

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
MALLARD RIDGE SUBDIVISION – JOHNSTOWN VILLAGE FILING. NO. 1**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MALLARD RIDGE SUBDIVISION – JOHNSTOWN VILLAGE FILING No. 1 (the “**Declaration**”) is made and entered into this 25<sup>th</sup> day of MAY, 2021 by Forestar (USA) Real Estate Group Inc., a Delaware corporation (the “**Declarant**” as hereinafter more fully defined), upon the following terms and conditions:

**RECITALS**

WHEREAS, the Declarant recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements for Mallard Ridge Subdivision – Johnstown Village Filing No. 1 in the real property records of Weld County, Colorado on March 3, 2021, at Reception Number 4688515 (the “**Original Declaration**”); and

WHEREAS, the Declarant is the owner of one hundred percent (100%) of the property subject to the Original Declaration (the “**Property**” as hereinafter more fully defined); and

WHEREAS, the Declarant, as the owner of one hundred percent (100%) of the property subject to the Original Declaration desires to amend and restate the Original Declaration in its entirety; and

WHEREAS, the Declarant desires to create a system of covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Property and Improvements to be developed thereon, which shall be known as the Mallard Ridge Subdivision (the “**Development**”); and

WHEREAS, the covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other charges set forth herein are in addition to the laws of any and all applicable governmental entities with jurisdiction over the Property, including but not limited to the Town of Johnstown (the “**Town**”) and Weld County, Colorado; and

WHEREAS, the Declarant desires that the Property shall be improved, held, used, occupied, leased, sold, and/or conveyed subject to this Declaration; and

WHEREAS, pursuant to the Service Plan for Johnstown Village Metropolitan District Nos. 1-5, as approved by the Town Council of the Town on Jun 4, 2018, the Johnstown Village Metropolitan District No. 2 (the “**Metropolitan District**,” as hereinafter more fully defined) may furnish covenant enforcement and design review services and the Metropolitan District intends to exercise its powers to provide covenant enforcement and design review services, as defined Section 32-1-1004 (8) of the Colorado Revised Statutes, for the Property; and

WHEREAS, this Declaration shall run with the land and be binding on and inure to the

benefit of all parties having any rights, title, or interest in any portion of the Properties, their heirs, successors, successors-in-kind and assigns; and

WHEREAS, the Declarant further hereby states that the Metropolitan District shall maintain, care for and manage the Metropolitan District owned portions of the Property and related Metropolitan District Improvements from time to time, and perform certain functions for the benefit of the Owners as further described herein and within the Service Plan; this Declaration shall also define certain duties, powers and rights of the Owners, Declarant and Metropolitan District; and

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

NOW, THEREFORE, the Original Declaration is amended and restated in its entirety as set forth in this Declaration and in addition to the foregoing, the Declarant for itself, its successors and assigns, declares that the Property shall, be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions set forth above and herein, as the same may be amended and/or supplemented from time to time; provided that the provisions of this Declaration shall apply only to those portions of the Property actually used for residential purposes or designated for such use.

## ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. When used in this Declaration, capitalized terms shall have the meanings provided in the following sections of this Article:

1.1.1 **“Architectural Control Committee”** or **“ACC”** shall mean and refer to the committee created pursuant to the terms of this Declaration established to review and approve plans for the construction or alteration of Improvements on Lots as set forth in Article 2 of this Declaration.

1.1.2 **“Benefited Parties”** means Declarant, the Metropolitan District, the Governing Board, the ACC, the Enforcement Committee, the Appeals Board, and each of their agents, directors, employees, members, managers, officers, partners, and shareholders, and their respective heirs, successors, and assigns.

1.1.3 **“Builder”** means (i) any Person who acquires a Lot from Declarant for the purpose of constructing a building thereon for subsequent sale, and/or rental or (ii) any Person who is designated by Declarant as a “Builder.”

1.1.4 **“Claims”** means any and all causes of action, claims, costs, damages, expenses, liabilities, and other claims.

1.1.5 “**Declarant**” means Forestar (USA) Real estate Group Inc., a Delaware corporation, and/or any other Person to whom the Declarant may, at any time from time to time, assign one or more of the Declarant's rights (which shall be the extent of the Declarant's rights to which such assignee succeeds); provided, that no assignment of any Declarant rights shall be effective unless such assignment is duly executed by the assignor Declarant and recorded in Weld County, Colorado. The term “Declarant” as used herein includes any entity that results from reorganization or restructuring of the existing entity or the conversion thereof to another form of entity.

1.1.6 “**Declaration**” shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Mallard Ridge Subdivision – Johnstown Village Filing No. 1, as amended and supplemented from time to time.

1.1.7 “**Development**” shall mean the Mallard Ridge Subdivision development subject to this Declaration, consisting of the Property described in Exhibit A attached hereto and incorporated herein by this reference.

1.1.8 “**Fees**” means, collectively, (i) any type of charge to any portion of the Development for any services or facilities provided through the Metropolitan District or (ii) any fees imposed by the Metropolitan District for services.

1.1.9 “**Fines**” means any monetary penalty imposed by the Metropolitan District against an Owner due to a violation of the Project Documents by an Owner or any Occupant.

1.1.10 “**Governing Board**” means the Board of Directors of Johnstown Village Metropolitan District No. 2.

1.1.11 “**Guidelines**” shall mean the guidelines and rules published, and as amended and supplemented from time to time in accordance with the terms therein, by the Declarant or the Metropolitan District, as more fully provided herein.

1.1.12 “**Improvement(s)**” shall mean and include the following: (a) the construction, installation, alteration, demolition in whole or in part, or expansion of any exterior improvement, building, structure, appurtenance, or other improvements, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sidewalks, trails, bridges, sprinkler systems, garages, driveways, parking areas, fences, including gates in fences, basketball backboards and hoops, swing-sets or other play structures, screening walls, retaining walls, stairs, decks, exterior light fixtures, poles, signs, exterior tanks, utilities, facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any; (b) the staking, clearing, grading, excavation, filling or similar disturbance to the surface of the land, including without limitation any change of grade, change of ground level, change of drainage pattern, or change of stream bed or course, ditch improvements, drainage, retention and detention ponds or facilities, storm sewer and other collection facilities; (c)

all initial planting of and subsequent material modifications to landscaping, hedges, windbreaks, berming, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, and all planting, clearing or removing of trees, shrubs, grass or perennial plants, but in each instance excluding removal of dead or diseased plants and trees and excluding any replacement that is substantially similar to the item being replaced; (d) any change or alteration to the exterior appearance of Improvements previously approved by the ACC, including any change in finish material, color or texture; (e) the repainting and resurfacing of exterior surfaces of structures, including roofing materials, gutters, downspouts, drainspouts, exterior siding or stucco finish, entry doors, windows, trim around doors and windows, surfaces of garage doors, external vents and flues and glass surfaces, exclusive of any replacement that is substantially identical to the item being repainted or resurfaced; and (f) reconstruction of any structures.

1.1.13 “**Lot**” means each platted lot that is included in the real estate described on the attached Exhibit A.

1.1.14 “**Metropolitan District**” or “**District**” means Johnstown Village Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the State of Colorado, its successor or assign, and/or any other metropolitan district(s) to whom the then-Metropolitan District may, transfer or assign any or all of the rights, duties obligations, and responsibilities delineated in this Declaration. Any such assignment or transfer shall be effective upon recording in Weld County, Colorado of a document of transfer or assignment, duly executed by the then Metropolitan District. The Metropolitan District is the entity authorized and empowered to enforce the covenants, conditions, restrictions and easements contained herein, and to provide design review services for the Development.

1.1.15 “**Occupant**” means any Person, other than Declarant, the District, the Enforcement Committee, and the ACC, from time to time that uses or occupies any portion of a Lot under an ownership right or any lease, sublease, license or concession or other use and occupancy agreement, any guests and invitees of any Owner or Occupant and any other Person that uses any portion of the Property.

1.1.16 “**Owner**” means each fee simple title holder of a Lot but does not include a Person having an interest in a Lot solely as security for an obligation.

1.1.17 “**Person**” means a natural person, corporation, limited liability company, partnership, trust, joint venture, an unincorporated association, or any other entity or any combination thereof and includes without limitation each Owner, Builder, and the Declarant.

1.1.18 “**Project Documents**” means this Declaration, Rules and Regulations, Guidelines and any documents now or hereafter adopted by or for the District, as amended or supplemented.

1.1.19 “**Property**” means the real estate described on the attached Exhibit A.

1.1.20 “**Rules and Regulations**” means rules and regulations concerning, without limitation, (i) the appointment of members to the ACC, (ii) the use of the Property, (iii) water conservation, management and landscaping, (iv) certain use restrictions, (v) other restrictions governing the conduct of Owners or Occupants, as such rules and regulations are adopted by the Declarant or the Metropolitan District, as amended from time to time, as more fully provided herein. Rules and Regulations are binding upon all Owners and Occupants.

Section 1.2 Other Terms in Covenants. Other terms in this Declaration may be defined in specific provisions contained herein and shall have the meaning assigned by such definition.

## ARTICLE 2. DELEGATION OF AUTHORITY

Section 2.1 Authority. Except as otherwise provided in this Declaration, Declarant delegates certain governance matters related to the Development to the Metropolitan District. Declarant, through this Declaration, grants the authority to the Metropolitan District through the ACC and the Governing Board, as applicable, to act on behalf of Declarant for certain matters specifically set forth in this Declaration, including, without limitation, implementing this Declaration and enforcing this Declaration.

Section 2.2 Enforcement of Covenants. Declarant grants the Metropolitan District the authority to enforce certain covenants contained in this Declaration and contained in the Project Documents, as applicable.

Section 2.3 Adopt Rules and Regulations Implementing this Declaration. After the period set forth in Section 7.3 of this Declaration, Declarant grants the Metropolitan District the authority to adopt certain Rules and Regulations for the effective governance of the Development to implement this Declaration.

Section 2.4 Design Guidelines. After the period set forth in Section 7.3 of this Declaration, Declarant grants the Metropolitan District the authority to promulgate architectural standards, rules, regulations and/or guidelines (collectively the “**Guidelines**” as more fully defined herein) to interpret and implement the provisions of this Declaration. The Guidelines may consist of one or more documents, of differing titles, and may be adopted as a component of the Rules and Regulations.

Section 2.5 Design Review. Declarant grants the Metropolitan District, acting through the ACC, as more fully provided in this Declaration, the authority to review and approve Improvements in compliance with the Guidelines and to enforce the Guidelines.

Section 2.6 Appellate Body. After the period set forth in Section 7.3, Declarant grants the Metropolitan District the authority to create an appellate body to review decisions of the ACC to be known as the “**Appeals Board**”. When appointed by the Governing Board of the Metropolitan District, the Appeals Board may consist of a subset of the members of the Governing

Board or all of the members of the Governing Board.

Section 2.7 Imposition of Fees and Fines. Declarant grants the Metropolitan District the authority to impose Fees and Fines related to the activities of enforcement and the ACC, and to otherwise implement the provisions of this Declaration.

### **ARTICLE 3. ARCHITECTURAL REVIEW**

Section 3.1 Appointment of Members to ACC. There shall be no less than three (3) and no more than five (5) members of the ACC. The Declarant shall have the authority to appoint members of the ACC during the period set forth in Section 7.3 of this Declaration. Thereafter, the Governing Board of the Metropolitan District shall have the authority to serve as, or to appoint the members of, the ACC. The power to “appoint” the ACC, as provided herein, shall include without limitation the power to: constitute the initial membership of the ACC; appoint member(s) to the ACC on the occurrence of a vacancy therein, for whatever reason; and remove any member of the ACC, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the entity which then has the power to appoint the ACC.

#### Section 3.2 Design Review Requirements.

3.2.1 No Improvements shall be constructed, erected, placed, altered, planted, applied or installed upon any Lot unless said Improvements are in full compliance with the provisions of the Project Documents and unless at least one (1) set of complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the ACC), shall have been first submitted to and approved in writing by the ACC.

3.2.2 The ACC shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the ACC will require as a condition to its considering an approval request that the applicant(s) pay or reimburse the ACC for the expenses incurred by the ACC in the review process.

3.2.3 In addition to the foregoing review and approvals, the construction, erection, addition, deletion, change or installation of any Improvements may require the applicant to obtain the approval of governmental entities with jurisdiction thereover, and the issuance of all required permits, licenses and approvals by all such entities.

3.2.4 The ACC shall have the power, with the consent of the entity then authorized to appoint the members of the ACC, to delegate the responsibility for reviewing any application submitted to the ACC to a professional architect, landscape architect, engineer, or other professional Person who is qualified to review the issues raised in the application. The ACC shall also have the power to require that the applicant pay the Fees reasonably incurred by the ACC in retaining such professional to review the application submitted.

Section 3.3 Guidelines. During the period set forth in Section 7.3 of this Declaration, the Declarant is authorized to adopt, enact, modify, amend, repeal, and re-enact design and/or architectural standards, rules, regulations and/or guidelines (collectively the “**Guidelines**”). Thereafter, the Governing Board of the Metropolitan District shall have such authority. Any such Guidelines may be included in Rules and Regulations promulgated by the Declarant or the Metropolitan District as set forth in Section 9.1 of this Declaration. Such Guidelines may contain provisions to clarify the designs and materials that may be considered in design approval, may state requirements for submissions, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the ACC. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval or may state that only one or more types of fences are acceptable and no other types will be approved. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration. The Guidelines may permit the Metropolitan District to send demand letters and notices, levy and collect Fees and/or Fines, and negotiate, settle and/or take any other actions with respect to any violation or alleged violation of any of this Declaration and/or the Guidelines.

Section 3.4 Procedures. The ACC shall approve or disapprove all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the ACC may require in conjunction therewith. A stamped or printed notation, initialed by a member of the ACC, affixed to any of the plans and specifications, shall be deemed a sufficient writing. However, unless required by applicable law, the ACC shall not be required to maintain records of plans, specifications or other documents or information that have been submitted to it for approval. Approval by the ACC shall be conclusive evidence of compliance with this Article 3, provided that the Improvements are constructed in compliance with the plans and specifications as approved. Failure to approve the plans and specifications within forty-five (45) days shall be deemed disapproval.

Section 3.5 Voting and Appeals. A majority vote of the ACC is required to approve a request for architectural approval or any other matter to be acted on by the ACC, unless the ACC has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the ACC decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full ACC upon a written request therefor submitted to the ACC within ten (10) days after such decision by the ACC's representative. In the event the ACC decides an appeal request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Appeals Board, upon a written request therefor

submitted to the entity then authorized to appoint the members of the ACC within ten (10) days after such decision by the ACC. The Appeals Board will review and issue a decision within thirty (30) days after a written request for such decision. Notwithstanding anything to the contrary in this Declaration, the entity then authorized to appoint the members of the ACC may intercede of its own volition in matters of architectural approval by the ACC, and the entity then authorized to appoint the members of the ACC Board may reverse, alter, amend, adjust, change, or otherwise modify any decisions of the ACC at any time, so long as any one or more Owners are not unduly prejudiced thereby.

Section 3.6 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application or to complete the Improvement in complete conformance with the conditions and requirements of the approval, shall constitute noncompliance with the requirement that approval for Improvements be obtained from the ACC; provided, however, the ACC, in its discretion, may grant extensions of time for completion of any proposed Improvements.

Section 3.7 Notice of Completion. Upon the completion of any Improvement, the applicant for approval of the same shall give a written “**Notice of Completion**” to the ACC. Until the date of receipt of such Notice of Completion, the ACC shall not be deemed to have notice of completion of any Improvement on which approval has been sought and granted as provided in this Article.

Section 3.8 Inspection of Work. The District and the ACC or any duly authorized representative of the same shall have the right to inspect any Improvement prior to or after completion in order to determine whether the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article.

Section 3.9 Notice of Noncompliance. If, as a result of inspections or otherwise, the District or the ACC finds that any Improvement has been done without obtaining the approval of the ACC, or was not done in substantial compliance with the approval that was granted, or was not completed within one (1) year after the date of approval, subject to any extensions of time granted pursuant to Section 3.6 hereof, the District may notify the applicant in writing of the noncompliance (a “**Notice of Noncompliance**”). The Notice of Noncompliance shall specify the particulars of the noncompliance.

Section 3.10 Correction of Noncompliance. If the District or the ACC determines that a noncompliance exists, the Person responsible for such noncompliance shall remedy or remove the same (and return the subject real estate and/or Improvements or structure to its original condition) within the period specified in the Notice of Noncompliance. If such Person does not comply within such period, the District may, at its option and after providing the Owner with notice and the opportunity for a hearing as more fully provided in Section 4.2.2 of this Declaration, record a notice of noncompliance against the Lot on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the Person responsible for such noncompliance shall reimburse the ACC, upon demand, for all costs and expenses



incurred with respect thereto.

Section 3.11 No Liability. The Benefited Parties are not liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing or approving any matter, the Benefited Parties are not responsible for any issue related to the Improvements, whether structural or otherwise and whether submitted for review or otherwise. The Benefited Parties are not responsible for any matter related to safety. The Benefited Parties are not responsible for any Improvement's conformance with applicable law or compliance with any other standards or regulations, and any approval of an Improvement by the ACC, any party designated by the ACC or the Appeals Board may not be deemed to represent that the Improvement conforms with applicable law or complies with any other standards or regulations. Neither the ACC, any party designated by the ACC, nor the Appeals Board will make any investigation into title, ownership, easements, rights-of-way, or other rights appurtenant to property with respect to architectural requests and shall not be liable for any disputes relating to the same. No Owner or other Person is a third-party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the ACC, any party designated by the ACC or the Appeals Board. Each Owner (i) waives and releases Benefited Parties from all Claims related to approval of any Improvements and (ii) waives and releases all Claims against the Benefited Parties related to the safety or compliance with applicable law or other standards or regulations of any Improvement. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The ACC members, any party designated by the ACC or the Appeals Board acting in such capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The ACC members, any party designated by the ACC, or the Appeals Board, acting in such capacity, have no personal liability with respect to any contract or other commitment made or action taken on behalf of the ACC, any party designated by the ACC or the Appeals Board .

Section 3.12 Variance. The ACC, in its sole discretion, may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration and/or the Guidelines, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other real estate and Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

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

Section 3.14 Declarant and District's Exemption. Notwithstanding anything to the contrary, Declarant, Declarant's affiliates, the ACC and the District are exempt from any and all

other matters that require ACC review and/or approval. Neither Declarant nor Declarant's affiliates are responsible for any review or approvals by the ACC under this Declaration or any other Project Document.

Section 3.15 Builder's Exemption. Notwithstanding anything to the contrary, as long as, and to the extent that, a Builder has received written architectural approval from the Declarant, such Builder shall, as to Declarant-approved Improvements, be exempt from this Article and all provisions of this Declaration that require ARC review and/or approval.

#### ARTICLE 4. ENFORCEMENT

Section 4.1 Fees and Expenses. All expenses of enforcement must be paid by the District with revenues derived from that portion of the Property with respect to which enforcement services are required or performed. The District has the right to charge Fees and Fines for costs of enforcement of the Project Documents and the costs incurred to correct, remedy or otherwise remedy violations, in amounts which may be established by the Governing Board from time to time. The District or a private management company hired by the District shall provide enforcement for the recording of meeting minutes and assistance with other administrative needs.

Section 4.2 General Inspections; Violation Identified by Another Owner; Notice and Hearing; Remedies.

4.2.1 General Inspection. Any member or authorized agent or consultant of the Governing Board, the ACC, or any other authorized officer, director, employee or agent of the District may enter upon any Lot, at any reasonable time after notice to Owner, without being deemed guilty of trespass, in order to investigate or inspect any portion of the Property for alleged violations of the Project Documents, or to verify any utility matter.

4.2.2 Notice of Alleged Violation; Right to a Hearing. If (i) an investigation or inspection reveals that any part or portion of a Lot is not in compliance with the Project Documents, (ii) the District has submitted a Notice of Noncompliance with respect to a Lot, which violation has not been cured as set forth in Section 3.10 of this Declaration, or (iii) another Owner has submitted a complaint in accordance with the Rules and Regulations, the District may send a notice of alleged Violation (a "Notice of Violation") to the Owner of such Lot in accordance with the Rules and Regulations. Upon receipt of a Notice of Violation, an Owner shall be entitled to request a hearing with respect thereto in accordance with the Rules and Regulations.

4.2.3 Remedies. If, after receipt of the Notice of Violation and, to the extent requested in accordance with the Rules and Regulations, any hearing requested by an Owner, such Owner is found by the Governing Board, or such enforcement tribunal which may be appointed by the Governing Board, to be in violation of the Project Documents and fails to remedy the violation within the time period specified in the Notice of Violation issued pursuant to the Rules and Regulations, the District shall have all remedies available to it at law or in equity, including, without limitation, the following remedies:

4.2.3.1 The District may record a notice of violation or noncompliance against the Lot on which the violation exists;

4.2.3.2 The District has the right to remove, correct or otherwise remedy any violation in any manner the Governing Board deems appropriate;

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

4.2.3.4 The District may levy reasonable Fines for such violation;

4.2.3.5 The District may collect, and shall have a lien against the Lot subject to the violation to secure, (1) payment for reimbursement by the violating Owner for any remedial work performed by the District to remove, correct or otherwise remedy the violation, (2) payment for expenses incurred in obtaining injunctive relief, including costs and attorneys' fees, plus the following amounts, to the extent not inconsistent with applicable laws, (3) interest on such amount at a rate equal to eighteen percent (18%), and (4) all costs and expenses of collecting the unpaid amount, including, without limitation, reasonable attorneys' fees.

Section 4.3 Deemed Nuisances. Every violation constitutes a nuisance, and every remedy allowed for such violation at law, in equity or under the Project Documents against the violating Owner is available to the District.

Section 4.4 No Liability. The Benefited Parties are not liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing any alleged violation, the Benefited Parties are not responsible for any issue related to the alleged violation. No Owner or other Person is a third-party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Benefited Parties. Each Owner (i) waives and releases the Benefited Parties from all Claims related to the actions of the District and/or their representatives and (ii) waives and releases all Claims against the Benefited Parties. The foregoing release and waiver is made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The Governing Board members and the ACC members, acting in such capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Governing Board members and the ACC members, acting in such capacity, shall have no personal liability with respect to any contract or other commitment made or action taken on behalf of the District.

## **ARTICLE 5. RESTRICTIONS**

Section 5.1 Restrictions Imposed. The Property is subject to all requirements, covenants, restrictions and other matters stated on the recorded plats of the Property, or any portion

thereof, as well as all other applicable documents. In addition, the Declarant declares that all of the Property 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.

Section 5.2 Residential Use; Professional or Home Occupation. Lots shall be used for residential use only, including uses which are customarily incidental thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

5.2.1 The business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

5.2.2 The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of one or more signs indicating that a business is being operated;

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

5.2.4 The business conforms to all zoning requirements and is lawful in nature;  
and

5.2.5 The business conforms to this Declaration, the Rules and Regulations, and the Guidelines.

Section 5.3 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Property; provided, however, that the Owners and Occupants of each Lot may keep a reasonable number (no more than four of any combination) of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Property. All household pets shall be controlled by their owner and shall not be allowed off the pet owner's Lot except when properly leashed and accompanied by the pet owner or his or her representative, who shall be responsible for collecting and properly disposing of any animal waste. The District shall have, and is hereby given, the right and authority to determine in its sole discretion 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 or Occupant is otherwise in violation of the provisions of this Section. In any such case, the District may take such action(s) as it may deem appropriate. An Owner's or Occupant'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 as a result of such pets.

Section 5.4 Temporary Structures; Unsightly Conditions. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a tent, shack, storage

shed, or outbuilding, shall be placed or erected on a 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 the Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be pursued diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on the Property as to be visible from a street or from the ground level of any other portion of the Property. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its agents, employees, and contractors, or a Builder with the express written approval of the Declarant, to maintain during the period of construction and sale of any Lots, upon such portion of the Property as Declarant may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale or rental of Lots, including, without limitation, a business office, storage area, construction yard, signs, model homes, sales office, construction office, parking areas, and lighting.

Section 5.5 Miscellaneous Requirements and Improvements.

5.5.1 Signs and Advertising. Unless otherwise prohibited by applicable law, no signs of any kind may be displayed to the public view on any Lot without the written approval of the ACC, including on any fencing facing an open or public space, except for:

5.5.1.1 Signs which are expressly permitted pursuant to the Guidelines or Rules and Regulations;

5.5.1.2 Signs which are part of the Declarant (or a Builder's with the express written consent of the Declarant) overall marketing, sale, or construction plans or activities for the property;

5.5.1.3 One (1) temporary "For Sale", "Open House", "Available", "For Rent", or "For Lease" sign placed on the front yard of the Lot. The sign must be professionally made and shall be limited to a maximum of six (6) square feet and, if free standing, is mounted on a single or frame post. The overall height of the sign from the finished grade of the Lot at the spot where the sign is located may not exceed four (4) feet. The sign shall be removed within two (2) business days following the sale or lease of the Lot;

5.5.1.4 Political signs are limited to one (1) sign per candidate or ballot measure, are limited to thirty-six inches (36") by forty-eight inches (48") and may only be ground mounted. The sign shall not be installed more than forty-five (45) days before the date of the election and shall be removed within seven (7) days after the election to which the sign relates;

5.5.1.5 One (1) "No Soliciting" and "Security Warning" sign near or on the front door of the residence, provided, that the sign may not exceed twenty-five (25) square inches.

5.5.2 HVAC. No types of refrigerating, cooling or heating apparatus shall be permitted on a rooftop or extended from windows.

5.5.3 Antenna. Except as may otherwise be permitted by the ACC, 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, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant (or by any Builder with the express written consent of the Declarant) in connection with the sale or rental of Lots, or otherwise in connection with development of or construction on the Property; and provided further, however, that the requirements of this subsection shall be subject to the Telecommunications Act of 1996 and applicable regulations, as amended from time to time.

5.5.4 Fences. Other than fences which may be constructed, installed or located by the Declarant (or by a Builder with the express written approval of the Declarant) in its development or construction of Improvements in the Property, fences shall only be permitted in accordance with the Guidelines and with the prior written approval of the ACC. Any fences constructed on a Lot shall be maintained by the Owners of such Lot.

5.5.5 Sheds. Sheds shall be permitted if: the shed is in accordance with the Guidelines or the Rules and Regulations; and the shed has the prior, written approval of the ACC.

#### Section 5.6 Vehicular Parking, Storage and Repairs.

5.6.1 Except for parking on the public streets, which shall be controlled by the Town or Weld County, as applicable, all parking within the Property shall be regulated by the District.

5.6.2 Except as otherwise provided in subsection 5.6.3 hereof and/or in the Rules and Regulations, vehicles shall be parked only in the garages and driveways, if any, serving the Lots, or in appropriate spaces or areas which may be designated by the Governing Board from time to time, except that any vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. Vehicles shall be subject to such reasonable Rules and Regulations as the Governing Board may adopt from time to time. The Declarant (or a Builder with the express written approval of the Declarant) may designate certain parking areas for visitors or guests, and the Governing Board may adopt reasonable rules and regulations, from time to time, governing traffic or parking areas.

5.6.3 Except as may otherwise be set forth in the Rules and Regulations, or as otherwise required by law, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, recreational vehicles, golf carts, boats and boat trailers, junk cars, cars that are not capable of moving on their own power, and buses shall be parked only in enclosed garages or specific areas, if any, which may be designated by the Governing Board from time to time. This restriction, however, shall not restrict trucks or

commercial vehicles which are necessary for construction or for the maintenance of any portion of the Property or any Improvements located thereon, nor shall such restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency. Stored vehicles and vehicles which are inoperable shall not be permitted in the Property except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours without the prior approval of the Governing Board. This provision is intended to be broadly interpreted to cover almost any type of vehicle or structure not intended for every-day use. However, trailers, campers, motor homes, pickups, coaches, tents, or boats which can be and are stored completely within a garage and are not used for living purposes will not be in violation of these restrictions. The fact that a vehicle of the above description may be licensed by the State of Colorado or any other state as a passenger vehicle shall in no way exempt it from this provision or the general intent of this provision.

5.6.4 In the event the Governing Board determines that a vehicle is parked or stored in violation of subsections 5.6.2 or 5.6.3 hereof, the Governing Board may elect to impose Fines or use other available sanctions.

5.6.5 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 Property unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining real estate and Improvements. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle on a Lot, together with those activities normally incidental and necessary to such washing and polishing.

Section 5.7 Nuisances. No nuisance shall be permitted which is visible within or otherwise affects any portion of the Property, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the term "nuisance" shall include each violation of any of the Project Documents, but shall not include any activities of the Declarant, or Builder with the express written consent of the Declarant. No noxious or offensive activity shall be carried on, nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 5.8 No Hazardous Activities; No Hazardous Materials or Chemicals. No activities shall be conducted which are or might be unsafe or hazardous to any Person, real estate or Improvements. Without limiting the generality of the foregoing, no firearms shall be discharged, and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored 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, real estate or Improvements.

Section 5.9 No Annoying Light, Sounds or Odors. No light shall be emitted which is unreasonably bright or causes unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be permitted which is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled from any Lot. In addition to the foregoing, no electromagnetic, light or any physical emission which might interfere with aircraft, navigation, communications or navigational aids shall be permitted.

Section 5.10 Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence or within an enclosed structure on any Lot, nor shall such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. In addition, no garbage or trash shall be placed on the street for removal prior to the night before the scheduled trash removal service is to be performed, and must be removed from the street by the end of the day of such scheduled trash removal services. All trash cans or receptacles must be placed in the curb, not blocking the sidewalk.

Section 5.11 Lots to be Maintained. Subject to Section 5.4 hereof, the Owners of each Lot shall have the sole duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Governing Board, in its sole discretion:

- 5.11.1 Promptly removing all litter, trash, refuse and waste;
- 5.11.2 Mowing and edging of lawns;
- 5.11.3 Pruning of trees and shrubs;
- 5.11.4 Replacing dead trees and other dead landscaping;
- 5.11.5 Keeping exterior lighting and mechanical facilities in working order;
- 5.11.6 Keeping lawn and garden areas alive, free of weeds, and attractive;
- 5.11.7 Keeping planting beds free of turf grass and weeds;
- 5.11.8 Keeping sidewalks, curbs, tree wells, landscape borders, walkways, alleys, and driveways in good repair; and
- 5.11.9 Repairing exterior damage, and wear and tear to the home and other and Improvements.



Section 5.12 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, as long as all leases provide for a minimum lease term of twelve (12) months, that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of the Project Documents; and that any failure by the lessee to comply with any of the Project Documents, in any respect, shall be a default under the lease. Each Owner who leases his or her Lot shall provide the District, upon request, a copy of the current lease, and any other information reasonably requested by the District.

Section 5.13 Completion of Landscaping. Within the time frames as hereinafter provided, the Owner (other than the Declarant, or a Builder with the express written approval of the Declarant) of each Lot shall install landscaping on all of the Lot, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. The first Owner of each Lot (other than Declarant, or a Builder with the express written approval of the Declarant) shall install landscaping on such Lot within one hundred eighty (180) days after acquisition of such Lot by such Owner if said acquisition occurs between April 1 and October 1; if said acquisition does not occur between such dates, then such landscaping shall be installed by such Owner by the following October 1. Landscaping plans and other required documents shall be in accordance with the Guidelines and shall be submitted to the ACC for review and approval prior to the installation of landscaping, except where installed by the Declarant, or Builder with the express written approval of the Declarant.

Section 5.14 Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.

5.14.1 Each Owner shall maintain the grading upon his Lot (including grading around the building foundation) 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 per the established drainage improvement plans as approved by the Town. Each Owner agrees that he will not in any way change or interfere with the established drainage pattern over his Lot. For purposes of this Section, “established drainage” is defined as the drainage which exists at the time final grading of a Lot by the Declarant or Builder is completed.

5.14.2 The Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens and 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 should water such shrubbery 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 and slabs.

## **ARTICLE 6. EASEMENTS**

Section 6.1 Easements for Access. Declarant declares, establishes, grants, and reserves easements over each Lot in favor of Declarant, its affiliates, Builders, the ACC, and the District, including each of their respective agents, representatives, contractors and employees, for performing any of the actions authorized or required of the same as provided in this Declaration, including but not limited to investigation and/or enforcement of any term or provision of any of the Project Documents, maintenance, repair, or replacement or other services as provided for in this Declaration, and enforcement of any provision in the Project Documents. The access easements granted in this Section 6.1 may be exercised only during reasonable hours after reasonable notice to the Owner of any affected Lot; provided, however, that no such notice is required in connection with any exterior, non-intrusive maintenance and in emergency situations entry upon a Lot may be made at any time, provided that Owner is notified of impending emergency entry as early as is reasonably possible.

Section 6.2 Additional Easements. Declarant and Declarant's affiliates shall have whatever easements are reasonably necessary or desirable across the Property for access to and utility services for the Property.

Section 6.3 Limitations on Easements. The easements established pursuant to this Declaration (a) shall in no way affect, avoid, extinguish, or modify any other covenants, easements, limitations, reservations, or restrictions affecting all or part of the Property recorded prior to this Declaration and (b) shall not be interpreted or construed as preventing or precluding the construction, operation, and use of any Lot which is otherwise permitted by the terms of this Declaration.

Section 6.4 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded Plat of the Property, or any portion thereof, and the easements established in this Declaration.

Section 6.5 Emergency 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 streets and upon the Property in the proper performance of their duties.

Section 6.6 Easements Deemed Appurtenant. Any and all conveyances made by Declarant to any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights created herein for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

## **ARTICLE 7. RESERVATION OF DEVELOPMENT RIGHTS**

Section 7.1 Declarant and Builder Exemption. Notwithstanding anything to the contrary contained in any of the Project Documents, the Declarant (and any Builder designated in writing by Declarant) shall be exempt from the Project Documents, including without limitation the

requirement to obtain design approval from the ACC and any covenants or restrictions. Notwithstanding the foregoing, neither the Declarant nor any Builder shall be exempt from the requirement to obtain approval from all governmental entities with jurisdiction over the Property.

Section 7.2 General Provisions. Declarant, for a period of twenty (20) years from and after the recording of this Declaration in the real estate records of Weld County, Colorado, will have the following development rights (collectively, the “**Development Rights**”) with respect to all of the Property:

7.2.1 Subdivision or Replatting of Lots. Declarant reserves for itself and its successors and assigns the right to subdivide or replat any Lot owned by Declarant. Each such subdivision or replatting may change the number of Lots in the Property. The foregoing reservation includes the right to move any lot lines on Lots for the purpose of accommodating Improvements which are or may be constructed.

7.2.2 Completion of Improvements. The right to complete or make Improvements as indicated on any Plat filed with respect to the Property.

7.2.3 The right to withdraw the Property, or any portion thereof, from this Declaration so long as the Declarant owns the portion of the Property to be withdrawn. By each such withdrawal, if any, the Declarant shall be deemed to have amended the term "Property" to exclude such withdrawn real estate and Improvements. The right to withdraw any portion(s) of the Property includes the right to withdraw one or more Lots, or other portion(s) of the Property, at different times and from time to time. Each withdrawal, if any, may be affected by the Declarant recording a withdrawal document in the office of the Weld County Clerk and Recorder. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn real estate and Improvements from this Declaration so that, from and after the date of recording a withdrawal document, the real estate and Improvements so withdrawn shall not be part of the Property. If real estate is withdrawn from the Property ("Withdrawn Property"):

7.2.3.1 The owner(s) of the Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the common areas within the Property.

7.2.3.2 The owner(s) within the Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the common areas within the Withdrawn Property.

7.2.3.3 Declarant shall prepare and record in the real property records of Weld County whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the owners of the Withdrawn Property and the owners of the Property shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of

them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

7.2.4 Sales and Construction Activities. The right, for Declarant and any Builder (but only with the express written consent of the Declarant), and their employees, agents, and contractors to perform, from time to time, and to maintain upon portions of the Lots, such activities and materials as Declarant or such Builder deems necessary or incidental to the construction and sale of Lots and development and construction of Improvements. The foregoing includes, without limitation, locating, maintaining and relocating management offices, construction trailers, construction offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its discretion from time to time. Further, nothing contained in any of the Project Documents shall limit the rights of Declarant or a Builder, with Declarant's express written approval:

7.2.4.1 To excavate, cut, fill or grade any real estate (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

7.2.4.2 To use any Improvements on any real estate (with the consent of the Owner thereof) as a construction, management, model home, sales or leasing office in connection with the development, construction or sale of any real estate and/or Improvements; and/or

7.2.4.3 To seek or obtain any approvals under any of the Project Documents for any other activity.

7.2.5 Dedications. The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

7.2.6 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or common area, which may or may not be a part of the Property.

7.2.7 Site Plan Modification/Expansion. Nothing in this Declaration shall preclude the Declarant from modifying any site plan for the Property, subject to the approval of the required governmental authorities, including but not limited to the purpose of expanding the square footage of Improvements permitted to be constructed on the Lots owned by Declarant, provided that such modification does not have a material and adverse impact on any Lot not owned by Declarant, and does not violate any then- existing zoning,

land use, or other requirements of the Town or Weld County or any other governmental entity having jurisdiction.

Section 7.3 Period of Declarant Control. Until the earlier of (a) a period of twenty (20) years from and after the recording of this Declaration in the real estate records of Weld County, Colorado or (b) such time as Declarant no longer owns any of the Property subject to this Declaration, Declarant shall have the authority to:

7.3.1 Appoint and remove members of the ACC as more fully provided in Section 3.1 of this Declaration.

7.3.2 Adopt, enact, modify, amend, repeal, and re-enact Guidelines, as more fully provided in Section 3.3 of this Declaration.

7.3.3 Adopt, enact, modify, amend, repeal, and re-enact Rules and Regulations, as more fully provided in Section 9.1 of this Declaration.

7.3.4 Enforce any violation of the Project Documents, in the same manner and with the same authority as the Metropolitan District, in the event the Metropolitan District fails to do so as more fully provided below. In the event the Metropolitan District fails to enforce any provision of the Project Documents, Declarant may provide written notice of such failure to the Metropolitan District. The Metropolitan District shall have thirty (30) days from the date of such notice to commence appropriate enforcement action in accordance with this Declaration and any Rules and Regulations related to enforcement procedures. If the Metropolitan District fails to commence appropriate enforcement action within such thirty (30) day period, Declarant may thereafter undertake enforcement of the violation in the place of the Metropolitan District after providing written notice of its intent to undertake the same to the Metropolitan District.

Section 7.4 Supplemental Provisions Regarding Development Rights. Without limiting the generality of the foregoing, certain of the Development Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any plat of the Property in connection with the exercise of any Development Rights, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

Section 7.5 Utility Easements. Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, and electrical, cable and other communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits, and conduits under and over the Property. No water, sewer, gas, telephone, electrical, communications or other utility or service lines, systems or facilities may be installed or relocated on the surface of the Property, unless approved by the ACC. These items may be temporarily installed above ground during construction, if approved by the ACC, subject to the requirements, if any, of any governmental authority having

jurisdiction over the Property.

Section 7.6 Drainage Easements. Declarant reserves for itself and its successors and assigns an easement to enter on any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Every Lot shall be burdened with easements for natural drainage of storm water runoff from the other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property without the consent of the ACC and the Owner of the affected property.

Section 7.7 General Provision. Any Person using these general easements provided under Sections 7.5 and 7.6 above shall use its best efforts to install and maintain the easements for utilities or drainage without disturbing the uses of the Owners and the Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and in the case of utility work, shall restore the surface to its original condition as soon as possible after completion of its work, and shall comply with all requirements of the Guidelines and the ACC. Should any Person furnishing a service covered by these general easements request a specific easement by separate recordable document, Declarant shall have, and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, void, extinguish, or modify any other recorded easement affecting the Property.

Section 7.8 Reservation for Construction. Declarant hereby reserves for itself and its successors and assigns a perpetual easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress. The location of these easements and rights-of-way may be made certain by Declarant by instruments recorded in the real estate records of Weld County, Colorado. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not hamper the enjoyment of the Property by the Owners.

Section 7.9 Rights Incidental to the Construction Easement. Declarant expressly reserves the right to perform construction work and to store materials in secure areas, in Lots and on other portions of the Property owned by it, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Owner or mortgagee. Declarant reserves an easement through the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's Development Rights reserved in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the land not designated as reserved for future development in this Declaration or on any plat of the Property for the purpose of furnishing utility and other services to the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey Improvements within those easements.

Section 7.10 Operations and Maintenance Services and Costs. The Declarant hereby

authorizes the Metropolitan District to provide certain operations and maintenance services to the Property in lieu of a homeowners' association (as may be authorized or limited by law and the Service Plan for the Metropolitan District), which services may include, operation and maintenance of any District open space, common areas, greenbelts, landscaped medians, monuments, entry features, fencing, landscape buffers and setbacks, ponds, lakes, trails, paths and walkways, non-potable irrigation water facilities and improvements, detention ponds and drainage facilities, covenant enforcement and architectural/design review services, and operations and maintenance services for public facilities and improvements not otherwise dedicated to the Town. Each Lot Owner may be charged an annual fee, for operation and maintenance services provided by the Metropolitan District as described herein. The annual fee shall be subject to adjustment at the discretion of and as determined by the Governing Board of the Metropolitan District based upon the Metropolitan District's annual budget, and amendments thereto from time to time. The Governing Board of the Metropolitan District shall not be liable for any omission or improper exercise by any Agent or independent contractor of any duty, power or function so delegated by written instrument executed by or on behalf of the Governing Board of the Metropolitan District.

Section 7.11 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded Plat of the Property, or any portion thereof, and the easements established in this Declaration.

Section 7.12 Emergency 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 streets and upon the Property in the proper performance of their duties.

Section 7.13 Easements Deemed Appurtenant. Any and all conveyances made by Declarant to any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights created herein for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights-of-way appear.

Section 7.14 Maintenance Easement. A blanket easement is hereby reserved to Declarant for the benefit of the Declarant, Declarant's affiliates, successors and specific assigns, and granted to the Metropolitan District and any member of the Governing Board or the ACC, and their respective officers, agents, employees, contractors and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make repairs or to perform the duties, obligations, functions and maintenance which the Metropolitan District, the Governing Board, or the ACC are obligated or permitted to perform pursuant to the Project Documents, including the right to enter upon any Lot for the purpose of performing maintenance and repair thereon, as required by this Declaration, together with the right of access, ingress and egress necessary for such installation, maintenance, operation, repair, replacement and upkeep.

Section 7.15 Order of Exercise of Development Rights. The fact that Declarant may

exercise one or more of Declarant's Development Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right with respect to any other portion of the Property. The Declarant may exercise its Development Rights on all or any portion of the Property in whatever order of development the Declarant, in its sole discretion, determines.

Section 7.16 Rights Transferable. Any Development Rights created or reserved under this Article or elsewhere in this Declaration for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the real estate records of Weld County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

## **ARTICLE 8. RELEASE, WAIVER AND CERTAIN DISCLOSURES**

Section 8.1 Acknowledgment of Inconvenience. Each Owner agrees that there are inconveniences which will accompany the construction of the Development, including, without limitation, construction noise, portable toilets, construction traffic, uncompleted buildings, areas not landscaped, potholes and construction supplies stored in plain view and general inconvenience associated with construction sites and related issues. Each Owner, by taking title to any Lot, waives any claims associated with the inconveniences, nuisance and hazards associated with such construction.

Section 8.2 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 Project Documents. 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. The release and waiver set forth in Section 8.7 (Waiver) shall apply to this Section.

Section 8.3 Limitation on Liability. The Declarant, the Metropolitan District, the Governing Board, the ACC, and their directors, officers, shareholders, partners, members, agents and employees, shall not be liable to any Person for any action or for any failure to act arising out of this Declaration or the Project Documents, unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 8.7 (Waiver) shall apply to this Section.

Section 8.4 No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, the Metropolitan District, the Governing Board, the ACC 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 Community, sale, operation, maintenance, cost of maintenance, taxes or



regulation thereof, unless and except as specifically set forth in writing. The release and waiver set forth in Section 8.7 shall apply to this Section.

Section 8.5 Disclaimer Regarding Safety.

THE DECLARANT, BUILDERS, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ACC, 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 THE DECLARANT, BUILDERS, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ACC, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED HEREIN OR IN THE COVENANTS AND GUIDELINES, 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. THE RELEASE AND WAIVER SET FORTH IN SECTION 8.7 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 8.6 Development Within and Surrounding the Property. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of Improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Property, view of or from the Property or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, Builders, the Metropolitan District, the Governing Board, the ACC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 8.7 shall apply to this Section.

Section 8.7 Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, Builders, the Metropolitan District, the Governing Board, the ACC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, and any Guidelines, Rules and Regulations, and other documents now or hereafter adopted by or for the Metropolitan District, including without limitation, those contained in Sections 8.2 through 8.6 of this Declaration.

Section 8.8 Colorado Governmental Immunity Act. Notwithstanding anything to the contrary, the parties hereto understand and agree that liability for claims for injuries to persons,

real estate or Improvements arising out of the negligence of the Metropolitan District, its boards, officials, and employees, is controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S. The Metropolitan District does not waive and shall retain all of the immunities, protections, rights, procedures, and limitations provided to the Metropolitan District under the Colorado Governmental Immunity Act.

## **ARTICLE 9. GENERAL PROVISIONS**

Section 9.1 Rules and Regulations. During the period set forth in Section 7.3 of this Declaration, the Declarant may adopt, enact, modify, amend, repeal, and re-enact Rules and Regulations concerning and governing the Property. Thereafter, the Governing Board of the Metropolitan District is authorized to adopt, enact, modify, amend, repeal, or re-enact such Rules and Regulations. The Rules and Regulations may state procedural requirements, interpretations, clarifications and applications of this Declaration and law, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Declarant or the Governing Board, as applicable, has the authority to adopt or vary one or more Rules and Regulations that are different for different types of Lots, if any. Any Rules and Regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

Section 9.2 Enforcement. Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Rules and Regulations, the Guidelines and any other Project Documents, as at any time amended, may be by any proceeding at law or in equity against any Persons violating or attempting to violate any such provision, and possible remedies include all of those available at Resolution), Declarant and the District have the right, but not the duty, to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), in any action instituted or maintained under this Declaration or any other such documents, the prevailing party shall recover its costs and attorneys' fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by Declarant or the District to enforce any covenant, restriction or other provision contained in this Declaration shall in no event give rise to any liability, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other provision of this Declaration. Each Owner, by its acceptance of title to a Lot, assigns and delegates and consents to the assignment and delegation to the District, in their own name as an Owner of property within the Property, the authority, power, right, and responsibility to enforce the Project Documents.

### Section 9.3 Duration, Amendment and Supplement.

9.3.1 Each and every provision of this Declaration shall run with and bind the Property perpetually from the date of recording of this Declaration. Subject to subsection 9.3.2 of this Section, this Declaration may be amended and/or supplemented by the affirmative vote or agreement of the Owners of sixty-seven percent (67%) of the Lots (with each Lot having one vote). Notwithstanding the foregoing, the Metropolitan District shall not be required to comply with or enforce any such Owner adopted amendments or

supplements to this Declaration until such time as the Metropolitan District receives a recorded copy of such amendment and/or supplement in compliance with Section 9.5 of this Declaration (Notices).

9.3.2 Notwithstanding anything to the contrary, until twenty (20) years after conveyance of all the Property to the first Owners thereof other than the Declarant, no amendment or supplement of this Declaration shall be effective without the prior written approval of the Declarant.

9.3.3 Notwithstanding anything to the contrary, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

9.3.4 Notwithstanding anything to the contrary, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to correct any clerical, typographical or technical errors in this Declaration or to clarify any provision of this Declaration.

9.3.5 Notwithstanding anything to the contrary, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to comply with the requirements of any applicable law in the event any provision contained herein does not so comply.

9.3.6 Subsections 9.3.2, 9.3.3, 9.3.4 and 9.3.5 of this Section shall not be amended or deleted without the prior written approval of the Declarant.

Section 9.4 Severability. All provisions of this Declaration are severable. Invalidation of any provision of this Declaration by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 9.5 Notices. Any notice permitted or required in this Declaration shall be deemed to have been given and received upon the earlier to occur of (a) personal delivery upon the Person to whom such notice is to be given; or (b) two (2) days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to the Owner at the address for such Owner's Lot.

Section 9.6 Headings. The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions

hereof.

Section 9.7 Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 9.8 Runs with the Land; Binding Upon Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property and all Improvements which are now or hereafter become a part of the Property and any Future Parcel(s). The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Metropolitan District, the Declarant, Builder, and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

Section 9.9 Powers and Authority. The Property is located within the boundaries of the District. Declarant authorizes the District to exercise with regard to the Property all powers and authority reasonably necessary to administer the rights and duties of District under this Declaration, including, without limitation: (a) the power to adopt and amend budgets for revenues, expenditures, and reserves; (b) the power to collect taxes and Fees from Owners to administer its duties and obligations provided in this Declaration; (c) the power to manage and enforce the Project Documents; (d) the power to contract with a third-party property manager for the management of the Property and/or for all other duties and responsibilities related to the overall operation of the Property; and (e) all other rights, powers and authority necessary to enforce this Declaration. The District has the power to levy Fees, Fines and other penalties for violations of the Project Documents, as allowed by applicable law and as set forth in this Declaration.

Section 9.10 Delegation. The duties, easements, responsibilities, and rights that are reserved and granted under this Declaration may be delegated in whole or in part by Declarant, Declarant's affiliates, the District to an agent or management company that is acting on behalf of Declarant, Declarant's affiliates, and/or the District with respect to all or part of the Property. The right and authority of Declarant under this Declaration automatically ceases upon expiration of Declarant Development Period at which time the foregoing reserved rights vest solely in the District.

## **ARTICLE 10. DISPUTE RESOLUTION**

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

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

(10) years' experience in the provision of such services.

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

10.1.3 “**Claimant**” means any Bound Party having a Claim.

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

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

10.1.6 “**Party**” means the Claimant and the Respondent individually; “**Parties**” means the Claimant and the Respondent collectively.

10.1.7 “**Respondent**” means any Bound Party against whom a Claimant asserts a Claim.

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

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

Section 10.2 Intent of Article: Applicability of Article: and Applicability of Statutes of Limitation.

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

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

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

Section 10.3 Commencement or Pursuit of Claim Against Bound Party.

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

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

Section 10.4 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties are subject to the provisions of Article 10. Notwithstanding the foregoing, unless all Parties otherwise agree, the following are not Claims and shall not be subject to the provisions of this Article 10:

10.4.1 Any suit by the District or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary in order to enforce any of the provisions of this Declaration;

10.4.2 Any suit by the District for the collection of any Fees or Fines imposed by the District;

10.4.3 Any suit between or among Owners, which does not also include Declarant, Declarant's affiliates, the District, or the ACC as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Project Documents; and

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

Section 10.5 Mandatory Procedure.

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

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

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

10.5.1.3 The proposed remedy; and

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

10.5.2 Negotiation and Mediation.

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

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

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

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

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

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

10.5.3 Binding Arbitration.

10.5.3.1 Upon Termination of Mediation, if Claimant desires to

pursue the Claim, Claimant may initiate final, binding arbitration of the Claim under the auspices of JAG in accordance with the rules of JAG in effect on the date of the Notice that is provided for in Section 10.5.1 of this Declaration. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, one arbitrator who has expertise in the areas of dispute, which may include legal expertise if legal issues are involved, will arbitrate the dispute.

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

Section 10.6 Award. The award of the arbitrator must be accompanied by detailed written findings of fact and conclusions of law. Except as required by applicable law or for confirmation of an award, neither Party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties.

Section 10.7 Waiver of Trial. BY ACCEPTING A DEED TO ANY LOT, EACH OWNER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY A JURY OR TO A JUDGE WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY THEM AGAINST DECLARANT OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION OR ANY DOCUMENT, OR ANY CLAIM ARISING OUT OF ALLEGATIONS OF DEFECTIVE CONSTRUCTION.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand this 25 day of May, 2021.

**DECLARANT:**

FORESTAR (USA) REAL ESTATE GROUP INC., a Delaware corporation

By: Matthew Napier  
Its: Division President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of May, 2021, by Matthew Napier as Division President of Forestar (USA) Real Estate Group Inc.

Witness my hand and official seal.

(SEAL)

**TROY HAZEL**  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20184015333  
My Commission Expires 4/6/2022

Troy Hazel  
Notary Public  
My Commission expires: 4/6/2022



**EXHIBIT A  
TO  
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS AND EASEMENTS FOR MALLARD RIDGE SUBDIVISION –  
JOHNSTOWN VILLAGE FILING NO. 1**

**(Legal Description of the Property)**

Lots 1-25, inclusive, Block 1,  
Lots 1-26, inclusive, Block 2,  
Lots 1-22, inclusive, Block 3,  
Lots 1-18, inclusive, Block 4,  
Lots 1-13, inclusive, Block 5,  
Lots 1-18, inclusive, Block 6,  
Lots 1-23, inclusive, Block 7,  
Lots 1-26, inclusive, Block 8,  
Lots 1-18, inclusive, Block 9,  
Lots 1-14, inclusive, Block 10,  
Lots 1-8, inclusive, Block 11,  
Lots 1-20, inclusive, Block 12,  
Lots 1-14, inclusive, Block 13,  
Lots 1-18, inclusive, Block 14,  
Tracts A, B, C, D, E, F, G, H, I, J, K, and Q,  
Johnstown Village Filing No. 1  
County of Weld,  
State of Colorado.