

**AMENDED AND RESTATED**  
**MASTER DECLARATION OF COVENANTS, CONDITIONS AND**  
**RESTRICTIONS**  
**OF**  
**BELLE CREEK**

After recording return to:  
WHITE BEAR ANKELE TANAKA & WALDRON  
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**AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF BELLE CREEK**

THIS AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BELLE CREEK (the “**Amended and Restated Declaration**”) is made and entered the date and year hereinafter set forth by the members of Belle Creek Master Association, Inc. (“**Association**”), with the consent of the Belle Creek Metropolitan District No. 1 (“**District**”) and Belle Creek LLC (“**Developer**”).

**WITNESSETH:**

WHEREAS, there has been recorded a certain Master Declaration of Covenants, Conditions and Restrictions of Belle Creek in the real property records of Adams County, Colorado on August 8, 2001, at Reception Number C083927, as supplemented and amended (“**Original Declaration**”); and

WHEREAS, Article 15, Section 15.10.2 of the Original Declaration provides that, while the Developer owns any portion of the property described on Exhibits A and D attached to the Original Declaration, no amendment may be made to the Original Declaration except with the affirmative vote or agreement of the Members holding ninety percent (90%) of the Votes (as defined in the Original Declaration); and

WHEREAS, pursuant to C.R.S. §32-1-1004, as amended, and other provisions of Title 32 of C.R.S., the District is empowered to provide certain services to the residents of the District, including covenant enforcement and design review; and

WHEREAS, it is the desire of the Members to amend the Original Declaration in its entirety, such that this Amended and Restated Declaration shall fully supersede and replace the Original Declaration and all provisions thereof; and

WHEREAS, it is the desire of the Members to terminate the Belle Creek community as a common interest community subject to the Colorado Common Interest Ownership Act (C.R.S. §38-33.3-101, et. seq.) and to dissolve the Association, but to keep in place certain restrictions and covenants applicable to the property subject to the Original Declaration, which are then to be enforced by the District; and

WHEREAS, upon the approval and recordation of this Amended and Restated Declaration, the Belle Creek community shall not be a common interest community as defined in the Colorado Common Interest Ownership Act, and this Amended and Restated Declaration shall not be subject to the Colorado Common Interest Ownership Act.

NOW THEREFORE, pursuant to Article 15, Section 15.10.2 of the Original Declaration, Members holding more than ninety percent (90%) of the Votes in the Association, present in person or by proxy at a duly constituted meeting of the Members, as evidenced by the signatures attached hereto, with the consent of the District and the Developer, hereby amend in its entirety

the Original Declaration, such that this Amended and Restated Declaration shall fully supersede and replace the Original Declaration and all provisions thereof.

## **ARTICLE 1. DEFINITIONS**

### **Section 1.1    *Active Area.***

“Active Area” means the area of each Residential Lot which is provided for the general use and enjoyment of the Owner of such Residential Lot and on which (or on a portion of which) may now or hereafter be located landscaping, a deck, patio, hot tub, barbecue, chair(s), table(s), patio furniture, fencing and/or other Improvements, as may be determined from time to time by the Owner of such Residential Lot with Architectural Review Committee approval as required.

### **Section 1.2    *Apartment Lot.***

“Apartment Lot” means a Lot that is designated for apartment uses in this Amended and Restated Declaration and on which one or more structures containing Apartment Units may be constructed from time to time.

### **Section 1.3    *Apartment Unit.***

“Apartment Unit” means each area of an Apartment Lot or a Mixed Use Lot which is or may be separately offered for rental or lease by the Owner of such Apartment Lot or Mixed Use Lot and which is intended for residential occupancy.

### **Section 1.4    *Architectural Review Committee.***

“Architectural Review Committee” (ARC) means the Architectural Review Committee which shall be appointed by the District as provided in Article 2 of this Amended and Restated Declaration. The ARC shall review, consider and approve, or disapprove, requests for architectural approval, as more fully provided in this Amended and Restated Declaration.

### **Section 1.5    *Builder.***

“Builder” means any owner other than the Developer who acquires (or has acquired prior to the recording of this Amended and Restated Declaration) one or more Lots for the purpose of constructing one or more commercial, apartment, or residential structures thereon, and who is designated as a “Builder” by the Developer in its sole discretion from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument duly recorded in the office of the Clerk and Recorder of the County of Adams, State of Colorado.

### **Section 1.6    *Commercial Unit.***

“Commercial Unit” means each area of a Mixed Use Lot and each Condominium Unit which are or may be separately offered for rental or sale and which are designated for

commercial uses in this Amended and Restated Declaration or in any other document recorded by the Developer (with the consent of the Owner of that Lot) or as permitted by applicable zoning, including any Apartment Unit so designated or permitted.

**Section 1.7      *Community.***

“Community” means the real estate described on Exhibit A of this Amended and Restated Declaration, as supplemented and amended from time to time. The name of the community is Belle Creek.

**Section 1.8      *Condominium Building.***

“Condominium Building” means any building (including all fixtures and Improvements therein contained) located in the Community and within which one or more Condominium Units are located. At the time of the recording of this Declaration, there are no Condominium Buildings. Notwithstanding, if any Apartment Lot or Mixed Use Lot is subsequently converted to a condominium form of ownership, any buildings on any such Apartment Lot or Mixed Use Lot so converted shall be deemed to be Condominium Buildings upon the recording of the condominium map(s) applicable to such Apartment Lot or Mixed Use Lot being so converted.

**Section 1.9      *Condominium Unit.***

“Condominium Unit” means the air space contained within the enclosed rooms occupying part of a floor or floors in a Condominium Building, and bounded by the unfinished interior surfaces of the perimeter walls (or the adjoining walls, if two or more Condominium Units adjoin each other), unfinished interior surfaces of floors (or the lowermost floors, if it is a Condominium Unit containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of a Condominium building, and which is separately identified on a condominium map. Each Condominium Unit shall be either a Residential Unit or a Commercial Unit, as applicable.

**Section 1.10    *Developer.***

“Developer” means Belle Creek LLC, a Colorado limited liability corporation, and/or any other Person to whom the Developer assigns one or more of the Development Rights, as defined herein, under this Amended and Restated Declaration (which shall be the extent of the Development Rights to which such assignee succeeds), provided, that no assignment of any Development Rights shall be effective unless such assignment is duly executed by the assignor Developer and recorded in Adams County, Colorado.

**Section 1.11    *Development Rights.***

“Development Rights” means the following rights or combination of rights hereby reserved by the Developer, as such Development Rights are further described in this Amended and Restated Declaration, to:



1.11.1 create Lots;

1.11.2 subdivide or replat Lots; or

1.11.3 withdraw real estate from the Community.

The Developer may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any such Development Rights. The Developer's right to exercise Development Rights shall terminate automatically as provided in Section 1.27 of this Amended and Restated Declaration.

#### **Section 1.12    *District.***

"District" means the Belle Creek Metropolitan District No. 1 and/or any other metropolitan district to which the District may transfer or assign any or all of the rights and duties of the District under this Amended and Restated Declaration. Any such assignment or transfer, if any, shall be effective upon recording in Adams County, Colorado, of a document of transfer or assignment, duly executed by the District. In addition to the authority granted to the District in this Amended and Restated Declaration, the District has such other authority with respect to the exercise of such authority, as may be permitted by the Special District Act, C.R.S. 32-1-101 *et seq.*, including but not limited to the right to adopt rules and regulations, fees, rates, tolls, penalties and charges, and to undertake enforcement actions.

#### **Section 1.13    *Easement Grant and Reservation Map.***

"Easement Grant and Reservation Map" means that certain map entitled "Easement Grant and Reservation Map for Belle Creek Filing 1," as supplemented and amended from time to time (including without limitation additions to the Easement Grant and Reservation Map to add additional filings), the purpose of which is to show the approximate location of the use easements that are provided for in Article 5 hereof, as well as other easement(s). More than one Easement Grant and Reservation Map, or amendment, modification or supplement thereto, is anticipated to be recorded; if so, then the term "Easement Grant and Reservation Map" collectively means all of such maps and amendments, modifications and supplements thereto.

#### **Section 1.14    *Fees.***

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

#### **Section 1.15    *Fines.***

"Fines" means any monetary penalty imposed by the District, the ARC, or any Enforcement Committee (as defined herein) against an Owner due to a violation of the Governing Documents by such Owner.

### **Section 1.16    *Governing Documents.***

“Governing Documents” means this Amended and Restated Declaration, any Design Guidelines (as defined herein) adopted by the governing board of the District, any Rules and Regulations (as defined herein) as adopted by the governing board of the District, and any other procedures or resolutions adopted by the governing board of the District to effectuate the provisions of this Amended and Restated Declaration.

### **Section 1.17    *Improvements.***

“Improvements” means all improvements, structures, buildings, and any and all landscaping features, buildings, outbuildings, geothermal systems, solar systems, swimming pools, hot tubs, satellite dishes, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, roads, driveways, parking areas, fences, gates, basketball backboards and hoops, swing sets or other play structures, screening walls, retaining walls, stairs, decks, fixtures, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment. Improvements include, without limitation, all initial Improvements constructed on any Lot and all subsequent changes, modifications, alterations or adjustments to any previously approved Improvement, including any change of exterior appearance, color, or texture, other than any changes, modifications, alterations or adjustments to the interior of a structure on a Lot.

### **Section 1.18    *Lot.***

“Lot” means each platted lot, including Apartment Lots, Residential Lots, and Mixed Use Lots, shown on any recorded subdivision map of the real property described on the attached Exhibit A, as the same may be resubdivided or replatted from time to time (subject to the restrictions contained in this Amended and Restated Declaration); and each Condominium Unit, if any; and any other real property as may hereafter be brought within the jurisdiction of this Amended and Restated Declaration, with the exception of any publicly dedicated property, any property owned or leased by the District, and any property which is in the form of common elements owned or maintained by any homeowners association established for any portion of the property subject to this Amended and Restated Declaration.

### **Section 1.19    *Mixed Use Lot.***

“Mixed Use Lot” means a Lot designated as such in this Amended and Restated Declaration and which includes more than one of the following in combination: residential use; apartment use; and/or commercial use.

### **Section 1.20     *Occupant.***

“Occupant” means any Person, other than the Developer, a Builder, the ARC, the Enforcement Committee, if any, and the District, who from time to time 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.

### **Section 1.21     *Owner.***

“Owner” means each fee simple title holder of a Lot, including the Developer, any Builder and any other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. If there is more than one fee simple holder of title, “Owner” includes each such Person, jointly and severally.

### **Section 1.22     *Passive Area.***

“Passive Area” means the area of each Residential Lot which is not intended for the general use and enjoyment of the Owner of such Residential Lot, and such owner’s family members, tenants, guests and invitees, if such Passive Area is part of a Use Easement Premises subject to the easement(s) that are provided for in Article 5 hereof. The approximate location of each Passive Area is shown on the Easement Grant and Reservation Map, and shall generally and approximately consist of that portion of the Residential Lot which lies between the side property line on such Residential Lot and the nearest exterior side wall of the dwelling unit on such Residential Lot, as if such side wall were extended to the front and rear property lines of such Lot, and is adjacent to a benefited Residential Lot (as shown on the Easement Grant and Reservation Map and listed on the attached Exhibit C).

### **Section 1.23     *Person.***

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

### **Section 1.24     *Property.***

“Property” means the real estate described on the attached Exhibit A, as supplemented and amended, as the same may now or hereafter be improved.

### **Section 1.25     *Residential Lot.***

“Residential Lot” means any Lot within the Community designated in this Amended and Restated Declaration for single family dwelling purposes, including any Condominium Unit so designated.

### **Section 1.26     *Rules and Regulations.***

“Rules and Regulations” means rules and regulations concerning, without limitation, (i) the appointment of members to the ARC and any Enforcement Committee, (ii) the use of the Property, (iii) certain use restrictions on the Lots, (iv) other restrictions governing the conduct of Owners, and/or (v) rules and regulations specific to Residential Lots, Apartment Lots, Commercial Units and/or Mixed Use Lots, as such rules and regulations are adopted the District and as may be amended from time to time. The Rules and Regulations are binding upon all Owners and Occupants.

### **Section 1.27     *Special Developer Rights.***

“Special Developer Rights” means the following rights, which are hereby reserved for the benefit of the Developer, and which rights may be further described in this Amended and Restated Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; or to use easements through the Community for the purpose of making Improvements within the Community or within real estate which may be added to the Community. All of the Special Developer Rights may be exercised by the Developer with respect to any portion of the property now or hereafter within the Community. The Developer may exercise any or all of these Special Developer Rights at any time and from time to time. Such rights shall terminate automatically 25 years from the date of the recording of this Amended and Restated Declaration.

### **Section 1.28     *Use Easement Premises.***

“Use Easement Premises” means that portion of any Passive Area that is granted to or reserved for the perpetual, exclusive use of the adjacent Residential Lot, in accordance with and subject to the provisions of Article 5 hereof. A Use Easement Premises will generally consist of the Passive Area of the Residential Lot on which the Use Easement Premises is located and will be next to the Active Area of the adjacent Residential Lot. Those Residential Lots in the Community on which a Use Easement Premises is planned to be located and those lots which are planned to benefit from such Use Easement Premises are listed on Exhibit C attached hereto and incorporated herein by this reference and are further identified on the Easement Grant and Reservation Map. However, the attached Exhibit C and the Easement Grant and Reservation Map are subject to change as provided in this Amended and Restated Declaration.

### **Section 1.29     *Vote or Votes.***

“Vote” or “Votes” means the number of votes allocated to each Lot as follows: for each Residential Lot, one (1); for each Apartment Lot, one (1) for each Apartment Unit on such Apartment Lot; for each Commercial Unit, one (1); and for each Mixed Use Lot, the number of Votes based on the types of uses that are included in such Mixed Use Lot (for example, if the Mixed Use Lot includes 20 Apartment Units and one Commercial Unit, then the Votes for such Mixed Use Lot would be 21 (20 + 1)).

## **ARTICLE 2. ARCHITECTURAL REVIEW**

### **Section 2.1   *Composition of ARC; Appointment and Authority of Representative.***

2.1.1 The ARC will consist of three (3) or more natural persons appointed by the governing board of the District. The power to “appoint” the ARC, as provided herein, shall include without limitation the power to: constitute the initial membership of the ARC; appoint member(s) to the ARC on the occurrence of a vacancy therein, for whatever reason; and remove any member of the ARC, 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 District.

2.1.2 The ARC may at any time, from time to time, appoint a representative to act on its behalf. If the ARC does so, then the actions of such representative shall be the actions of the ARC, subject to the right of appeal as provided below. However, if such representative is appointed by the ARC, then the ARC shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative’s authority to act on behalf of the ARC and the power to at any time remove or replace such representative.

### **Section 2.2   *Architectural Review Requirements; Authority of ARC.***

2.2.1 Except as provided in Sections 2.4 and 2.16 of this Amended and Restated Declaration, no Improvement may be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Lot, unless the Improvement is in full compliance with all provisions of the Governing Documents. Prior to constructing, erecting, placing, altering, planting, applying, installing or modifying an Improvement upon any Lot, the Owner of the Lot must submit plans and specifications of the proposed Improvement to the ARC for review and consideration, and then receive approval in writing from the ARC, all in accordance with the Design Guidelines and/or Rules and Regulations. An Owner may designate in writing a Person other than Owner to submit plans and specifications as a co-applicant with Owner.

2.2.2 The ARC shall endeavor to exercise its reasonable judgment in an attempt to provide for each proposed Improvement to generally harmonize with the existing surroundings, residences, landscaping and structures.

2.2.3 In its review of such plans, specifications and other materials and information, the ARC may require that the applicant(s) reimburse the ARC for the actual expenses incurred by the ARC in the review and approval process. Such amounts, if any, shall be collectible by the District in the same manner as other fees authorized to be charged and collected by the District pursuant to Colorado law.

2.2.4 In addition to the foregoing review and approval, and notwithstanding anything to the contrary in this Declaration, prior to the construction, erection, addition, deletion, change or installation, of any Improvement, the Owner must obtain the approval of all governmental entities with jurisdiction there over, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by Commerce City, Colorado, if required, shall be a precondition to commencement of any construction or alteration of, addition to or change in any Improvement.

### **Section 2.3    *Delegation (and Acceptance) of Architectural Review and Approval.***

The governing board of the District may delegate any or all design review and/or approval functions pursuant to this Amended and Restated Declaration to an architectural review committee appointed by one or more homeowner associations governing all or any portion of the Property, and may accept from any architectural review committee appointed by any such homeowner associations the delegation of any or all review and/or approval functions of such architectural review committee. The District may, at any time, determine to reclaim the delegated rights. To reclaim the delegated rights, written notice must be given to the board of directors of any homeowners association to which such rights were delegated that such rights are being reclaimed by the District, and the reclamation shall be effective upon receipt of the notice by the board of directors of such homeowners association. No delegation of design review and/or approval to any such homeowners association shall constitute a waiver of the District's right of design review and/or approval as provided in this Amended and Restated Declaration.

### **Section 2.4    *Design Guidelines.***

The governing board of the District may, at any time and from time to time, enact, issue, promulgate, modify, amend, repeal, and re-enact, and enforce, a manual of design guidelines for the Community, or other design or architectural guidelines, to interpret and/or implement any provisions of this Article and this Amended and Restated Declaration ("**Design Guidelines**"). Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the ARC, may state procedural requirements, or may specify acceptable Improvements that may be installed without prior approval of the ARC. The Design Guidelines may permit the District to send demand letters and notices, levy and collect Fees, Fines and interest, and negotiate, settle and/or take any other actions with respect to any violation or alleged violation of any of the Governing Documents. Any architectural or design guidelines so adopted by the governing board of the District shall be consistent, and not in conflict, with this Article and this Amended and Restated Declaration. In addition, the Design Guidelines may provide for blanket approvals, interpretations, or restrictions. By way of example, and not by way of limitation, the Design Guidelines may state that a certain type of screen door will be acceptable and will not require approval, or may state that only one or more types of fences are acceptable and no other types will be approved.

## **Section 2.5    *Procedures.***

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

## **Section 2.6    *Vote and Appeal.***

The affirmative, majority vote of the ARC is required to approve a request for approval pursuant to this Article, (which may be with conditions and/or requirements), unless the ARC has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the ARC decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to appeal such decision to the full ARC, upon a written request therefor submitted to the ARC within thirty (30) days after such decision by the ARC's representative.

## **Section 2.7    *Prosecution of Work After Approval.***

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

## **Section 2.8    *Notice of Completion.***

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

## **Section 2.9    *Inspection of Work.***

The ARC, the District, and/or the Enforcement Committee, if any, and any duly authorized representative of the same, has the right to inspect any Improvement at any time, including prior to or after completion, to determine whether or not the Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article.

## **Section 2.10   *Notice of Noncompliance.***

If, as a result of inspections or otherwise, or following receipt of a Notice of Completion, the District, the ARC, or the Enforcement Committee, if any, determines that any Improvement has been constructed without obtaining all required approvals (which may be with conditions and/or requirements), or was not constructed in substantial compliance with the approval that was granted, or has not been completed by the Completion Deadline (except landscaping, as provided below), subject to any extensions of time granted pursuant to Section 2.7 hereof, then the District or the Enforcement Committee, if any, will notify the applicant in writing of the non-compliance, specifying the particulars of the noncompliance ("**Notice of Noncompliance**").

## **Section 2.11   *Correction of Noncompliance.***

If it has been determined that a non-compliance exists, the Person responsible for such non-compliance must remedy or remove the same, and return the subject property or structure to a condition acceptable to the District or the Enforcement Committee, if any, within the period specified in the Notice of Noncompliance. The District may at its option, record a notice of non-compliance against the Lot on which the non-compliance exists, may impose Fees, Fines, penalties and interest, may remove the non-complying Improvement, or may otherwise remedy the non-compliance, and the Person responsible for such non-compliance shall reimburse the District, upon demand, for all Fees, costs and expenses, as well as anticipated costs and expenses, with respect thereto.

## **Section 2.12   *Access Easement.***

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



### **Section 2.13 *No Liability.***

Neither the Developer, the ARC, the District, the Enforcement Committee, if any, or any member of any the same (the “**Released Parties**”) are liable or shall be liable to any Person by reason of any action, failure to act, approval (which may be with conditions and/or requirements), disapproval, or failure to approve (which may be with conditions and/or requirements) or disapprove, in regard to any matter whether for damage or in equity. In reviewing or approving any matter, the Released Parties are not be responsible for any issue related to the Improvements, whether structural or otherwise, and whether submitted for review or otherwise. The Released Parties are not responsible for any matter related to safety. The Released Parties are not responsible for the conformance of Improvements with applicable law or compliance with any other standard or regulation, and any approval (which may be with conditions and/or requirements) of any Improvement by the ARC will not be deemed an approval of any such matters, will not be deemed to represent that the Improvement conforms to applicable law or complies with any other standards or regulations, and will not constitute a warranty by the ARC to any applicant of the adequacy of design, workmanship or quality of such work or materials for any applicants’ intended use. The ARC will not 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 Released Parties. Each Owner (i) waives and releases the District, the ARC, and the Enforcement Committee, if an, from all claims related to approval or disapproval of any Improvements and (ii) waives and releases all claims against the District, the ARC, and the Enforcement Committee, if any. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The ARC members, acting in that capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The ARC members, acting in that capacity, have no personal liability with respect to any contract or other commitment made or action taken on behalf of the ARC.

### **Section 2.14 *Variance.***

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

### **Section 2.15 *Waivers; No Precedent.***

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

### **Section 2.16 *Developer's and District's Exemption.***

Notwithstanding anything to the contrary, the Developer and the District are exempt from this Article and all provisions of this Amended and Restated Declaration that require ARC review and/or approval, except for the requirement to obtain approval from all governmental entities with jurisdiction over any portion of the Property owned or improved by the Developer or the District, as applicable (as provided in Section 2.2.4 of this Amended and Restated Declaration).

### **Section 2.17 *Builders Exemption.***

Notwithstanding anything to the contrary, as long as, and to the extent that, a Builder has received written architectural approval from the Developer, such Builder shall, as to Developer-approved Improvements, be exempt from this Article and all provisions of this Amended and Restated Declaration that require ARC review and/or approval, except for the requirement to obtain approval from all governmental entities with jurisdiction over any portion of the Property owned or improved by the Developer (as provided in Section 2.2.4 of the Amended and Restated Declaration).

## **ARTICLE 3. RESTRICTIONS**

### **Section 3.1 *Restrictions Imposed.***

The Community is subject to the recorded easements, licenses and other matters listed on Exhibit B attached hereto and incorporated herein by reference. In addition, the Lots in the Community 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 Amended and Restated Declaration and in the Governing Documents.

### **Section 3.2 *Residential Use.***

Subject to Section 9.6 of this Amended and Restated Master Declaration, Residential Lots and Apartment Units must be used for residential use only, including uses which are

customarily incident thereto, and not for business, commercial or professional purposes. Notwithstanding the foregoing, Owners or tenants may conduct business activities within their Residential Lot or Apartment Unit if all of the following conditions are satisfied:

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

3.2.2 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 signs indicating that a business is being conducted (other than as may be permitted by the Design Guidelines and approved by the ARC);

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

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

3.2.5 The business conforms to any Rules and Regulations that may be imposed by the governing board of the District from time to time on a uniform basis to protect the peace, tranquility and quality of the Community.

### **Section 3.3 *Household Pets.***

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

### **Section 3.4 *Temporary Structures; Unsightly Conditions.***

Except as hereinafter provided, no structure of a temporary character, including but not limited to a house, trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Apartment Lot (including Apartment Units) as to be visible from a street or from any other Lot.

### **Section 3.5    *Miscellaneous Improvements.***

3.5.1    No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Residential Lot or Apartment Lot (including Apartment Units) other than a name plate of the occupant and a street number, and except for a “For Sale,” “Open House,” “For Rent,” or security sign(s) of not more than a total of five (5) square feet; provided however, that each Apartment Lot shall be entitled to five (5) square feet of signage for each five (5) Apartment Units located on such Apartment Lot. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Developer and/or any Builder (with the written consent of the Developer) in connection with the sale or rental of Lots, or otherwise in connection with development of or construction on the Lots, shall be permissible.

3.5.2    No wood piles or storage areas shall be located on any Lot as to be visible from a street or from the ground level of any other Lot.

3.5.3    No types of refrigerating, cooling or heating apparatus shall be permitted on a roof, except as approved by the ARC subject to any provisions of the Design Guidelines. No such apparatus shall be permitted elsewhere on a Lot (including Apartment Units thereon), except when appropriately screened and approved by the ARC subject to any provisions of the Design Guidelines.

3.5.4    Except as may otherwise be permitted by the ARC, no exterior radio antennae, television antennae, or other antennae, satellite dish or audio or visual reception device of any type shall be placed, erected or maintained on any Lot (including the Apartment Units thereon), except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Developer during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those “antennae” (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended from time to time. As to “antennae” (including satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, the District shall be empowered to adopt Rules and Regulations governing the types of “antennae” (including satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or Rules and Regulations promulgated thereunder, as amended, establish reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

3.5.5    No fences shall be permitted, except, subject to any provisions of the Design Guidelines, with the prior written approval of the ARC and except such fences as may be constructed, installed or located by the Developer (or a Builder with the consent of the Developer) in its development of, or construction of Improvements in, the Community.

3.5.6 No wind generators, clotheslines (except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the District), drying yards, or service yards shall be constructed, installed, erected or maintained on any Lot .

3.5.7 Dog runs shall be permitted only with the prior approval of the ARC, subject to any provisions of the Design Guidelines and shall not be permitted on Apartment Lots or Mixed Use Lots.

### **Section 3.6 *Vehicular Parking, Storage and Repairs.***

3.6.1 No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (excluding pickup trucks that are 1 ton or less), self-contained motorized recreational vehicle, jet ski, or other type of recreational or commercial vehicle or equipment, may be parked or stored in the Community, unless such parking or storage is entirely within a garage area of any Lot or unless otherwise permitted pursuant to Rules and Regulations promulgated by the District. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

3.6.2 No vehicle described in Section 3.6.1 above or any disassembled or partially disassembled vehicles of any type shall be parked, stored, maintained, or used in the Community except within the fully enclosed garage on a Lot. However, recreational vehicles and motor homes may be temporarily parked for a maximum of three (3) consecutive days in the driveway for the purpose of loading and unloading. Recreational vehicles shall include, but not be limited to, motor homes, pick-up trucks with camper shells, trailers, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or the air, and the trailers used for their transportation.

3.6.3 Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community so as to be visible from the ground level of any other Lot. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of forty-eight (48) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provide, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

3.6.4 In the event the District shall determine that a vehicle is parked or stored on any Residential Lot or Apartment Lot in violation of subsections 3.6.1, 3.6.2 or 3.6.3 above, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the

District in its discretion from time to time, the District shall have the right to remove the vehicle at the sole expense of the owner thereof.

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

### **Section 3.7    *Nuisances.***

No Owner or Occupant will permit a nuisance on his or her Lot. Owners and Occupants will not permit any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot. This Section does not apply to the activities of Declarant, a Builder or the District.

### **Section 3.8    *No Hazardous Materials or Chemicals.***

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

### **Section 3.9    *No Annoying Lights, Sounds or Odors.***

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot (including the Apartment Units thereon) which is unreasonably loud or annoying; and no odor shall be permitted from any Lot (including Apartment Units thereon) which is noxious or offensive to others. Any exterior lighting installed or maintained on a Lot (including Apartment Units thereon) or Improvement(s) shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

### **Section 3.10    *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 on any Residential Lot or Apartment Lot (including in the Apartment Units thereon) or within a Commercial Units; nor shall such items be deposited on a street or within any parking area, unless placed in a suitable container suitably located solely for the purpose of garbage pickup. 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. Trash removal services may be provided by the District on behalf of the residents of the Property and, if so, Owners shall be obligated to utilize the trash removal services provided by the District and shall not be permitted to utilize any trash removal service or company individually. If trash removal services are provided by the District, the governing board of the District may determine the scope, frequency, and all other matters with regard to such trash removal services, and the Owners shall pay their proportionate share, as determined by the governing board of the District.

### **Section 3.11 *Lots to be Maintained.***

Each Lot shall at all times be kept in a clean, sightly and wholesome condition by the Owner thereof. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 3.10 above. Any damage to or destruction of any structure or Improvement located on a Lot shall be promptly repaired and replaced by the Owner of the Lot, in accordance with this Amended and Restated Declaration. "Repaired and replaced," as used in this Section 3.11, means restoring the structure or Improvement to substantially the same condition in which it existed immediately prior to such damage or destruction. Except as otherwise provided in this Amended and Restated Declaration, the cost of such repair or replacement shall be the personal obligation of the Owner of the Lot on which such work was performed.

### **Section 3.12 *Leases.***

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot (including Apartment Units thereon), or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease such Owner's Lot (including the Apartment Units thereon), or any portion thereof, as long as all leases provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Amended and Restated Declaration and the Rules and Regulations of the District; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

### **Section 3.13 *Landscaping.***

Within the time frame hereinafter provided, the Owner (other than the Developer or a Builder) of each Residential Lot (with the exception of any Condominium Units) shall install landscaping over all unlandscaped portions of such Lot which are not covered by a building or other Improvements in accordance with the applicable landscaping plan for the Community and the applicable Design Guidelines. The Owner shall thereafter maintain all landscaping on such Owner's Residential Lot in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. The Owner of each Residential Lot (other than the Developer or a Builder, and with the exception of any Condominium Units) shall completely landscape such Lot, as aforesaid, within twelve (12) months after conveyance of such Residential Lot to the first Owner thereof (other than the Developer or Builder). Landscaping plans and other required documents shall be professionally

done, must meet the applicable zoning guidelines regarding landscaping, shall be in accordance with this Amended and Restated Declaration and the applicable Design Guidelines, and shall be submitted to the ARC for review and approval, and such approval shall be obtained prior to the installation of any landscaping by or for such Owner. If any Owner fails or refuses to install or maintain landscaping, as hereinabove provided, then the District may, at the direction of the governing board of the District, enter upon such Residential Lot and install or maintain landscaping on such Residential Lot and the Owner thereof shall be obligated to pay for the same, in accordance with and subject to the provisions of Section 6.2 of this Amended and Restated Declaration.

### **Section 3.14 *Alleys.***

The alleys in or adjacent to the Community are solely for the purpose of pedestrian and vehicular ingress, egress and access. Without limiting the generality of the foregoing: No parking of any vehicle(s) is permitted in any of the alleys; no trash may be stored or located in any of the alleys; and no objects or Improvements may be placed or stored in any of the alleys.

### **Section 3.15. *Maintenance of and Non-Interference with Grade and Drainage.***

3.15.1 Each Owner shall maintain the grading upon such Owner's Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slope, so as to maintain the established drainage. Each Owner agrees, for himself and his successors and assigns, that he will not in any way interfere with the established drainage pattern over his Lot. In the event that it is necessary or desirable to change the established drainage over any Lot, then the Owner thereof shall submit a plan to the ARC for review and approval in accordance with Article 2 of the Amended and Restated Declaration, and any such change shall also be made in accordance with all laws, regulations, requirements and resolutions of all applicable governmental entities.

3.15.2 For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Developer is completed.

## **ARTICLE 4. EASEMENTS**

### **Section 4.1 *Easements.***

In addition to other easements which may be granted or reserved elsewhere in this Amended and Restated Declaration, the following Sections describe easements to which the Community is or may be subject.

### **Section 4.2 *Maintenance, Repair and Replacement, Right of Access and Easement.***

Each Owner, except the Developer and the District for any Lots owned by the Developer or the District respectively, hereby grants to the District and the other Owners, and to their



agents and employees and contractors, a right and easement on, over, across and through such Owner's Lot for maintenance, repair and replacement as provided in this Amended and Restated Declaration, including without limitation as provided in Article 6 of this Amended and Restated Declaration; and access to another Owner's Lot or a Use Easement Premises appurtenant thereto. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any property owned or maintained by the District, any other property, or any Lot, the owner responsible for the damage or expense to avoid damage is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, repair and/or replacement; and except that in emergency situations entry upon a Lot may be made at any time provided that the owner or occupants of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any residence shall not be subject to the easement granted in this Section.

#### **Section 4.3    *Easement for Access to District Property.***

If any portion of the Community is developed and subjected to a declaration of covenants, conditions and restrictions and becomes part of a homeowners association governing such portion of the Community, any such declaration shall provide for an easement to all Owners subject to this Amended and Restated Declaration and to the District, for access to any property owned by the District which is accessible from property that becomes subject to that declaration and which is thereafter owned by any such homeowners association or which becomes part of the common elements of any such homeowners association.

#### **Section 4.4    *Utilities and Drainage Easement.***

In addition to those easements shown on the plat(s) of the Community, the Developer reserved, in the Original Declaration, and hereby continues to reserve, to itself and to the District, easements for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot (with the exception of any Condominium Unit); provided, however that if a structure is located on any of the area(s) described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest Lot line to the exterior wall of the structure on such Lot that is nearest to such Lot line. No Improvements (except fencing or landscaping with the prior written approval of the ARC) shall be placed or permitted to remain on any Lot, nor shall any change in grading be permitted to exist, which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. The Developer reserved, in the Original Declaration, and hereby continues to reserve, to itself and the District, the right to enter in and upon each drainage easement, at any time, to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as the Developer or the District may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Developer shall automatically cease at such time as the Special Developer Rights terminate as provided in Section 1.27 of this Amended and Restated Declaration, at which time said reserved right shall vest solely in the District.

## **ARTICLE 5. USE EASEMENTS ON LOTS**

### **Section 5.1   *General Description of Use Easements.***

Each Residential Lot may have an Active Area and a Passive Area. If a Residential Lot includes a Passive Area, then such Passive Area will be subject to a use easement as provided in this Article. That is, the Developer intends to expand the general area for use and enjoyment of a Residential Lot by providing a Use Easement Premises for such Residential Lot so that the useable area of such Residential Lot will essentially be expanded to include the Passive Area of the Residential Lot next door. As a result, those Residential Lots which benefit from a Use Easement Premises will have an expanded use area for their general use, enjoyment, and improvements, all as provided in this Article.

### **Section 5.2   *Reservation of Use Easements.***

In the Original Declaration the Developer reserved, and hereby continues to reserve, a perpetual, exclusive easement in accordance with this Article, on, over and across each Use Easement Premises for the benefit of the Residential Lots adjacent to such Use Easement Premises. Not all Residential Lots will be granted the benefit of a Use Easement Premises as provided herein, nor will all Residential Lots be burdened by having a Use Easement Premises located thereon. The listing provided on the attached Exhibit C, and the use easements as shown on the Easement Grant and Reservation Map, constitute the plan for some of the Residential Lots in the Community, but the Developer may change any of such designations as to Residential Lots owned by the Developer which are listed on the attached Exhibit C and/or shown on the Easement Grant and Reservation Map. Notwithstanding the foregoing, at any time, from time to time, as to any Residential Lots owned by the Developer, the Developer may add, remove, or otherwise change the Use Easement Premises or the designations of "Active Area" or "Passive Area" applicable to such Residential Lot or Use Easement Premises, including without limitation those listed on the attached Exhibit C and/or shown on the Easement Grant and Reservation Map and/or may supplement the attached Exhibit C and/or the Easement Grant and Reservation Map.

### **Section 5.3   *Purpose of Use Easement Premises.***

The Owner of the Residential Lot that is immediately adjacent to a Use Easement Premises, and also the family members, tenants, guests and invitees of such Owner, shall have the right to use the adjacent Use Easement Premises in a manner that is consistent with this Amended and Restated Declaration, to the exclusion of the Owner of the Residential Lot on which such Use Easement Premises is located, except as otherwise provided in this Amended and Restated Declaration. Subject to compliance with all terms and provisions of this Amended and Restated Declaration, including without limitation obtaining the prior written approval of the ARC as required, such permitted uses of the Use Easement Premises include those uses permitted by applicable zoning and also include, without limitation, grass, shrubs, plants, flowers, vegetables and trees, construction, location, and use of hot tubs, patios, dog houses, trellises, chairs, tables, patio furniture, fencing, and similar Improvements. The Use Easement

Premises may be used as a general recreational, picnic, social and garden area as though such Use Easement Premises were owned by the Owner of the Residential Lot with a right to use such Use Easement Premises; provided that such Use Easement Premises shall not be used in any manner, at any time, to unreasonably disturb the Owner of the Residential Lot on which the Use Easement Premises is located or such Owner's family members, tenants, guests or invitees, and nothing shall be attached to the exterior wall of the dwelling unit on such Residential Lot on which the Use Easement Premises is located.

#### **Section 5.4    *Side Yard Fencing.***

Side yard fencing is not allowed on the side lot line between structures on those Residential Lots on which a Use Easement Premises is located.

#### **Section 5.5    *Right of Entry.***

The Owner of a Residential Lot on which a Use Easement Premises is located shall have the right at all reasonable times to enter upon the Use Easement Premises, including the right to reasonably cross over the Active Area that borders the Use Easement Premises, for the purpose of performing work related to maintenance of the dwelling unit located on the Residential Lot on which the Passive Area is located.

#### **Section 5.6    *Right of Drainage.***

The Passive Area shall have the right of drainage over, across and upon the Use Easement Premises for normal precipitation upon and irrigation of the Residential Lot on which the Passive Area is located, as long as such is done in accordance with the approved drainage plan, and the Owner of the Residential Lot adjacent to such Use Easement Premises shall not do or permit to be done any act which interferes with such drainage.

#### **Section 5.7    *Right of Support.***

The Residential Lot on which the Passive Area is located shall have the right of lateral and subjacent support for the dwelling unit and all Improvements now or hereafter constructed upon such Residential Lot, and no use of the Use Easement Premises shall adversely affect such right of support.

#### **Section 5.8    *Indemnity of Owner of Active Area.***

The Owner of the Passive Area shall indemnify and hold the Owner of the Active Area harmless from damage to any Improvements, shrubs, plants, flowers, vegetables, trees and other landscaping, to the extent the damages result from the right of access reserved to the Owner of the Passive Area onto the Use Easement Premises.

#### **Section 5.9    *Indemnity of Owner of Passive Area.***

The Owner of the Active Area shall indemnify and hold the Owner of the Passive Area

harmless from damage to any Improvements now or hereafter constructed, located or erected on the Residential Lot on which such Passive Area is located, and from any personal injury (including death), to the extent that any such damage or injury is caused by the use of the Use Easement Premises by the Owner of the adjacent Active Area or by such Owner's family members, tenants, guests and invitees. The Owner of the Active Area shall acquire and keep in force adequate hazard and liability insurance covering the Use Easement Premises.

#### **Section 5.10 *Maintenance of Easement Premises.***

The Owner of the Residential Lot which has the right to use a Use Easement Premises, as provided in this Article, shall be responsible for maintenance, repair and replacement of the Use Easement Premises, and of all improvements that are located thereon by or for the benefit of such Residential Lot and owned by the Owner of such Residential Lot. The foregoing shall include, without limitation, watering of landscaping on the Use Easement Premises and maintenance, repair and replacement of any fence that lies on, or borders, the Use Easement Premises.

### **ARTICLE 6. MAINTENANCE**

#### **Section 6.1 *General.***

The maintenance, repair and replacement of each Lot, the Use Easement Premises that benefit such Lot (if applicable) and the Improvements thereon shall be performed by the Owner thereof at such Owner's sole cost and expense.

#### **Section 6.2 *District's Right to Repair, Maintain and Reconstruct.***

In the event any Owner shall fail to perform the maintenance, repair and/or reconstruction obligations in a manner satisfactory to the governing board of the District, the District may, if said failure continues for a thirty (30) day period after written notice to said Owner by the District, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or reconstruction. The cost of such maintenance, repair or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed.

#### **Section 6.3 *Owner's Acts or Omissions.***

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

liability therefor, shall be made by the governing board of the District at a hearing after notice to the Owner.

## **ARTICLE 7. COVENANT ENFORCEMENT**

### **Section 7.1   *Enforcement Committee.***

The governing board of the District shall have the right to establish a committee to enforce the Governing Documents (the “**Enforcement Committee**”) and, upon its establishment, the members of the Enforcement Committee will be appointed and removed by the governing board of the District and shall have the same rights as the District under this Article 7 and as elsewhere set forth in this Amended and Restated Declaration in relation to the enforcement of the Governing Documents. The District shall be responsible for the ministerial administration and enforcement of the Governing Documents, and has the right to: (a) accept complaints for violations of the Governing Documents; (b) submit complaints regarding violations of the Governing Documents; (c) inspect the Property for violations of the Governing Documents; (d) issue various notices to Owners regarding the Governing Documents; and (e) provide all ministerial administration and enforcement of the Governing Documents.

### **Section 7.2   *Purpose and General Authority.***

The District or the Enforcement Committee shall review all complaints and notifications provided by the Developer, a Builder, an Owner, a resident within the Community, or the ARC regarding any alleged violation of the Governing Documents. The District also has the right to make an investigation on its own regarding potential violations. The District has the authority to determine whether a violation has occurred by any Owner or Occupant, and upon such determination, may issue to an Owner a notice of violation identifying the particular circumstances or conditions of the violation and require Owner to take such action as may be necessary to correct, remedy or otherwise remove the violation, including the time period in which the violation is to be remedied as further set forth in Section 7.4.

### **Section 7.3   *Fees and Expenses.***

All expenses of the District or the Enforcement Committee, if any, must be paid by the District with revenues derived from that portion of the Property with respect to which the District’s or the Enforcement Committee’s services are required or performed. The District has the right to charge fees and fines for costs of enforcement of the Governing Documents and the costs incurred to correct, remedy or otherwise remedy violations, in amounts which may be established by the District from time to time.

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

7.4.1 Any member or authorized agent or consultant, the Enforcement Committee or the ARC, or any authorized officer, director, employee or agent of the District may enter upon any Lot, at any reasonable time after notice to Owner, without

being deemed guilty of trespass, in order to investigate or inspect any portion of the Property for alleged violations of the Governing Documents, or to read a utility meter or to verify any utility matter.

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

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

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

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

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

7.4.3.4 The District may levy and collect fees, charges, penalties and fines for the violation of any provisions of the Governing Documents. Prior to the imposition of any fines, the District or the Enforcement Committee shall mail notice of violation to the Person(s) alleged to be in violation of any such provision and shall give such notified Person(s) the opportunity for a hearing in front of the governing board of the District or the Enforcement Committee appointed by the governing board of the District, prior to the imposition of any such fine. The governing board of the District may adopt Rules and Regulations further defining the process by which such fines may be imposed, including but not limited to establishing the schedule of fines to be imposed.

7.4.3.5 The District may collect, and shall have a statutory perpetual lien pursuant to § 32-1-1001(1)(j)(I), C.R.S. against the Lot subject to the violation to secure, (1) payment for reimbursement by the violating Owner for any remedial work performed by the District to remove, correct or otherwise remedy the violation, (2) payment for expenses incurred in obtaining injunctive relief, including costs and attorneys’ fees, (3) payment of any fines levied by the District against such Lot, plus the following amounts, to the extent not inconsistent with applicable laws, (4) interest on such amount at a rate equal to

eighteen percent (18%), and (5) all costs and expenses of collecting the unpaid amount, including, without limitation, reasonable attorneys' fees.

### **Section 7.5    *No Liability.***

Neither the District, the ARC, any representative appointed by the ARC, nor the Enforcement Committee, if any, are liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing any alleged violation, the District, the ARC, and/or the Enforcement Committee, if any, are not responsible for any issue related to the alleged violation. No Owner or other Person is a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the District, the ARC, and/or the Enforcement Committee, if any. Each Owner (i) waives and releases the District, the ARC, and the Enforcement Committee, if any, from all claims related to the actions of the District, the ARC, and/or the Enforcement Committee, if any and (ii) waives and releases all claims against the District, the ARC, and/or the Enforcement Committee, if any. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The members of the governing board of the District, the ARC, and the Enforcement Committee members, acting in that capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The members of the governing board of the District, the ARC, and the Enforcement Committee members, acting in that capacity, shall have no personal liability with respect to any contract or other commitment made or action taken on behalf of the District, the ARC and/or the Enforcement Committee, if any.

## **ARTICLE 8. ALTERNATIVE DISPUTE RESOLUTION**

### **Section 8.1    *Definitions Applicable to this Article 8.***

For purposes of this Article 8 only, the following terms have the meanings set forth in this Section 8.1:

8.1.1        “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

8.1.2        “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 8. Notwithstanding the foregoing, “Bound Party” does not include any of the parties identified in this subsection 8.1.2 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 8.

8.1.3 “Claimant” means any Bound Party having a Claim.

8.1.4 “Claim” means, except as exempted by the terms of this Article 8, any claim, grievance or dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Bound Party under any of the Governing Documents; or (ii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

8.1.5 “Notice” means the written notification given by a Claimant to a Respondent and which shall comply with the requirements of subsection 8.5.1

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

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

8.1.8 “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.

8.1.9 “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 8.2 *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.***

8.2.1 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 8.4.

8.2.2 By acceptance of a deed to a Lot, each Owner agrees to abide by the terms of this Article 8.

8.2.3 Any applicable statute of limitation shall apply to the alternative dispute resolution procedures set forth in this Article 8.



### **Section 8.3    *Commencement or Pursuit of Claim Against Bound Party.***

8.3.1    A Bound Party may not commence or pursue a Claim against any other Bound Party except in compliance with this Article 8.

8.3.2    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 8.4    *Claims.***

Unless specifically exempted below, all Claims between any of the Bound Parties are subject to the provisions of Article 8. Notwithstanding the foregoing, unless all Parties otherwise agree, the following are not Claims and shall not be subject to the provisions of this Article 8:

8.4.1    Any action or suit by the District, the ARC, the Enforcement Committee, or the Developer to enforce any provisions of the Governing Documents, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary;

8.4.2    Any suit between or among Owners, which does not also include the Developer, the District, the ARC, or the Enforcement Committee as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

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

### **Section 8.5    *Mandatory Procedure.***

8.5.1    *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:

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

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

8.5.1.3    The fact that Claimant will give the Respondent an opportunity to inspect all Property and Improvements potentially involved with the Claim, and that Claimant will meet with Respondent within a reasonable time after such inspection to discuss in good faith ways to resolve the Claim.

## 8.5.2 *Negotiation and Mediation.*

8.5.2.1 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.

8.5.2.2 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 8.5.1.

8.5.2.3 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.

8.5.2.4 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.

8.5.2.5 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.

8.5.2.6 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 8. 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.

## 8.5.3 *Binding Arbitration.*

8.5.3.1 Upon Termination of Mediation, if the Claimant desires to pursue the Claim, the 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 8.5 of this Declaration. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise

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

8.5.3.2 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 8.6    *Award.***

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

### **ARTICLE 9. GENERAL PROVISIONS**

#### **Section 9.1    *Powers and Authority.***

The Property is or will be located within the boundaries of the District. The District is authorized to perform covenant enforcement and design review services as set forth in this Declaration, and the District has agreed to perform covenant enforcement and design review services as set forth in this Declaration. The District may exercise with regard to the Property, all powers and authority reasonably necessary to administer the rights and duties of the District under this Amended and Restated 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 Amended and Restated Declaration; (c) the power to manage and enforce the Governing Documents; (d) the power to contract with a third-party property manager for the management of the Property and/or for all other duties and responsibilities related to the overall operation of the Property; and (e) all other rights, powers and authority necessary to enforce this Amended and Restated Declaration. The District has the power to levy Fees, Fines and other penalties for violations of the Governing Documents, as allowed by applicable law and as set forth in this Declaration.

#### **Section 9.2    *Rules and Regulations.***

Rules and Regulations affecting, concerning and governing the Lots and/or the Community may be adopted, amended or repealed from time to time by the governing board of the District and the governing board of the District may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any such Rules and Regulations. The Rules and Regulations, if any, may impose

additional restrictions affecting, concerning and governing the Lots and/or the Community not otherwise provided for herein, and may state procedural requirements, interpretations, clarifications and applications of any provision(s) of this Amended and Restated Declaration or the Design Guidelines and law, including blanket requirements, blanket interpretations, and blanket applications. The governing board of the District has the authority to adopt or vary one or more Rules and Regulations that are different for different types of Lots, that is Residential Lots, Commercial Units, and Apartment Lots. Any Rules and Regulations, if any, that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Amended and Restated Declaration and all provisions hereof.

### **Section 9.3    *Enforcement.***

Subject to the provisions of Article 8 of this Amended and Restated Declaration, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Amended and Restated Declaration, the Rules and Regulations, the Design Guidelines and any other Governing Documents, as at any time amended, may be by any proceeding at law or in equity against any Persons violating or attempting to violate any such provision, and possible remedies include all of those available at law or in equity. Subject to the provisions of Article 8 of this Amended and Restated Declaration, the Developer 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 8 of this Amended and Restated Declaration, in any action instituted or maintained under this Amended and Restated Declaration or any other such documents, the prevailing party shall be entitled to recover its costs and attorneys' fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Developer, the District, and/or ARC to enforce any covenant, restriction or other provision contained in this Amended and Restated 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 Amended and Restated 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 Governing Documents. The foregoing shall include the right of the District to send demand letters and notices, to charge interest and/or late charges, to levy and collect Fines, to impose liens (as provided in C.R.S. Section 32-1-1001(j)(1), as amended), to negotiate, settle and/or take any other actions, with respect to any violation(s), or alleged violation(s), of any of the Governing Documents.

### **Section 9.4    *Severability.***

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

### **Section 9.5    *Minor Violations of Setback Restrictions.***

If upon the erection of any structure or Improvement, it is disclosed by a 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 this the Governing Documents, if any. A “minor violation,” for the purpose of this Section, is a violation of not more than four (4) feet 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.

### **Section 9.6    *Rights and Easements of Developer and Builders.***

Notwithstanding anything to the contrary contained in this Amended and Restated Declaration, it shall be expressly permissible and proper for the Developer and any Builder (but only with the written consent of the Developer), and their respective employees, agents, and contractors to perform such reasonable activities, and maintain Improvements, tools, equipment, and facilities incidental to development, construction, use, rental, sale, occupancy, and/or advertising on the portion of the Property owned by them in accordance with this Amended and Restated Declaration and any other covenants, including, without limitation, any builder covenants, encumbering the Property. The foregoing includes locating, maintaining and relocating management offices, construction offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations on the portion of the Property owned by such parties. In addition, nothing contained in this Amended and Restated Declaration shall limit the rights of Developer, or require the Developer, to obtain approvals:

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

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

9.6.3 To seek or obtain any approvals under this Amended and Restated Declaration for any such activity.

### **Section 9.7    *Duration, Revocation and Amendment.***

9.7.1 Each and every provision of this Amended and Restated Declaration shall run with and bind the land perpetually from the date of recording of this Amended and Restated Declaration. This Amended and Restated Declaration may be amended and/or supplemented by the affirmative vote or agreement of Owners holding at least sixty-seven percent (67%) of the Votes allocated to the Lots and with the prior written consent of the District. In addition, during the time period set forth in Section 1.27 of this Amended and Restated Declaration, any amendment to Article 8 of this Amended and Restated Declaration shall also require the written consent of the Developer.

9.7.2 Notwithstanding anything to the contrary contained in this Amended and Restated Declaration, this Amended and Restated Declaration may be amended in whole or in part, at any time from time to time, by the Developer without the consent or approval of any other Owner or any other Person, in order to correct clerical, typographical or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.27 of this Amended and Restated Declaration.

9.7.3 No action to the challenge the validity of this Amended and Restated Declaration may be brought more than one year after the recording of this Amended and Restated Declaration. Further, no action to challenge the validity of any subsequent amendment to this Amended and Restated Declaration may be brought more than one year after the recording of such amendment.

#### **Section 9.8    *Subdivision or Replatting of Lots.***

The Developer hereby reserves for itself and its successors and assigns the right to subdivide or replat any Lot(s) owned by the Developer in the Community. Each such subdivision or replatting may change the number of Lots in the Community. The foregoing reservation includes the right to move any lot lines on Lots for the purpose of accommodating Improvements which are, or may be constructed. The rights provided for in this Section shall terminate automatically as provided in Section 1.27 of this Amended and Restated Declaration.

#### **Section 9.9    *Annexation; Withdrawal.***

9.9.1 Additional property within the boundaries of the District may be annexed to this Amended and Restated Declaration by the vote or agreement of Owners holding at least sixty-seven percent (67%) of the Votes allocated to the Lots, and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

9.9.2 Notwithstanding the foregoing, the Developer may annex additional property to this Amended and Restated Declaration until termination of this right as provided below, without the consent of any other Owners or any other Person. The Developer's right to annex additional property without approval shall terminate automatically at the time of termination of the Special Developer Rights as provided in Section 1.27 of this Amended and Restated Declaration. Each such annexation shall be effected, if at all, by recording an Annexation of Additional Land and/or Supplemental Declaration in the county where the annexed property is located, which document:

9.9.2.1            Shall provide for annexation to this Amended and Restated Declaration the property described in such Annexation of Additional Land and/or Supplemental Declaration;

9.9.2.2            Shall assign an identifying number to each new Lot, if any;

9.9.2.3            Shall state the classification(s) of the Lots described therein

(Apartment Lot, Residential Lot, Commercial Unit or Mixed Use Lot); and

9.9.2.4 Shall list the Residential Lots in the annexed property, if any, which are planned to benefit from a Use Easement Premises and the Residential Lots in the annexed property, if any, which are planned to be burdened by a Use Easement Premises, comparable to the attached Exhibit C, unless that same has been or will be done by the Developer by separate recordable instrument; and

9.9.2.5 May include such other provisions as the Developer deems appropriate. Other provisions that may be included in an Annexation of Additional Land and/or Supplemental Declaration include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions that apply or will apply to some or all of the property that is being annexed to this Amended and Restated Declaration. Any such other provisions referenced in the preceding sentence may be amended with the consent of Owners holding at least of sixty-seven percent (67%) of the Votes allocated to the Lots to which such provisions are applicable.

9.9.3 The Developer reserves the right to withdraw the Property, or any portion thereof, including one or more Lots, from this Amended and Restated Declaration, so long as the Developer owns the Property to be withdrawn. Each withdrawal, if any, may be affected by the Developer recording a withdrawal document in the Clerk and Recorder of Adams County, Colorado. A withdrawal pursuant to this Section constitutes a divestiture, withdrawal, and deannexation of the withdrawn property from this Amended and Restated Declaration so that, from and after the date of recording of a withdrawal document, the property so withdrawn shall not be part of the Property. This Section shall be in effect until conveyance of all of the Property to the first Owners thereof, other than the Developer or any Builder.

#### **Section 9.10 *Notices.***

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

#### **Section 9.11 *Limitation on Liability.***

The Developer, the District, the ARC, the Enforcement Committee, if any, and their respective directors, officers, shareholders, members, partners, agents and employees, shall not

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

#### ***Section 9.12 No Representations, Guaranties or Warranties.***

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

#### ***Section 9.13 Disclaimer Regarding Safety.***

**THE DEVELOPER, THE DISTRICT, THE ARC, THE ENFORCEMENT COMMITTEE, IF ANY, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENT 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 FOREGOING ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.**

#### ***Section 9.14 Development Within and Surrounding the Property.***

Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Property, views of or from the Property, the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other



inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot, as applicable, subject to the foregoing, and waives and releases any claim against the Developer, the District and/or any Builder, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 9.16 shall apply to this Section 9.14.

**Section 9.15 *District May Assign.***

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

**Section 9.16 *Waiver.***

By acceptance of a deed to a Lot, each Owner releases, waives, and discharges the Developer, the District, the ARC, and the Enforcement Committee, if any, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or property risks set forth in this Amended and Restated Declaration.

**Section 9.17 *Headings.***

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

**Section 9.18 *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 9.19 *Action.***

Any action that has been or may be taken by the Developer, the District, the ARC the Enforcement Committee, if any, or any other Person, may be taken “at any time, from time to time.” Each provision that authorizes, directs or permits action shall be deemed to include such language.

**Section 9.20 *Sole Discretion.***

All actions which are to be taken by, or on behalf of, the Developer, the District, the ARC, or the Enforcement Committee, if any, or any other Person, shall be deemed to be taken “in the sole discretion” of such Person.

**Section 9.21 *Use of “Include,” “Includes,” and “Including.”***

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

**Section 9.22 *No Waiver.***

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

**Section 9.23 *Exemption.***

Notwithstanding anything in this Amended and Restated Declaration to the contrary, (a) neither the Developer, nor any of its activities shall in any way be subject to the control of, or under the jurisdiction of the District, the ARC or the Enforcement Committee, if any (including any Design Guidelines or Rules and Regulations), nor shall the Developer be required to seek the approval or consent of the District, the ARC or the Enforcement Committee, if any, for any construction or other work to be performed by or on behalf of the Developer in the Property and (b) nothing contained in this Amended and Restated Declaration shall be construed to prevent or limit (i) the Developer’s exercise or enjoyment of any Special Developer Rights or any other right of the Developer under this Amended and Restated Declaration or (ii) the conduct by the Developer or its employees or agents, as applicable, of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of the Property or any other property. The Developer, in its sole discretion, may also exempt a Builder from the provisions of Article 2, (a) as long as the Builder has received written design approval under the Design Guidelines from the Developer, and/or (b) for activities which the Developer deems to be incidental to the Builder’s development activities, in the Developer’s sole and absolute discretion. This exemption terminates upon expiration of the Developer’s Special Rights as provided in Section 1.27 of this Amended and Restated Declaration.

**Section 9.24 *Runs with the Land; Binding Upon Successors.***

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

## ARTICLE 10. DISCLOSURES

### **Section 10.1** *No Liability for Condition of the Property/Nuisances/Hazards Associated with Adjacent Lands.*

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

### **Section 10.2** *Land Use Documents.*

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

### **Section 10.3 *Future Development and Views.***

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

### **Section 10.4 *Separate Ownership of Surface and Subsurface Rights.***

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

### **Section 10.5 *Safety and Security.***

Each Owner and Occupant is responsible for their own personal safety and the security of their property in the Community. The District may, but shall not be obligated to, maintain or support certain activities designed to enhance the level of safety or security in accordance with applicable law. Neither the Developer nor the District shall in any way be considered insurers or guarantors of safety or security within the Community, nor be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

#### **Section 10.6 *Disruption from Development and Construction.***

Each Owner agrees that there are inconveniences which will accompany the construction of Improvements within the Community, 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 10.7 *View Impairment.***

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

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### CONSENT OF DEVELOPER

The undersigned, Belle Creek LLC, a Colorado limited liability company, hereby consents to the aforesaid Amended and Restated Declaration Master Declaration of Covenants, Conditions and Restrictions of Belle Creek.

IN WITNESS WHEREOF, the undersigned as hereto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BELLE CREEK LLC,  
a Colorado limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of Belle Creek LLC, a Colorado limited liability company.

Witness my hand and official seal.  
(SEAL)

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**CONSENT OF DISTRICT**

The undersigned, Belle Creek Metropolitan District No. 1, hereby consents to the aforesaid Amended and Restated Declaration Master Declaration of Covenants, Conditions and Restrictions of Belle Creek.

IN WITNESS WHEREOF, the undersigned as hereto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BELLE CREEK METROPOLITAN DISTRICT NO. 1

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO

)

) ss.

COUNTY OF \_\_\_\_\_

)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of Belle Creek Metropolitan District No. 1.

Witness my hand and official seal.  
(SEAL)

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

## CONSENT OF OWNERS

IN WITNESS WHEREOF, the undersigned, either on his or her own, or acting pursuant to a duly executed proxy given, have hereunto set their hands, effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Signature Pages to be Attached

DRAFT



**EXHIBIT A**  
**TO AMENDED AND RESTATED**  
**MASTER DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS OF BELLE CREEK**

(Community)

The following property as shown on the plat of Belle Creek Filing 1, recorded in the office of the Clerk and Recorder of Adams County, Colorado on October 10, 2000, at Reception Number C0719064, as amended and supplemented from time to time:

Lots 1 through 9, inclusive, Block 1 (Residential Lots)  
Lots 10 through 11, inclusive, Block 1 (Each may be used as an Apartment Lot or a Mixed Use Lot)  
Lots 1 through 9, inclusive, Block 2 (Residential Lots)  
Lots 10 through 11, inclusive, Block 2 (Each may be used as an Apartment Lot or a Mixed Use Lot)  
Lots 1 through 26, inclusive, Block 3 (Residential Lots)  
Lots 1 through 16, inclusive, Block 4 (Residential Lots)  
Lots 1 through 17, inclusive, Block 5 (Residential Lots)  
Lots 1 through 17, inclusive, Block 6 (Residential Lots)  
Lots 1 through 17, inclusive, Block 7 (Residential Lots)  
Lots 1 through 8, inclusive, Block 8 (Residential Lots)  
Lots 1 through 20, inclusive, Block 9 (Residential Lots)  
Lots 1 through 11, inclusive, Block 10 (Residential Lots)  
Lots 1 through 17, inclusive, Block 11 (Residential Lots)  
Lots 1 through 13, inclusive, Block 12 (Residential Lots)  
Lots 1 through 20, inclusive, Block 13 (Residential Lots)  
Lots 1 through 8, inclusive, Block 14 (Residential Lots)

The following property as shown on the plat of Belle Creek Filing No. 2, recorded in the office of the Clerk and Recorder of Adams County, Colorado on November 13 2001, at Reception Number C0886382, as amended and supplemented from time to time:

Lots 1 through 19, inclusive, Block 1 (Residential Lots)  
Lot 1, Block 2 (May be used as an Apartment Lot or a Mixed Use Lot)  
Lots 1 through 23, inclusive, Block 3 (Residential Lots)  
Lots 1 through 13, inclusive, Block 4 (Residential Lots)  
Lots 1 through 16, inclusive, Block 5 (Residential Lots)

Lots 1 through 7, inclusive, Block 6 (Residential Lots)  
Lots 1 through 35, inclusive, Block 7 (Residential Lots)  
Lots 1 through 10, inclusive, Block 8 (Residential Lots)  
Lots 1 through 33, inclusive, Block 9 (Residential Lots)  
Lots 1 through 13, inclusive, Block 10 (Residential Lots)  
Lots 1 through 20, inclusive, Block 11 (Residential Lots)  
Lots 1 through 14, inclusive, Block 12 (Residential Lots)  
Lots 1 through 9, inclusive, Block 13 (Residential Lots)  
Lot 1, Block 14 (May be used as an Apartment Lot or a Mixed Use Lot)

The following property as shown on the plat of Belle Creek Filing No. 3, recorded in the office of the Clerk and Recorder of Adams County, Colorado on January 16, 2003, at Reception Number C1081909, as amended from time to time:

Lots 1 through 57, inclusive, Block 1 (Residential Lots)  
Lots 1 through 23, inclusive, Block 2 (Residential Lots)  
Lots 1 through 9, inclusive, Block 3 (Residential Lots)  
Lots 1 through 7, inclusive, Block 4 (Residential Lots)  
Lots 1 through 14, inclusive, Block 5 (Residential Lots)  
Lots 1 through 12, inclusive, Block 6 (Residential Lots)  
Lots 1 through 4, inclusive, Block 8 (Residential Lots)  
Lot 5, Block 8 (May be used as an Apartment Lot or a Mixed Use Lot)  
Lot 1, Block 9 (May be used as an Apartment Lot or a Mixed Use Lot)  
Lots 2 through 6, inclusive, Block 9 (Residential Lots)  
Lots 1 through 8, inclusive, Block 11 (Residential Lots)  
Lots 1 through 7, inclusive, Block 12 (Residential Lots)

The following property as shown on the plat of Belle Creek Filing No. 3, Amendment No. 1, recorded in the office of the Clerk and Recorder of Adams County, Colorado on September 26, 2005, at Reception Number 20050926001047840, as amended from time to time:

Lots 1 through 56, inclusive, Block 7 (Residential Lots)  
Lots 1 through 20, inclusive, Block 10 (Residential Lots)

**EXHIBIT B**  
**TO AMENDED AND RESTATED**  
**MASTER DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS OF BELLE CREEK**

(Certain Title Exceptions)

IF RECORDED, THE FOLLOWING DOCUMENTS ARE RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF ADAMS COUNTY, COLORADO:

1. TAXES AND ASSESSMENTS FOR THE YEAR OF RECORDING OF THIS AMENDED AND RESTATED DECLARATION AND FOR SUBSEQUENT YEARS, NOT YET DUE AND PAYABLE.
2. RIGHT OF WAY EASEMENT GRANTED TO COLORADO-WYOMING GAS COMPANY IN INSTRUMENT RECORDED MARCH 6, 1950 IN BOOK 390 AT PAGE 347.
3. LIMITED POINTS OF ACCESS TO HIGHWAY 40 AS SET FORTH IN INSTRUMENT RECORDED MARCH 18, 1953 IN BOOK 460 AT PAGE 414.
4. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT AS EVIDENCED BY INSTRUMENT RECORDED AUGUST 5, 1981 IN BOOK 2575 AT PAGE 967, AND RECORDED DECEMBER 31, 1997 IN BOOK 5196 AT PAGE 855.
5. TERMS, CONDITIONS AND PROVISIONS OF ZONING HEARING DECISION- CASE #112-98-MD BELLE-CREEK METRO DISTRICT RECORDED AUGUST 31, 1998 IN BOOK 5450 AT PAGE 194.
6. RIGHT OF WAY FOR INGRESS AND EGRESS GRANTED IN INSTRUMENT RECORDED OCTOBER 1, 1981 IN BOOK 2590 AT PAGE 460 AND RECORDED MAY 4, 1998 IN BOOK 5317 AT PAGE 815.
7. THE EFFECT OF RESTRICTIONS (CASE #Z-717-99) RECORDED FEBRUARY 15, 2000 IN BOOK 6035 AT PAGE 342.
8. NOTICE OF ANNEXATION AGREEMENT ENCUMBERING REAL ESTATE RECORDED MARCH 1, 2000 IN BOOK 6049 AT PAGE 312.
9. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE BELLE CREEK METROPOLITAN DISTRICT NO. 1, AS EVIDENCED BY INSTRUMENT RECORDED JUNE 6, 2000 IN BOOK 6150 AT PAGE 21 AND AS EVIDENCED BY INSTRUMENT RECORDED OCTOBER 10,

2000 IN BOOK 6284 AT PAGE 950 AND RECORDED OCTOBER 10, 2000 IN BOOK 6284 AT PAGE 957.

10. EASEMENTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS ON THE RECORDED PLAT OF BELLE CREEK SUBDIVISION FILING 1, RECORDED OCTOBER 10, 2000 UNDER RECEPTION NUMBER 285401.
11. TERMS, CONDITIONS AND PROVISIONS OF GUARANTY AGREEMENT RECORDED OCTOBER 10, 2000 IN BOOK 6293 AT PAGE 599.
12. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPER'S AGREEMENT RECORDED OCTOBER 20, 2000 IN BOOK 6296 AT PAGE 748.
13. SHARED USE ALLEY AND UTILITY EASEMENT ALONG THE REAR 10 FEET OF SUBJECT PROPERTY AS SHOWN ON THE RECORDED PLAT.  
  
SAID EASEMENT SHALL BE MAINTAINED BY THE BELLE CREEK METROPOLITAN DISTRICT FOR THE PURPOSE OF ACCESS.
14. TERMS, CONDITIONS AND PROVISIONS OF EASEMENT BETWEEN THE ADEN FAMILY TRUST AND BELLE CREEK METROPOLITAN DISTRICT NO. 1 RECORDED JUNE 6, 2001 AT RECEPTION NUMBER C0810051.
15. RIGHT OF WAY GRANTED TO UNITED POWER INC. RECORDED JUNE 18, 2001, UNDER RECEPTION NO. C0815269.
16. THE EFFECT OF BELLE CREEK SUBDIVISION TRANSPORTATION AND STORM SEWER EASEMENTS MAP RECORDED JUNE 28, 2001, UNDER RECEPTION NO. C0820765.
17. UTILITY EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED JULY 9, 2001, UNDER RECEPTION NUMBER C0824932.

**EXHIBIT C**  
**TO AMENDED AND RESTATED**  
**MASTER DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS OF BELLE CREEK**

(Use Easement Premises)

<u>LOTS*</u>	<u>ASSOCIATED USE EASEMENT**</u>
Lot 2/Block 4	Lot 1/Block 4 (Northwesterly 5.1 Feet)
Lot 3/Block 4	Lot 2/Block 4 (Northwesterly 5.0 Feet)
Lot 4/Block 4	Lot 3/Block 4 (Northwesterly 5.0 Feet)
Lot 5/Block 4	Lot 4/Block 4 (Northwesterly 5.0 Feet)
Lot 6/Block 4	Lot 5/Block 4 (Northwesterly 5.0 Feet)
Lot 7/Block 4	Lot 6/Block 4 (Northwesterly 5.0 Feet)
Lot 9/Block 4	Lot 10/Block 4 (Northwesterly 5.0 Feet)
Lot 10/Block 4	Lot 11/Block 4 (Northwesterly 5.0 Feet)
Lot 11/Block 4	Lot 12/Block 4 (Northwesterly 5.0 Feet)
Lot 12/Block 4	Lot 13/Block 4 (Northwesterly 4.8 Feet)
Lot 13/Block 4	Lot 14/Block 4 (Northwesterly 5.0 Feet)
Lot 14/Block 4	Lot 15/Block 4 (Northwesterly 5.0 Feet)
Lot 15/Block 4	Lot 16/Block 4 (Northwesterly 5.0 Feet)
Lot 1/Block 5	Lot 2/Block 5 (Northeasterly 7.0 Feet)
Lot 2/Block 5	Lot 3/Block 5 (Northeasterly 5.0 Feet)
Lot 3/Block 5	Lot 4/Block 5 (Northeasterly 5.0 Feet)
Lot 6/Block 5	Lot 5/Block 5 (Northwesterly 5.5 Feet)
Lot 7/Block 5	Lot 6/Block 5 (Northwesterly 13.5 Feet)
Lot 8/Block 5	Lot 7/Block 5 (Northwesterly 13.5 Feet)
Lot 9/Block 5	Lot 8/Block 5 (Northwesterly 7.0-5.0 Feet)
Lot 12/Block 5	Lot 13/Block 5 (Northwesterly 4.8 Feet)
Lot 13/Block 5	Lot 14/Block 5 (Northwesterly 4.8-5.0 Feet)
Lot 14/Block 5	Lot 15/Block 5 (Northwesterly 5.0 Feet)
Lot 15/Block 5	Lot 16/Block 5 (Northwesterly 5.0 Feet)
Lot 16/Block 5	Lot 17/Block 5 (Northwesterly 5.0 Feet)

\* All lots are as shown on the Plat of Belle Creek Filing No. 1 recorded in the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented from time to time.

\*\* All distances are approximate since the actual distance of the easement (as provided in the Declaration) is from the lot line of the Lot to the nearest side of the home on such Lot.

LOTS\*

Lot 1/Block 6  
Lot 2/Block 6  
Lot 5/Block 6  
Lot 11/Block 6  
Lot 12/Block 6  
Lot 16/Block 6

Lot 5/Block 7  
Lot 6/Block 7  
Lot 7/Block 7  
Lot 8/Block 7  
Lot 11/Block 7  
Lot 12/Block 7  
Lot 14/Block 7  
Lot 15/Block 7  
Lot 16/Block 7  
Lot 17/Block 7

Lot 2/Block 9  
Lot 3/Block 9  
Lot 4/Block 9  
Lot 5/Block 9  
Lot 6/Block 9  
Lot 7/Block 9  
Lot 8/Block 9  
Lot 9/Block 9  
Lot 10/Block 9  
Lot 11/Block 9  
Lot 14/Block 9  
Lot 14/Block 9  
Lot 15/Block 9  
Lot 16/Block 9  
Lot 17/Block 9  
Lot 18/Block 9  
Lot 19/Block 9

ASSOCIATED USE EASEMENT\*\*

Lot 2/Block 6 (Northeasterly 7.3 Feet)  
Lot 3/Block 6 (Northeasterly 5.4-5.7 Feet)  
Lot 4/Block 6 (Northwesterly 5.0 Feet)  
Lot 10/Block 6 (Northeasterly 5.0 Feet)  
Lot 11/Block 6 (Northeasterly 5.0 Feet)  
Lot 17/Block 6 (Northwesterly 5.0 Feet)

Lot 6/Block 7 (Northeasterly 5.0 Feet)  
Lot 7/Block 7 (Northeasterly 5.0 Feet)  
Lot 8/Block 7 (Northeasterly 5.0 Feet)  
Lot 9/Block 7 (Northeasterly 5.0 Feet)  
Lot 10/Block 7 (Northwesterly 5.0 Feet)  
Lot 11/Block 7 (Northwesterly 5.0 Feet)  
Lot 13/Block 7 (Northeasterly 5.0 Feet)  
Lot 14/Block 7 (Northeasterly 5.0 Feet)  
Lot 15/Block 7 (Northeasterly 5.0 Feet)  
Lot 16/Block 7 (Northeasterly 5.0 Feet)

Lot 1/Block 9 (Northwesterly 5.0 Feet)  
Lot 2/Block 9 (Northwesterly 5.0 Feet)  
Lot 3/Block 9 (Northwesterly 5.1 Feet)  
Lot 4/Block 9 (Northwesterly 5.0 Feet)  
Lot 5/Block 9 (Northwesterly 5.0 Feet)  
Lot 6/Block 9 (Northwesterly 5.0 Feet)  
Lot 7/Block 9 (Northwesterly 5.0 Feet)  
Lot 8/Block 9 (Northwesterly 5.0 Feet)  
Lot 11/Block 9 (Northeasterly 5.0 Feet)  
Lot 12/Block 9 (Northeasterly 5.0 Feet)  
Lot 13/Block 9 (Southeasterly 5.0 Feet)  
Lot 15/Block 9 (Northwesterly 5.0 Feet)  
Lot 16/Block 9 (Northwesterly 5.0 Feet)  
Lot 17/Block 9 (Northwesterly 5.0 Feet)  
Lot 18/Block 9 (Northwesterly 5.0 Feet)  
Lot 19/Block 9 (Northwesterly 4.9 Feet)  
Lot 20/Block 9 (Northwesterly 4.8 Feet)

\* All lots are as shown on the Plat of Belle Creek Filing No. 1 recorded in the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented from time to time.

\*\* All distances are approximate since the actual distance of the easement (as provided in the Declaration) is from the lot line of the Lot to the nearest side of the home on such Lot.

LOTS\*

Lot 1/Block 10  
Lot 2/Block 10  
Lot 3/Block 10  
Lot 5/Block 10  
Lot 7/Block 10  
Lot 8/Block 10

Lot 9/Block 11

ASSOCIATED USE EASEMENT\*\*

Lot 2/Block 10 (Northeasterly 5.0 Feet)  
Lot 3/Block 10 (Northeasterly 5.0 Feet)  
Lot 4/Block 10 (Northeasterly 5.0 Feet)  
Lot 6/Block 10 (Southeasterly 5.0 Feet)  
Lot 8/Block 10 (Southwesterly 5.0 Feet)  
Lot 9/Block 10 (Southwesterly 5.0-7.0 Feet)

Lot 10/Block 11 (Northeasterly 4.5-5.0 Feet)

\* All lots are as shown on the Plat of Belle Creek Filing No. 1 recorded in the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented from time to time.

\*\* All distances are approximate since the actual distance of the easement (as provided in the Declaration) is from the lot line of the Lot to the nearest side of the home on such Lot.

LOTS\*

Lot 1/Block 3  
Lot 2/Block 3  
Lot 3/Block 3  
Lot 4/Block 3  
Lot 5/Block 3  
Lot 6/Block 3  
Lot 7/Block 3  
Lot 8/Block 3  
Lot 9/Block 3  
Lot 11/Block 3  
Lot 12/Block 3  
Lot 15/Block 3  
Lot 16/Block 3  
Lot 17/Block 3  
Lot 18/Block 3  
Lot 19/Block 3  
Lot 20/Block 3  
Lot 21/Block 3  
Lot 22/Block 3  
Lot 23/Block 3

Lot 1/Block 4  
Lot 2/Block 4  
Lot 3/Block 4  
Lot 5/Block 4  
Lot 6/Block 4  
Lot 9/Block 4  
Lot 10/Block 4  
Lot 11/Block 4  
Lot 13/Block 4

ASSOCIATED USE EASEMENT

Lot 2/Block 3 (Northwesterly Side)  
Lot 3/Block 3 (Northwesterly Side)  
Lot 4/Block 3 (Northwesterly Side)  
Lot 5/Block 3 (Northwesterly Side)  
Lot 6/Block 3 (Northwesterly Side)  
Lot 7/Block 3 (Northwesterly Side)  
Lot 8/Block 3 (Northwesterly Side)  
Lot 9/Block 3 (Northwesterly Side)  
Lot 10/Block 3 (Northwesterly Side)  
Lot 12/Block 3 (Northeasterly Side)  
Lot 13/Block 3 (Northeasterly Side)  
Lot 14/Block 3 (Northwesterly Side)  
Lot 15/Block 3 (Northwesterly Side)  
Lot 16/Block 3 (Northwesterly Side)  
Lot 17/Block 3 (Northwesterly Side)  
Lot 18/Block 3 (Northeasterly Side)  
Lot 19/Block 3 (Northeasterly Side)  
Lot 20/Block 3 (Northwesterly Side)  
Lot 21/Block 3 (Northwesterly Side)  
Lot 22/Block 3 (Northwesterly Side)

Lot 13/Block 4 (Northeasterly Side)  
Lot 3/Block 4 (Northwesterly Side)  
Lot 4/Block 4 (Northwesterly Side)  
Lot 6/Block 4 (Northeasterly Side)  
Lot 7/Block 4 (Northeasterly Side)  
Lot 8/Block 4 (Northwesterly Side)  
Lot 9/Block 4 (Northwesterly Side)  
Lot 10/Block 4 (Northwesterly Side)  
Lot 12/Block 4 (Northeasterly Side)

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LOTS\*

Lot 1/Block 5  
Lot 2/Block 5  
Lot 3/Block 5  
Lot 4/Block 5  
Lot 5/Block 5  
Lot 7/Block 5  
Lot 8/Block 5  
Lot 11/Block 5  
Lot 12/Block 5  
Lot 13/Block 5  
Lot 14/Block 5  
Lot 15/Block 5  
Lot 16/Block 5

Lot 1/Block 6  
Lot 2/Block 6  
Lot 3/Block 6  
Lot 4/Block 6  
Lot 7/Block 6

Lot 1/Block 8  
Lot 2/Block 8  
Lot 3/Block 8  
Lot 4/Block 8  
Lot 7/Block 8  
Lot 8/Block 8  
Lot 9/Block 8  
Lot 10/Block 8

Lot 1/Block 9  
Lot 23/Block 9  
Lot 24/Block 9  
Lot 25/Block 9  
Lot 26/Block 9  
Lot 27/Block 9  
Lot 28/Block 9  
Lot 30/Block 9  
Lot 31/Block 9  
Lot 32/Block 9  
Lot 33/Block 9

ASSOCIATED USE EASEMENT

Lot 2/Block 5 (Northwesterly Side)  
Lot 3/Block 5 (Northwesterly Side)  
Lot 4/Block 5 (Northwesterly Side)  
Lot 5/Block 5 (Northwesterly Side)  
Lot 6/Block 5 (Northwesterly Side)  
Lot 8/Block 5 (Northeasterly Side)  
Lot 9/Block 5 (Northeasterly Side)  
Lot 10/Block 5 (Northwesterly Side)  
Lot 11/Block 5 (Northwesterly Side)  
Lot 12/Block 5 (Northwesterly Side)  
Lot 13/Block 5 (Northwesterly Side)  
Lot 14/Block 5 (Northwesterly Side)  
Lot 15/Block 5 (Northwesterly Side)

Lot 7/Block 6 (Northeasterly Side)  
Lot 3/Block 6 (Northeasterly Side)  
Lot 4/Block 6 (Northeasterly Side)  
Lot 5/Block 6 (Northeasterly Side)  
Lot 6/Block 6 (Northeasterly Side)

Lot 2/Block 8 (Northwesterly Side)  
Lot 3/Block 8 (Northwesterly Side)  
Lot 4/Block 8 (Northwesterly Side)  
Lot 5/Block 8 (Northwesterly Side)  
Lot 6/Block 8 (Northwesterly Side)  
Lot 7/Block 8 (Northwesterly Side)  
Lot 8/Block 8 (Northwesterly Side)  
Lot 9/Block 8 (Northwesterly Side)

Lot 33/Block 9 (Northeasterly Side)  
Lot 22/Block 9 (Northwesterly Side)  
Lot 23/Block 9 (Northwesterly Side)  
Lot 24/Block 9 (Northwesterly Side)  
Lot 25/Block 9 (Northwesterly Side)  
Lot 26/Block 9 (Northwesterly Side)  
Lot 27/Block 9 (Northwesterly Side)  
Lot 29/Block 9 (Northeasterly Side)  
Lot 30/Block 9 (Northeasterly Side)  
Lot 31/Block 9 (Northeasterly Side)  
Lot 32/Block 9 (Northeasterly Side)

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LOTS\*

Lot 1/Block 10  
Lot 2/Block 10  
Lot 3/Block 10  
Lot 5/Block 10  
Lot 6/Block 10  
Lot 7/Block 10  
Lot 10/Block 10  
Lot 11/Block 10  
Lot 13/Block 10

Lot 1/Block 11  
Lot 2/Block 11  
Lot 3/Block 11  
Lot 4/Block 11  
Lot 5/Block 11  
Lot 6/Block 11  
Lot 7/Block 11  
Lot 8/Block 11  
Lot 11/Block 11  
Lot 12/Block 11  
Lot 13/Block 11  
Lot 14/Block 11  
Lot 15/Block 11  
Lot 16/Block 11  
Lot 17/Block 11  
Lot 18/Block 11  
Lot 20/Block 11

Lot 1/Block 12  
Lot 2/Block 12  
Lot 3/Block 12  
Lot 4/Block 12  
Lot 6/Block 12  
Lot 7/Block 12  
Lot 10/Block 12  
Lot 11/Block 12  
Lot 12/Block 12  
Lot 14/Block 12

ASSOCIATED USE EASEMENT

Lot 13/Block 10 (Northeasterly Side)  
Lot 3/Block 10 (Northwesterly Side)  
Lot 4/Block 10 (Northwesterly Side)  
Lot 6/Block 10 (Northeasterly Side)  
Lot 7/Block 10 (Northeasterly Side)  
Lot 8/Block 10 (Northeasterly Side)  
Lot 9/Block 10 (Northwesterly Side)  
Lot 10/Block 10 (Northwesterly Side)  
Lot 12/Block 10 (Northeasterly Side)

Lot 20/Block 11 (Northeasterly Side)  
Lot 3/Block 11 (Northwesterly Side)  
Lot 4/Block 1 (Northwesterly Side)  
Lot 5/Block 11 (Northwesterly Side)  
Lot 6/Block 11 (Northwesterly Side)  
Lot 7/Block 11 (Northwesterly Side)  
Lot 8/Block 11 (Northwesterly Side)  
Lot 9/Block 11 (Northwesterly Side)  
Lot 10/Block 11 (Northwesterly Side)  
Lot 11/Block 11 (Northwesterly Side)  
Lot 12/Block 11 (Northwesterly Side)  
Lot 13/Block 11 (Northwesterly Side)  
Lot 14/Block 11 (Northwesterly Side)  
Lot 15/Block 11 (Northwesterly Side)  
Lot 16/Block 11 (Northwesterly Side)  
Lot 17/Block 11 (Northwesterly Side)  
Lot 19/Block 11 (Northeasterly Side)

Lot 14/Block 12 (Northeasterly Side)  
Lot 3/Block 12 (Northwesterly Side)  
Lot 4/Block 12 (Northwesterly Side)  
Lot 5/Block 12 (Northwesterly Side)  
Lot 7/Block 12 (Northeasterly Side)  
Lot 8/Block 12 (Northeasterly Side)  
Lot 9/Block 12 (Northwesterly Side)  
Lot 10/Block 12 (Northwesterly Side)  
Lot 11/Block 12 (Northwesterly Side)  
Lot 13/Block 12 (Northeasterly Side)

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