot must be kept free from noxious weeds.

Section 2.15 Animals. No horses, livestock, fowl, poultry, or other animals of any kind shall be raised, bred, kept or boarded in the Community; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats, and other domestic animals approved by the Board), not to exceed the maximum number of pets specified in the Design Guidelines, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Community. The District shall have, and is hereby given, the right and authority to do the following as well as take such other action(s) with regard to these matters as the Board may determine: set a maximum number of household pets; set a size or weight limit for pets; regulate the type(s) of

animals that are permitted to be kept; determine that any dog(s), cat(s) or pet(s) or other animals are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other governmental laws, ordinances, or other provisions; or determine that an Owner is otherwise in violation of any provision of this Declaration or the Rules and Regulations. If the Board determines that any of the foregoing have been or are being violated, the Board may take any action(s) it determines appropriate, including requiring permanent removal of the pet. An Owner's right to keep household pets is coupled with the responsibility to remove and properly dispose of animal waste, and pay for any damage caused by such pets, as well as all costs incurred by the District as a result of such pets, and all such costs and damages shall be subject to all of the District's rights with respect to the enforcement of the obligations set forth in this Declaration. Notwithstanding the foregoing, nothing in this Declaration shall be construed in a manner that restricts or impinges on a person's right to own or use an animal in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., or other applicable law.

Section 2.16 Vehicles; Parking. A boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes, any towed trailer unit, motorcycle, all-terrain vehicle, recreational vehicle or any vehicle whose gross vehicle weight exceeds 10,000 pounds or which exceeds 23 feet in length, shall not be parked on any street in the Community or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Design Review Committee. An exception to this restriction will be made for an emergency motor vehicle used by an Owner who is a bona fide member of a volunteer fire department or is an employee of an emergency firefighting, ambulance service, law enforcement or emergency medical services provider, provided that the vehicle: i) has a gross weight rating of 10,000 pounds or less; ii) bears an official emblem of the emergency services provider; and iii) does not obstruct emergency access or interfere with the reasonable needs of other Owners. Passenger vehicles owned, leased, rented or used by Owners or any other Person used as primary transportation on a day-to-day basis shall not be parked on any street within the Property for longer than seventy-two (72) consecutive hours without being moved in a manner required by the Rules and Regulations. Movement of a vehicle for the purpose of circumventing the restrictions in this Section will not be permitted. It is the intent of this Declaration that all vehicles park in garages and driveways; no extended street parking is permitted. The foregoing notwithstanding, however, this Section shall not apply to Declarant, nor shall it restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

(a) **Vehicle Repairs.** The maintenance, servicing, repair, dismantling, sanding or repainting or any type of vehicle, boat, machine, apparatus, trailer, equipment or device may not be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets and from neighboring property.

(b) **Abandoned or Inoperable Vehicles and Equipment.** Any type of stripped down, partially wrecked or abandoned or other similar vehicle (including any boat, machine, apparatus, trailer, equipment or device, or any sizeable part thereof) which has not been driven or operated under its own propulsion or by its own means for a period of two weeks, shall not be

permitted to be placed anywhere within the Property except within a completely enclosed Improvement.

Section 2.17 Leases. The term “lease,” as used herein, shall include any agreement or arrangement for the occupancy of a Lot or Dwelling Unit on the Lot by a Person other than the Owner or members of the Owner’s immediate family, with or without the contemporaneous occupancy by the Owner or members of the Owner’s immediate family, including month-to-month rentals, shorter term rentals, long-term rentals, and subleases, and “leases” shall mean collectively all leases then in effect. Any Owner has the right to lease his Lot, or any portion thereof, under the following conditions:

- (a) All leases shall be in writing;
- (b) All leases shall provide that the terms of the lease and lessee’s occupancy of the leased premises shall be for no less than thirty (30) days and be subject in all respects to the terms of this Declaration and the Rules and Regulations; and
- (c) No Dwelling Unit or portion thereof may be used for short term lodging, home share arrangements, home exchange arrangements, vacation rental, or any similar temporary lodging or living quarter arrangement.

Section 2.18 Signs. One (1) temporary sign advertising the real property for sale or rent, or for a garage sale, which is no more than six square feet in size, the style of which is compatible with the appearance of the Community and which may be subject to prior approval of the Design Review Committee or as provided in the Design Guidelines, may be placed on a Lot. Trade signs identifying a contractor performing work such as landscaping, painting, remodeling, etc., may only be displayed while such work is in progress on a Lot and must be removed upon completion of the work. No Owner or Person may post signs upon any portion of the District Properties or public rights-of-way. This Section shall not apply to Declarant.

Section 2.19 Hazardous Activities. No activities shall be conducted on any Lot or within an Improvement which are unreasonably unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on any Lot except in a contained cooking unit while attended and in use for cooking purposes or within an attended fireplace or fire pit. 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 common household products and in such limited quantities so as to not constitute an unreasonable hazard or danger to person or property. An Owner must not permit any condition on a Lot that creates a fire hazard or is in violation of fire prevention regulations adopted by the governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by a governmental authority, such ban shall be observed within the Property.

Section 2.20 Temporary Buildings. No temporary house, trailer, garage or other outbuilding may be placed or erected on a Lot or used as a residence. The Design Review

Committee may grant permission to an Owner for the placement of a temporary structure for storage of materials during construction on a Lot.

Section 2.21 Professional or Home Occupation. Except as may be required of Declarant in pursuit of construction activities within the Property, Lots shall be used for residential use only including uses which are customarily incident to such residential use, and shall not be used at any time for business, commercial or professional purposes. However, an Owner may conduct business activities within a Dwelling Unit provided that all of the following conditions are met:

(a) The business conducted is clearly secondary to the residential use of the Dwelling Unit and is conducted entirely within the Dwelling Unit;

(b) The existence or operation of the business is not detectable from outside of the Dwelling Unit by sight, sound, smell, vibration or otherwise, or by the existence of signs or deliveries indicating that a business is being conducted;

(c) The business does not result in an undue volume of traffic or parking within the Property;

(d) The business conforms to all applicable zoning requirements and is lawful in nature; and

(e) The business conforms to any Rules and Regulations that may be adopted by the Board from time to time.

Section 2.22 Subdivision or Combination of Lots. No Lot may be subdivided or further divided or combined with another Lot by an Owner other than Declarant.

Section 2.23 Satellite Dishes and Antennas. Except as provided below in this Section, no aerial, antenna or other device for reception of radio, television, microwave device or other electronic signals may be maintained on the roof of any Improvement, nor shall such structure be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for structures, other than FCC Structures (defined below) must be approved by the Design Review Committee prior to installation. An FCC Structure is defined by the Federal Communications Commission as: (a) an antenna that is one meter (39.37") or less in diameter and is designed to: (i) receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite; (ii) receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite; and (b) an antenna that is used to receive television broadcast signals. An FCC structure may be installed on a Lot without prior Design Review Committee approval, subject to the following conditions:

(a) To the extent feasible, the satellite dish/antenna should be placed in the rear or side yard in such a manner that it is screened from adjacent street(s) and neighboring properties. Rooftop mounting that is visible from adjacent street(s) is discouraged.

(b) The satellite dish/antenna should be installed at the lowest possible placement, utilizing ground level siting (unless a signal is not attainable).

(c) The satellite dish/antenna should be painted to match the surrounding environment or screened with a reasonable amount of plantings to minimize its visual impact to surrounding areas, so long as such painting or screening does not materially interfere with the broadcast signals.

Section 2.24 Utilities Location. Before installing Improvements on a Lot, Owners are responsible for locating all water, sewer, gas, electrical, cable television or other utility lines within easements granted for such purposes. Owners must not construct any Improvements over utilities easements without the consent of the utility involved and Owners will be responsible for any damage to utility lines caused by their work. Owners should request the location of underground utility lines and easements through a utility line location center.

Section 2.25 Restriction on Conveyance of District Properties. For a minimum period of eight (8) years following conveyance of the last Lot in the Property from the Declarant to a non-Declarant Owner, the District Properties shall not be sold, conveyed, or transferred except in conjunction with the dissolution of the District.

ARTICLE 3. DESIGN REVIEW AND APPROVAL

Section 3.1 Design Review Committee. The Design Review Committee shall consist of at least one and not more than five individuals, all of whom shall be appointed by the Board. In lieu of appointing a separate Design Review Committee, the Board may act as the Design Review Committee. The Design Review Committee shall exercise the functions assigned to it by the Board, this Declaration and the Design Guidelines.

Section 3.2 Composition of the Design Review Committee. If the Board does not serve as the Design Review Committee, then individuals appointed to serve on the Design Review Committee shall serve for a two-year term and may be removed by a majority vote of the Board at any time even if prior to expiration of a designated term. Individuals may serve for more than one term, even if consecutive. If a vacancy on the Design Review Committee occurs for any reason, a majority of the Board may appoint a replacement to complete the unexpired term. Design Review Committee members need not be Owners.

Section 3.3 Design Guidelines. The District may from time to time adopt Design Guidelines applicable to Improvements within the Property. Such Design Guidelines may regulate, without limitation, matters including but not limited to the following:

- (a) Site location;
- (b) Architectural design;

- (c) Site accessories, (*e.g.*, lights, signs, yard decorations or ornaments);
- (d) Landscape design;
- (e) Building size and height;
- (f) Aesthetics of Improvements; and
- (g) Approval processes.

The District shall have the right to modify or supplement the Design Guidelines from time to time upon the written approval of the Board. The Design Guidelines may include, among other things, guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Design Review Committee, may state procedural requirements, may specify acceptable Improvement(s) that may be installed without the prior approval of the Design Review Committee, may include design standards, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters; and may provide for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the Design Review Committee deems to be proper, necessary or in the best interests of the Community. In addition, such provisions may provide for blanket approvals, interpretations and/or restrictions on Improvements. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be completed and used in accordance with this Declaration. The Design Guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Design Guidelines and the provisions of this Declaration, the Declaration shall control.

Section 3.4 Approval Required. An Improvement shall not be placed, erected, installed or permitted to exist on any Lot, the exterior of any existing Improvements shall not be altered, and construction shall not be commenced on any Improvements, unless and until the plans for such Improvement have been submitted to and approved in writing by the Design Review Committee. Improvements installed or constructed prior to Design Review Committee written approval, or not installed or constructed in compliance with the approved Plans, shall be deemed to be in non-compliance and may be subject to enforcement action under this Declaration including, in addition to any other available right or remedy set forth herein, the Board's right to record a notice of violation or noncompliance against title to the Lot.

Section 3.5 Exclusive Approval by Board. Notwithstanding the foregoing provisions of this Article, the Board shall have the exclusive right to review, approve and enforce construction of all Improvements on a Lot prior to the completion of the first Dwelling Unit on a Lot in accordance with this Declaration and the Design Guidelines. After the first Dwelling Unit on a Lot has been completed, the Design Review Committee shall have the right to review and approve construction of Improvements on a Lot in accordance with this Declaration and Design Guidelines.

Section 3.6 Exemption of Declarant. Declarant shall be exempt from the provisions of this Article. This exemption shall terminate at such time as Declarant no longer owns any real property within the Property.

Section 3.7 Submittal of Plans. The requirements for submittal of plans to the Design Review Committee will be set forth in the Design Guidelines.

Section 3.8 Approval Process. All final action required or permitted to be taken by the Design Review Committee must be stated in writing, and any such written statement must establish the action of the Design Review Committee. The Design Review Committee will approve or disapprove Plans within forty-five (45) days following submission of a complete set of Plans. If the Design Review Committee does not act within forty-five (45) days following submission, the plans shall be deemed disapproved. The Design Review Committee may charge reasonable fees to cover expenses incurred in the review of plans. The Design Review Committee will retain one copy of all approved plans as provided in its Rules and Regulations and written records of all actions taken by it that will be available to Owners for inspection at reasonable business hours. Plan approval will automatically expire one year after approval if construction is not commenced within such one-year period, or such shorter period of time approved by the Design Review Committee, and if approval so expires, the applicant must submit a new request for approval.

Section 3.9 Approval Standards. In granting or withholding approval of matters submitted to it, the Design Review Committee shall consider the specific standards and specifications set forth in any Design Guidelines then in effect and any other matter, whether objective or subjective, that the Design Review Committee feels is relevant to the issue presented.

Section 3.10 Review of Plans. The Design Review Committee shall have the right to disapprove any plans or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with the Design Guidelines or any provision of this Declaration; if the plans submitted are incomplete; or if the Design Review Committee deems the plans or details, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the Community, District, or the Owners. If the Design Review Committee believes there may be questions of structural integrity or proposed Improvements that affect drainage on the Lot or adjacent portions of the Property, it may, as part of the review process, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. A majority of the Design Review Committee members attending a meeting in accordance with applicable bylaws at which plans are approved shall constitute a quorum, and a majority vote of the Design Review Committee members present at which a quorum is present shall constitute action of the Design Review Committee. Owners acknowledge that Design Review Committee review is an inherently subjective process and that the Design Review Committee is given wide discretion in carrying out its function.

Section 3.11 Appeal of Decision. If an application for an Improvement is denied by the Design Review Committee, the Owner seeking approval of the application shall have the right to appeal such decision to the Board, if a written request for a hearing on an appeal of the same is submitted to the Board within thirty (30) days after such denial by the Design Review Committee ("Appeal Request"). After receiving an Appeal Request, the Board shall notify the Owner and the

Design Review Committee in writing of the date, time, and location of the hearing. The hearing shall be held as soon as practicable after receipt of the Appeal Request. At the hearing, all parties will have the opportunity to present evidence in support of their respective positions. Within ten (10) days of the conclusion of the appeal hearing, the Board shall issue its written decision ("Design Appeal Decision"). The Board's Design Appeal Decision shall be final and binding.

Section 3.12 Variances. The Board, or if the Board delegates its authority to the Design Review Committee, then the Design Review Committee shall have the authority to grant for a Lot a variance from any provision of this Declaration (including any provision of the Design Guidelines) that is within the authority of the Board or the Design Review Committee, as the case may be. Such variance will only be made upon a finding of unreasonable hardship not created by the Lot Owner or circumstances where literal enforcement of the covenant will create a material hardship to the applicant, and that such a variance is not contrary to the intent or interests of the Community, District, and Owners. A variance may be made subject to terms and conditions approved by the Board or the Design Review Committee. If a variance is denied, the applicant may not bring another application for a similar variance for the same Lot for a period of one year after submittal of the original request.

Section 3.13 Waivers; No Precedent. The approval or conditional approval or consent of the Design Review Committee, or any representative thereof, to any application shall not be deemed to constitute a waiver of any right to withhold or deny approval or conditional approval by the Design Review Committee as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval, conditional approval or consent be deemed to constitute a precedent as to any other matter.

Section 3.14 No Liability. The Declarant, the District, and the Design Review Committee, and any member, agent or representative thereof, shall not be liable in damages or otherwise to anyone submitting plans for approval or requesting a variance, or to any Owner or other Person, by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the Plans or variance. Approval of plans shall not mean that plans are in compliance with the requirements of any local building codes, zoning ordinances, or other governmental regulations, and it shall be the responsibility of the Owner, Declarant or applicant to comply with all codes, ordinances and regulations. Nothing in this Declaration shall be construed as a waiver in whole or in part of any of the rights, protections, privileges, limitations on damages, or governmental immunity provided to the District, or the directors, officers, employees, servants, agents, or authorized volunteers of the District, pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as the same currently exists or may hereafter be amended.

Section 3.15 Design Review Non-Compliance. If an Owner is in violation of the provisions of this Article or the Design Guidelines, the violation will be processed in accordance with Article 4 of this Declaration.

ARTICLE 4. ENFORCEMENT AND DELEGATION OF AUTHORITY.

Section 4.1 Adoption of Rules and Regulations. The Board may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or appropriate with respect to the interpretation and implementation of this Declaration. The Rules and Regulations may provide for the assessment of fines for a violation of this Declaration or the Rules and Regulations. Written notice of the adoption, amendment or repeal of any Rule or Regulation will be provided to all Owners in the manner provided in the bylaws, and copies of the currently effective Rules and Regulations will be made available to each Owner upon request. Rules and Regulations shall have the same force and effect as if they were set forth in and this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, this Declaration shall control. The Design Review Committee, an owners association or other district which has been delegated authority by the Board to adopt, amend or repeal Rules and Regulations may so adopt, amend or repeal only with the written approval of the Board.

Section 4.2 Enforcement. Subject to the Notice and Hearing provisions set forth in Section 4.3 below, the Board shall further have the right to levy and collect fines for violation of any of the provisions of this Declaration and the Rules and Regulations. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion. A decision to enforce or not enforce shall not be construed as a waiver of the Board's right to enforce such provision at a later time or preclude the Board from enforcing any other covenant, restriction, or Rule and Regulation.

Section 4.3 Notice and Hearing Procedures before Levying Fines. If the Board determines that an Owner is in violation of this Declaration or the Rules and Regulations, the Board shall give written notice to the Owner, which includes a description of the violation and the date of the violation (the "Notice"). The Notice shall also provide the day, time and location of the hearing on the violation and shall be hand-delivered or sent by U.S. Mail postage prepaid, to the Owner alleged to be in violation not less than ten (10) days prior to the scheduled hearing date. The hearing may be recorded by video or audio recording by the Board. All parties will have the opportunity to present evidence in support of their respective positions. Within ten (10) days of the conclusion of the hearing, the Board shall issue its written decision. The hearing may occur whether or not the Owner attends the hearing. The Board's decision shall be final and binding.

Section 4.4 Failure to Remedy Violation. If, after Notice and Hearing, the Board issues a written decision that an Owner has violated the Declaration or the Rules and Regulations, the Owner shall have forty-five (45) days from the date of the Board's decision under Section 4.3 to remedy such violation. If the Owner fails to remedy such violation within forty-five (45) days after a decision under Section 4.3 is issued, the Board may impose fines and record a notice of noncompliance or notice of lien on the Owner's Lot ("Notice of Lien"). The Notice of Lien will substantially set forth:

- (a) The amount of the monetary lien or description of the violation;
- (b) The interest and expenses of collection which have accrued, if any;
- (c) The legal description and street address of the Lot against which the lien is claimed or violation has occurred; and

- (d) The name of the record Owner.

The Notice of Lien shall be signed and acknowledged by an officer of the Board or its duly authorized agent. The amounts claimed under the lien may include, without limitation, all amounts authorized under Colorado law. Upon an Owner's payment of the fines in full and remedying the violation, the Board shall execute and record a release of the Notice of Lien on the Owner's Lot. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado. In addition to, or as an alternative to, recording a Notice of Lien on an Owner's Lot, if an Owner fails to remedy the violation within forty-five (45) days after the Board renders a decision, the Board may remove the violation or otherwise remedy the noncompliance, and the Owner responsible for the violation shall reimburse the Board, upon demand, for all costs and expenses incurred by the Board in remedying the violation.

Section 4.5 Delegation of Authority. Subject to limitations set forth elsewhere in this Declaration, the Board shall have the right to delegate all or a portion of its power and authority to adopt Rules and Regulations (including Design Guidelines), and its design review and covenant enforcement rights and obligations under this Declaration to persons or entities including but not limited to the Design Review Committee and District employees or consultants. Notwithstanding such delegation, the Board shall always maintain the right to enforce the provisions of this Declaration, Design Guidelines and the Rules and Regulations if the party to whom enforcement has been delegated or Declarant fails to sufficiently, in the Board's view, enforce the same.

ARTICLE 5. EASEMENTS

Section 5.1 District Easement. An easement to enforce its rights or perform its obligations pursuant to this Declaration is hereby granted to the District, its officer, agents, employees, representatives and assigns, upon, across, over, in and under all property within the Community, but only the exterior portions of the Lots, except as necessary for the District to access, operate, maintain, repair, and replace any improvements for this the District is responsible, together with the right to make such use of the Community as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

Section 5.2 Easements for Utilities. Declarant hereby creates and reserves to itself until Declarant no longer owns any real property within the Property, and thereafter, to the District, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the utility easements of each Lot as shown on a Plat for the placement of utilities, drainage structures or other similar purposes, together with a blanket easement across, over and under the District Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities and drainage facilities.

Section 5.3 Drainage Easement. Declarant hereby reserves, to itself and to the District, easements for drainage and drainage facilities within the easements granted and reserved on the

Plat; provided, however, that if a Dwelling Unit is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line of such Lot to the exterior wall of the residence on such Lot that is nearest to such lot line. Except for Dwelling Units as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear, front or side yard drainage easements. Declarant reserves to itself and to the District the right to enter upon each such rear, front and side yard drainage easements to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the District may deem necessary or desirable; provided, however, that such right and authority in the Declarant shall cease at such time that Declarant no longer owns any real property in the Property, at which time said reserved right shall vest in the District.

Section 5.4 Easement for Emergency Vehicles. An easement is granted for emergency vehicles, including fire, police and ambulance, to enter upon any portion or the Community for emergency or other official purposes.

Section 5.5 Easements over Adjoining Lots for Maintenance of Party Walls. In each case where Dwelling Units share a Party Wall, non-exclusive easements over the Lots of such Dwelling Units for maintenance, repair and replacement of the Party Wall, foundations and other common structural elements by such Owner and the permittees of such Owner, and for access, ingress and egress necessary for such maintenance, repair and replacement are hereby granted and reserved.

Section 5.6 Matters of Record. In addition to the easements created in this Article and on any Plat, the Property is subject to all other easements, reservations and restrictions of Record.

ARTICLE 6. PARTY WALLS

Section 6.1 Common Law Rules Apply to Party Walls. Except as otherwise specifically provided herein, the general rules of law applicable to Party Walls and of liability for property damage arising from negligence or willful acts or omissions shall apply with respect to any Party Wall. Without limiting the generality of the foregoing, each Owner shall have the right to use a Party Wall which is a part of such Owner's Dwelling Unit provided that such use does not unreasonably interfere with the use and enjoyment thereof by the other Owner who shares such Party Wall. Additionally, nothing shall be done, without the written consent of the District, in, on or to any Dwelling Unit or any Party Wall which is a part thereof, which would impair the structural integrity of such Party Wall or any other Dwelling Unit.

Section 6.2 Sharing Party Wall Repair, Maintenance and Restoration Costs. The costs and expenses of necessary and reasonable repair, maintenance or restoration of any portion of a Party Wall, including restoration in the event of damage or destruction due to fire or other casualty (subject, however, to the provisions of Sections 2.7 and 2.8), shall be shared equally by the Owner of each Dwelling Unit sharing the Party Wall, without prejudice however, to the right of any such

Owner to recover from the other Owner under any rule of law with respect to liability for negligent or willful acts or omissions; provided, however, nothing contained herein shall require such Owners to share the costs and expenses of normal repair and maintenance, such as painting and refinishing, of the surfaces of the Party Walls which are interior to the Dwelling Unit of the other Owner. If any monolith slab requires repair, the entire monolithic foundation shall be included in the repair process. The Owners and occupants of each of the two Lots on which such monolithic foundation is located shall cooperate regarding repairs to such foundation.

Section 6.3 Weatherproofing Exposed Party Wall. In the event any portion of a Party Wall is exposed to the elements by reason of damage, destruction or demolition of one of the Dwelling Units sharing such Party Wall, the Owner of the Lot on which such Dwelling Unit existed shall be responsible for providing weatherproofing or other protection of the exposed portion of such Party Wall, without prejudice, however, to the right of such Owner to recover the costs of weatherproofing from the other such Owner under any rule of law with respect to liability for negligent or willful acts or omissions.

Section 6.4 Lien for Party Wall Repair, Maintenance and Restoration Costs. If an Owner shall fail, after a written demand, to pay any costs and expenses with respect to a Party Wall to be borne by such Owner, then the Owner of the adjoining Dwelling Unit sharing such Party Wall shall have a lien, from and after the time a notice of lien is recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado, against the Lot of the Owner who has failed to pay any such costs and expenses, for the full amount due and not paid, plus interest charges (computed from its due date at a rate of twenty-one percent (21%) per annum or such lesser rate as the District may establish from time to time), plus all costs and expenses of collecting the unpaid amount, including reasonable attorney fees. The lien may be foreclosed in the manner of foreclosure of mortgages in the State of Colorado.

Section 6.5 Rights of Owners. The Owners of each Lot with a Party Wall shall have the following rights: (a) a perpetual and reciprocal easement in and to that part of the adjacent Lot on which such Party Wall is located, for Party Wall purposes only, including mutual support, maintenance, repair and inspection. For the purposes of repairing or maintaining a Party Wall, the Owners of each Lot with a Party Wall are granted the right to enter onto the adjacent Lot which shares the same Party Wall and to enter into any residence or other Improvements thereon to perform work necessary in the exercise of rights provided herein at all reasonable times after reasonable notice to the occupants of such adjacent Lot, or immediately in the event of an emergency; and (b) after reasonable notice to the occupants of the adjacent Lot on which a Party Wall is located, the Owner of a Lot on which such Party Wall is located shall have the right to break through an appurtenant Party Wall for the purposes of repairing or restoring sewer, water, or other utilities located within such Party Wall, subject to the obligation to restore such Party Wall to its previous structural condition at the sole cost and expense of the Owner who effectuates such breakage.

Section 6.6 Arbitration of Party Wall Disputes. In the event of any dispute with respect to a Party Wall or with respect to costs and expenses to be borne by an Owner with respect to a Party Wall, the dispute shall be resolved in accordance with the provisions of Article 8 hereof.

**ARTICLE 7.
SPECIAL DECLARANT RIGHTS; ADDITIONAL RESERVED RIGHTS**

Section 7.1 Exercise of Special Declarant Rights. For so long as Declarant owns real property in the Property, Declarant reserves for itself and its successors and assigns the right to perform the acts and exercise the rights specified below (the "Special Declarant Rights"). Special Declarant Rights include the following rights:

(a) To exercise any Development Right as contemplated by Section 1.7 herein. The exercise of Development Rights as to some portions of the real property owned by Declarant will not obligate the Declarant to exercise them as to other portions;

(b) To maintain sales offices, sales trailers, construction offices, construction trailers, management offices, model homes and signs advertising the Community and/or Lots; and

(c) To use easements through the District Properties for the purpose of making Improvements within the Community or within real estate which may be added to the Community.

All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any times, and from time to time.

Section 7.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves for itself and its successors and assigns the following additional rights for so long as Declarant owns real property in the Property:

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

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

**ARTICLE 8.
MANDATORY DISPUTE RESOLUTION**

Section 8.1 Alternative Method for Resolving Disputes. Declarant, the District, their officers, directors, affiliates, agents, employees and contractors, all Owners, and consultants, each such entity being referred to individually as a "Bound Party" and collectively as the "Bound Parties," agree to encourage the amicable resolution of disputes involving the Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, except as

otherwise agreed to in writing between any Bound Parties, each Bound Party covenants and agrees to submit all Claims to mediation, and if such mediation is not successful, final binding arbitration, as set forth below in this Declaration.

Section 8.2 Definition of Claim. Except as specifically excluded in this Section or as otherwise agreed to in writing between any Bound Parties, all claims, disputes and other controversies arising out of or relating in any way to the following are hereinafter referred to as a “Claim” or “Claims.”

- (a) Interpretation, application or enforcement of this Declaration;
- (b) Design, construction, sale, maintenance, habitability or condition of any improvements within the Community or any alleged defect therein, including without limitation any “action” as defined in C.R.S. § 13-20-802.5(1);
- (c) Design Appeal Decision under Section 3.11 of this Declaration; and
- (d) Rights, obligations and duties of any Bound Party under this Declaration, the Rules and Regulations, and/or any violation thereof.

All Claims shall be subject to and resolved in accordance with the terms and provisions of this Article 8.

Notwithstanding any contrary provision of this Article 8, the following shall not be subject to the provisions of this Article 8:

- (a) Any legal action by the District or Declarant to obtain a temporary or permanent restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the District or Declarant to act under and enforce the provisions of Article 2 (Covenants to Preserve the Character of the Community Design Approval) or Article 3 (Design Review and Approval);
- (b) Any action to collect a fine or other charge as provided in Section 4.4 above; and
- (c) Any legal action to enforce an arbitration award provided in this Article 8.

Any question about whether a matter is a Claim or whether such matter is covered by this Article shall be determined by the arbitrator.

Section 8.3 Notice of Claim. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) shall notify each Respondent in writing of their Claim, stating plainly and concisely: (a) the nature of the Claim, including the date, time, location, persons involved, and Respondent’s role in the Claim; (b) the basis of the Claim (i.e., the specific authority out of which the claim arises); and (c) the specific relief and/or proposed remedy sought (“Notice of Claim”). The Claimant must deliver the Notice of Claim to the respective Respondents within

a reasonable time after the Claim has arisen, but in no event later than any applicable statute of limitations or repose under Colorado law. Upon receipt of a Notice of Claim, the parties shall make a reasonable effort to meet and confer for the purpose of resolving the Claim by good faith negotiation.

Section 8.4 Right to Inspect. If a Claim asserted against Declarant and/or its officers, directors, affiliates, agents, employees, contractors or consultants is based on a defect in the design or the construction of any Improvements within the Community, subject to Owner's prior written approval, which shall not be unreasonably withheld, Declarant shall have the right to access the affected area for purposes of inspecting the condition complained of, and the correction thereof: including any necessary redesign. This shall include, but not be limited to, notice prior to conducting any investigative or destructive testing. The Claimant shall meet with Declarant and/or its designees to discuss, in good faith, ways to resolve the Claim.

The Inspecting Party shall indemnify, defend and hold harmless the Owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney fees, resulting from its inspection of the Property.

Section 8.5 Mediation. Within forty-five (45) days of the date of the Notice of Claim, if the parties have not otherwise resolved the Claim(s) through good faith negotiation, the parties shall submit the Claim to mediation before a neutral third party mediator agreed upon by the parties. If the parties are unable to agree upon a mediator within fifteen (15) days of the date of the Notice of Claim, then a single mediator shall be chosen in accordance with the rules governing the selection of an arbitrator under the Colorado Uniform Arbitration Act (the "CUAA"). All mediation fees shall be split equally among the parties.

Section 8.6 Final Binding Arbitration. If a Claim remains unresolved at the conclusion of the mediation, any party may submit the Claim for final and binding arbitration under this Section within thirty (30) days after conclusion of the mediation. The arbitration will be conducted in accordance with the following procedures:

(a) If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim(s) shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.

(b) In the absence of an agreement otherwise between the applicable Bound Parties, all Claims subject to arbitration shall be conducted in accordance with the CUAA and be decided by a single private party arbitrator who is a retired Colorado state court or Federal judge or attorney licensed to practice law in the State of Colorado.

(c) If the parties are unable to agree upon an arbitrator within thirty (30) days from the date that the Claim(s) were submitted for arbitration, then the arbitrator shall be chosen in accordance with the rules governing the selection of an arbitrator under the CUAA.

(d) No person shall serve as the arbitrator who may have any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the appearance of impartiality and/or actual impartiality, including any bias or financial or personal interest or relationship in the outcome of the arbitration ("Arbitrator's Disclosure"). If any party objects to the service of any arbitrator within fourteen (14) days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as provided in Section 7.6(b) above.

(e) The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in Arapahoe County, Colorado unless otherwise agreed by the parties.

(f) Subject to the provisions of these procedures, the arbitration shall be conducted in accordance with rules and procedures determined by the arbitrator.

(g) Subject to the arbitrator's right to establish rules and procedures governing formal discovery in the arbitration, no formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement of the parties. Notwithstanding the foregoing sentence, any party asserting Claims against the Declarant and/or its officers, directors, affiliates, agents, employees, contractors or consultants shall notify the Declarant prior to retaining any Person as an expert witness for purposes of any arbitration or authorized litigation, and the Declarant shall be entitled to conduct discovery, including depositions, of such expert.

(h) The arbitrator shall render a decision and award within thirty (30) days after the close of the arbitration. The award shall be in writing and signed and dated by the arbitrator and shall contain express findings of fact and the basis for the award. An award in favor of any party shall be limited to actual damages, and the arbitrator shall not have any authority to award exemplary, punitive, special, indirect, consequential or any other damages other than actual damages. The award rendered by the arbitrator shall be final and binding and may be filed with any court of competent jurisdiction in accordance with the laws of the State of Colorado. All arbitration fees shall be split equally among all parties. Each Bound Party shall be responsible for its own costs, expenses, and attorney's fees incurred in the arbitration.

(i) Unless directed by the arbitrator, there shall be no post-hearing briefs.

(j) The arbitration award shall address each Claim to be resolved in the arbitration, provide a summary of the reasons therefor and the relief granted.

Section 8.7 Binding Effect. BY TAKING TITLE TO ANY PORTION OF THE COMMUNITY, EACH OWNER THEREOF ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 9 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP THE COMMUNITY, CONSTRUCT IMPROVEMENTS AND SELL DWELLING UNITS, AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE 8, DECLARANT WOULD HAVE BEEN UNABLE AND

UNWILLING TO DEVELOP THE COMMUNITY, CONSTRUCT IMPROVEMENTS OR SELL DWELLING UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO SUCH PORTION OF THE COMMUNITY, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 8 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHTS AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL OR ACTUAL CONSTRUCTION DEFECT AFFECTING THE IMPROVEMENTS OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION ANY DWELLING UNIT.

ARTICLE 9. MISCELLANEOUS

Section 9.1 Persons Entitled to Enforce Declaration. Subject to the provisions of Article 8 above, the District shall have the exclusive right to enforce any or all of the provisions, covenants, conditions or restrictions contained in this Declaration. Subject to the provisions of Article 8 above, the right or enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Declaration, and all other rights and remedies provided in the Declaration or available at law or in equity.

Section 9.2 Term of Declaration. This Declaration shall be effective for twenty (20) years following the date this Declaration was originally recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless it is terminated by the written approval of Declarant (until such time as Declarant no longer owns real property within the Property and thereafter, the Board) and Owners of at least sixty-seven percent (67%) of all Lots in the Community. The written agreement shall be duly acknowledged by the Declarant (or Board) and the Owners and recorded in the Records.

Section 9.3 Amendment of Declaration.

(a) Except as otherwise provided in this Declaration, and subject to the written approval of Declarant (until such time as Declarant no longer owns real property within the Property and thereafter, the Board), any provision, covenant, condition, or restriction in this Declaration may be amended, rescinded, added or modified upon written approval by Owners of at least sixty-seven percent (67%) of all Lots in the Community.

(b) This Declaration may be amended at any time by Declarant without the consent or approval of any other Owner or any other Person, in order to comply with the requirements, standards, or guidelines of the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, including the Federal Housing Administration, the Veterans Administration, or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities. Declarant's right of amendment herein shall terminate at such time as Declarant no longer owns land within the Property.

(c) No action to challenge an amendment of this Declaration may be brought more than one (1) year after the date of recordation of such amendment.

(d) An amendment to this Declaration shall be acknowledged by the Declarant (or Board) and if approval of Owners is required, shall contain a certification that written approval of such amendment was given by Owners of at least sixty-seven percent (67%) of all Lots within the Community, and shall be recorded in the Records.

Section 9.4 Notices. Unless otherwise required by applicable law or this Declaration, any requirement to deliver any notice, statement, demand, document or record to an Owner shall be deemed satisfied by sending the same to the applicable Owner by electronic delivery if the Owner has provided an electronic mail or delivery address to the District. Otherwise, any notice given under this Declaration shall be in writing and may be served either personally, by mail or by any other lawful means. If served by mail, the notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the District for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the District, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the third business day after it is deposited in a regular depository of the U.S. Postal Service. Such address may be changed from time to time by notice in writing to Declarant or the District.

Section 9.5 Violations of Law. Any violation of any federal, state, county or municipal law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration. There shall be no obligation or duty of Declarant to undertake the enforcement of the laws, ordinances, rules or regulations of other governmental entities.

Section 9.6 Remedies Cumulative. Each remedy provided under the Declaration is cumulative and not exclusive.

Section 9.7 Limitation on Liability. District, Declarant, the Design Review Committee, and their officers, directors, shareholders, managers, members, partners, agents or employees, shall not be liable to any Person for any action or for any failure to act if such action or failure to act was in good faith and without malice.

Section 9.8 Representations and Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, District, or by any of their officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, 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 specifically set forth in writing.

Section 9.9 Disclaimer Regarding Safety. DECLARANT, THE DISTRICT, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS

AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE DISTRICT, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.

Section 9.10 Costs and Attorney Fees. In any action or proceeding to enforce any provision of the Declaration, except as otherwise provided in Article 8 above, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, court costs, and collection costs.

Section 9.11 Governing Law. The Declaration shall be construed and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding other than as set forth in Article 8 above shall be in Arapahoe County, Colorado.

Section 9.12 Severability. Each of the provisions of the Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 9.13 Number. Unless the context requires a contrary construction, as used in the Declaration, the singular shall include the plural and the plural, the singular.

Section 9.14 Board Resolves Questions of Construction. If any doubt or question should arise concerning the true intent or meaning of any of the provisions, covenants, conditions and restrictions contained in this Declaration, the Board shall determine the proper construction of the provisions in question and shall set forth the meaning, effect, and application of the provision in a written document acknowledged by the Board. This determination will thereafter be binding on all parties so long as it is not arbitrary or capricious.

[Remainder of page intentionally left blank- signature on following page]

EXHIBIT A

East Bend Subdivision Filing No. 1,
County of Arapahoe,
State of Colorado.