

**COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TRAILSIDE**

THESE COVENANTS, CONDITIONS AND RESTRICTIONS FOR TRAILSIDE ("Covenants," as hereinafter more fully defined) are made and entered into the date and year hereinafter set forth by KB HOME COLORADO INC., a Colorado corporation ("Developer," as hereinafter more fully defined).

WITNESSETH:

WHEREAS, Developer is the owner of that certain real property in the City of Thornton ("City"), County of Adams, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference ("Property," as hereinafter more fully defined); and

WHEREAS, the Developer desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, architectural guidelines, reservations, rights-of-way, obligations, liabilities and other provisions; and

WHEREAS, these Covenants do not create a Common Interest Community, as defined by the Colorado Common Interest Ownership Act at C.R.S. §38-33.3-103(8); therefore, these Covenants shall not be governed by the Colorado Common Interest Ownership Act; and

WHEREAS, pursuant to C.R.S. § 32-1-1004(8), and other provisions of Title 32 of C.R.S., it is the intention of the Developer to empower the Metropolitan District (as hereinafter defined) to provide certain services to the residents of the Metropolitan District (collectively, the "Services," as hereinafter more fully defined), which may include covenant enforcement, design review, and trash collection.

NOW, THEREFORE, Developer hereby declares that the Property shall be held, sold, and conveyed, subject to the following covenants, conditions, restrictions, easements, architectural guidelines, reservations, rights-of-way, obligations, liabilities, and other provisions, as set forth herein.

GENERAL

A. Planned Community. Developer is the owner of Lots located in the County of Adams, State of Colorado, more particularly described on Exhibit A attached hereto and by this reference incorporated herein, which Lots collectively constitute and are defined in these Covenants as the "Property". Developer intends to develop the Property as a master planned community of single family residential homes and related uses. The name of the community to be developed on the Property is "Trailside". All of the Property is located within the Cundall Farms Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("CFMD"). Because ownership of a Lot does not obligate the owner to pay for real estate taxes,

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("CFMD"). Because ownership of a Lot does not obligate the owner to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration, the Property is not and will not be a "common interest community", as defined in the Colorado Common Interest Ownership Act ("Act"), and therefore the Property and these Covenants are not subject to or required to comply with the Act. Developer confirms its intention that the Act will not apply to the Property or these Covenants.

B. Purposes of Covenants. These Covenants are executed (a) to further a common and general plan for the development of the Community Area, as hereinafter defined; (b) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Community Area; (c) to provide for and define certain duties, powers and rights of the Architectural Review Committee, as defined herein; (d) to define certain duties, powers and rights of CFMD under this Declaration; and (e) to define certain duties, powers and rights of Owners of Lots within the Community Area.

C. Declarations. Developer, for itself and its successors and assigns, hereby declares that the Property, and all property that becomes subject to this Declaration in the manner hereinafter provided from the date the same becomes subject to this Declaration, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in these Covenants. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall bind, be a charge upon and inure to the mutual benefit of: (a) the Property and all property that becomes part of the Community Area; (b) Developer and its successors and assigns; (c) CFMD and its successors and assigns; and (d) all Persons having or acquiring any right, title or interest in the Property or in any property that becomes part of the Community Area, or any Improvement thereon, and their heirs, personal representatives, successors or assigns. These Covenants shall be recorded in every county in which any portion of the Community Area is located.

ARTICLE 1. DEFINITIONS

Section 1.1. *ARC.*

"ARC" means the Architectural Review Committee, which shall be appointed by the Developer during the Developer Control Period (as defined in Section 2.1), and upon expiration of the Developer Control Period, appointed by the Metropolitan District, all as provided in Section 2.1 of these Covenants. The ARC shall review, consider and approve, or disapprove, requests for architectural approval, as more fully provided in these Covenants. To the extent (i) the Person with the authority to appoint the ARC, as provided in Section 2.1, has delegated, in writing, some or all architectural authority, to one or more other Persons, or (ii) a representative or committee has been appointed by the ARC to act on its behalf, as provided in Section 2.3.5, then the actions of such Person, representative or committee shall be deemed to be the actions of the ARC.

Section 1.2. *Builder.*

"**Builder**" means any Person who is designated as a "**Builder**" under these Covenants in a written designation that is signed by the then-Developer, and which designation is recorded in the office of the Clerk and Recorder of Adams County, Colorado, and such Person: (i) acquires one or more parcels of the Property for the purpose of constructing at least one residence on each such parcel for sale, and/or rental, to the public; and/or (ii) acquires one or more parcels of the Property for sale to any Person fitting the description in Section 1.2(i).

Section 1.3. *Community Area.*

"**Community Area**" means the real property described on **Exhibit A** attached hereto and all other real property, if any, made subject to the terms and provisions of these Covenants after the date hereof.

Section 1.4. *Covenants.*

"**Covenants**" means these Covenants, Conditions and Restrictions for Trailside, as amended and supplemented from time to time.

Section 1.5. *Developer.*

"**Developer**" means KB Home Colorado Inc., a Colorado corporation, and/or any other Person to whom the Developer may assign one or more of the Developer's rights under these Covenants (which shall be the extent of the Developer's rights to which such assignee succeeds); provided, that no assignment of any Developer rights shall be effective unless such assignment is duly executed by the assignor Developer and recorded in the office of the Clerk and Recorder of Adams County, Colorado.

Section 1.6. *Governing Documents.*

"**Governing Documents**" means these Covenants, any Guidelines (as hereinafter defined), any Rules and Regulations (as hereinafter defined), and any other documents now or hereafter adopted by or for the Metropolitan District or ARC, as amended and supplemented.

Section 1.7. *Improvements.*

"**Improvements**" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including but not limited to buildings, outbuildings, swimming pools, hot tubs, satellite dishes, antennas, tennis courts, patios, patio covers, awnings, solar collectors, roof materials, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, dog runs, fences, including gates in fences, basketball backboards and hoops, swingsets or other play structures, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, groundcover, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment, permanent fire pits, chimneys, exterior ornaments, if any.

Section 1.8. *Metropolitan District.*

"**Metropolitan District**" means Cundall Farms Metropolitan District, and/or any other metropolitan district(s), to which the then-Metropolitan District may transfer or assign any or all of the rights and duties of the Metropolitan District under these Covenants. Each 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 then-Metropolitan District. Cundall Farms Metropolitan District shall be considered the "**Metropolitan District**" for all purposes of these Covenants. In addition to the authority to provide the Services (as defined in Section 1.12), the Metropolitan District has such other authority with respect to the provision of the Services, 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 undertake enforcement actions.

Section 1.9. *Owner.*

"**Owner**" means each fee simple title holder of a Unit, including Developer, any Builder and any other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation.

Section 1.10. *Patio Home Property.*

"**Patio Home Property**" means the real estate described on the attached **Exhibit B**, as supplemented and amended, as the same may now or hereafter be improved, and as the Developer, any Builder or Owner may now or hereafter subdivide or re-subdivide any portion thereof.

Section 1.11. *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 entity or any combination thereof, and includes each Owner, the Developer, each Builder, the ARC, the Metropolitan District, and the governing body of the Metropolitan District.

Section 1.12. *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, and as the Developer, any Builder or Owner may now or hereafter subdivide or re-subdivide any portion thereof; provided, however, that the "**Property**" shall not include any property that has been withdrawn as provided in Section 5.10 hereof.

Section 1.13. Services.

“Services” means the services that the Metropolitan District is empowered to provide pursuant to C.R.S. §32-1-1004, as amended, and other provisions of Title 32 of C.R.S., as amended, including but not limited to covenant enforcement, design review, and trash collection.

Section 1.14. Unit.

“Unit” means any portion of the Property which is designated as a lot on a recorded plat, including each residence (attached or detached), each condominium unit, and each apartment unit, now or hereafter located thereon.

ARTICLE 2. ARCHITECTURAL REVIEW

Section 2.1. Composition of ARC.

The ARC shall consist of three (3) or more natural Persons. The Developer has the authority to appoint the ARC, and/or to delegate some or all architectural authority (as provided in Section 2.2 hereof), from the date of recording of these Covenants until the date of conveyance of all the Units to the first Owners thereof other than: (i) the Developer; or (ii) any Builder; or (iii) any other Person who acquires one or more parcels of the Property for the purpose of constructing at least one residence on each such parcel (the “Developer Control Period”). After expiration of the Developer Control Period, the governing board of the Metropolitan District has the authority to serve as or appoint members to the ARC, and/or to delegate some or all architectural authority (as provided in Section 2.2 hereof). The appointments of all then-current members of the ARC who were appointed by the Developer shall automatically terminate on the date which is thirty (30) days after expiration of the Developer Control Period.

Section 2.2. Delegation of Some or All Architectural Authority.

The Person with the authority to appoint the ARC, as provided in the preceding Section 2.1, shall have the right and authority to: (i) delegate, in writing, some or all architectural authority, to one or more other Persons, including one or more management companies or metropolitan or other district(s), such as by entering into intergovernmental agreement(s) or other document(s) or agreement(s); and (ii) withdraw, in writing, any delegated authority.

Section 2.3. Architectural Review Requirements; Authority of the ARC.

2.3.1. No Improvements shall be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Unit, unless said Improvements are in full compliance with all provisions of the Governing Documents, and unless such Improvements are approved in writing by the ARC. At least one (1) detailed set of complete plans and specifications of proposed Improvements (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may

be required by the ARC), shall have been first submitted to the ARC for review and consideration.

2.3.2. The ARC shall endeavor to exercise its judgment in an attempt to provide for each proposed Improvement to generally harmonize with the existing surroundings, residences, landscaping and structures. However, the ARC shall not review or approve any proposed Improvements regarding whether the same complies with governmental requirements. Rather, as provided in Section 2.3.3, below, the applicant is also required to submit proposed Improvements to the applicable governmental entities for a determination of compliance with governmental requirements. In its review of such plans, specifications and other materials and information, the ARC may require, as a condition to its considering an approval request, that the applicant(s) pay, and/or reimburse the ARC, for the expenses incurred in the process of review and approval or disapproval.

2.3.3. In addition to the foregoing review and approval, and notwithstanding anything to the contrary in these Covenants, the construction, erection, addition, deletion, change or installation, of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and shall require issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City of Thornton, Colorado, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in, any Improvement.

2.3.4. In addition to the authority that is given to the ARC in these Covenants, as well as such authority as may be implied from any provision(s) of these Covenants, the ARC shall have all authority and powers that are given by Colorado statute and/or case law, to a corporation, a limited liability company, or any other legal entity.

2.3.5. The ARC may, at any time, appoint a representative or committee to act on its behalf. During the Developer Control Period, the Developer may contract with the Metropolitan District in order for the Metropolitan District to provide the Services. If so, then the actions of such representative or committee, or the Metropolitan District, as applicable, shall be the actions of the ARC. However, if such a representative or committee is appointed, then the ARC shall have full power over such representative or committee, including the power to at any time withdraw from such representative or committee, any authority to act on behalf of the ARC, and the power to at any time remove or replace such representative or committee.

Section 2.4. *Guidelines.*

The ARC, with the prior, written approval of the Person who then has the authority to appoint the ARC, as provided in Section 2.1 of these Covenants, may promulgate, adopt, enact, modify, amend, repeal, and re-enact, architectural standards, rules, regulations and/or guidelines, regarding architectural matters and matters incidental thereto (collectively the "**Guidelines**"), but the Guidelines shall not be in conflict with these Covenants. The Guidelines may include: clarifying the designs and materials that may be considered in architectural approval; requirements

for submissions, procedural requirements, specification of acceptable Improvement(s) that may be installed without prior review or approval; and permitting the Metropolitan District, with respect to any violation(s) or alleged violation(s) of any of the Governing Documents, to send demand letters and notices, levy and collect fines and interest, and negotiate, settle and take any other actions. In addition, the Guidelines may provide for blanket approvals, interpretations, or restrictions. By way of example, and not by way of limitation, the 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. All Improvements proposed to be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Unit by any Owner shall be done and used in accordance with the Guidelines and these Covenants. The Guidelines (as amended from time to time in accordance with their terms) shall not be recorded against the Property but are hereby incorporated into these Covenants as if fully set forth herein.

Section 2.5. *Procedures.*

The ARC shall 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, 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 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, specifications, materials and other information with respect thereto, such request is deemed approved by the ARC.

Section 2.6. *Vote.*

The affirmative, majority vote of the ARC shall be required for approval (which may be with conditions and/or requirements) of each matter, unless the Person with the authority to appoint the ARC, as provided in Section 2.1, has delegated, in writing, some or all architectural authority, to one or more other Persons or the ARC has appointed a representative or committee to act for it, in which case the decision of such Person, representative or committee shall control.

Section 2.7. *Prosecution of Work After Approval.*

After approval (which may be with conditions and/or requirements) of any proposed Improvement by the ARC, the proposed Improvement shall be completed and constructed as promptly and diligently as possible, and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application ("**Completion Deadline**"), or to complete the Improvement in complete conformance with the conditions and requirements of the approval, shall constitute noncompliance; provided, however, that the ARC may grant extensions of time to individual Owners 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 an Improvement, the applicant for approval of the same shall give a written "**Notice of Completion**" to the ARC (in form and substance acceptable to the ARC, or 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 on 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, or its duly authorized representative, shall have the right to inspect any Improvement at any time, including prior to or after completion, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article. However, such right of inspection shall terminate ninety (90) days after the ARC has received a Notice of Completion from the applicant and no action has been initiated by the ARC. The 90-day period to perform inspections after the ARC has received a Notice of Completion does not apply to or limit the right or authority of the ARC to require compliance with the Improvement review and approval process as set forth in the Covenants and the Guidelines, or the right or authority of the Metropolitan District to enforce these Covenants, the Guidelines, or any Rules and Regulations, including but not limited to the requirements pertaining to the maintenance of Improvements.

Section 2.10. *Notice of Non-compliance.*

If, as a result of inspections or otherwise, the ARC determines that any Improvement has been done without obtaining all required approvals (which may be with conditions and/or requirements), or was not done in substantial compliance with the approval that was granted, or has not been completed by the Completion Deadline (except landscaping, as provided below), subject to any extensions of time granted pursuant to Section 2.7 hereof, then the ARC shall notify the applicant in writing of the non-compliance. Such notice of non-compliance shall be given not later than sixty (60) days after (as applicable), (a) the ARC receives a Notice of Completion from the applicant, or (b) the ARC discovers any such noncompliance. The notice of non-compliance shall specify the particulars of the non-compliance.

Section 2.11. *Correction of Non-compliance.*

If the ARC determines that a non-compliance exists, the Person responsible for such non-compliance shall remedy or remove the same within not more than forty-five (45) days from the date of receipt of the notice of non-compliance. If such Person does not comply with the ruling within such period, the ARC shall notify the Metropolitan District, and the Metropolitan District may, at its option, record a notice of non-compliance against the Unit on which the non-compliance

exists, may impose 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 Metropolitan District, upon demand, for all costs and expenses, as well as anticipated costs and expenses, with respect thereto.

Section 2.12. Cooperation.

The ARC has the right and authority to enter into agreements and otherwise cooperate with any architectural review or similar committees, any metropolitan or other districts, or one or more boards or committees that exercise architectural or design review functions, or any other Person, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the ARC. The costs and expenses for all such matters, if any, shall be shared or apportioned between such Persons and the ARC, as the ARC may determine. The foregoing shall include collection, payment, and disbursement of fees, charges, and/or any other amounts.

Section 2.13. Access Easement.

The Developer hereby reserves, and each Owner hereby grants, to the ARC, the Metropolitan District, and the Person who then has the authority to appoint the ARC, as provided in Section 2.1 of these Covenants, including the agents, employees and contractors of each such Person (including the ARC), on, over, under and across the Units 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 pursuant to the first sentence of Section 2.9 of these Covenants and including enforcement of each of the terms and provisions of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any other property or any Unit, the Person responsible for the damage or expense to avoid damage, or the ARC or the Person who then has the authority to appoint the ARC, as provided in Section 2.1 of these Covenants, if such Person (including the ARC) is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive inspections and maintenance; and except that, in emergency situations, entry upon a Unit may be made at any time, provided that the Owner(s) or occupant(s) of each affected Unit shall be notified of emergency entry as early as is reasonably possible. The interior of any residence shall not be subject to the easements provided for in this Section.

Section 2.14. No Liability.

The ARC, the Metropolitan District, the Person who then has the authority to appoint the ARC, as well as any representative or committee appointed by the ARC, shall not be liable in equity or damages 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. In reviewing or approving

any matter, the ARC shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor compliance with any other standards or regulations, and any approval (which may be with conditions and/or requirements) of an Improvement by the ARC shall not be deemed an approval of any such matters and shall 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. No Owner or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by, the ARC.

Section 2.15. *Variance.*

The ARC may grant reasonable variances or adjustments from any conditions and restrictions imposed by Article 2 of these Covenants, or by the Guidelines, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood, and shall not militate against the general intent and purpose hereof. However, any variance that may be granted under this Section is only a variance from the requirements of the applicable Governing Document for the individual applicant, and is not a variance from the requirements of any applicable governmental or quasi-governmental agency or entity. No granting of a variance or adjustment to any one applicant/Owner shall constitute a variance or adjustment, or the right to a variance or adjustment, to any or all other applicants/Owners.

Section 2.16. *Waivers; No Precedent.*

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

Section 2.17. *Developer and Builder Exemption.*

2.17.1. Notwithstanding anything to the contrary, the Developer is exempt from this Article and all provisions of the Governing Documents that require ARC review and/or approval, except for the requirement to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 2.3.3 of these Covenants).

2.17.2. 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 the Governing Documents that require ARC review and/or approval, except for the requirement to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 2.3.3 of these Covenants).

Section 2.18 *Patio Homes Exemption.*

2.18.1. Notwithstanding anything to the contrary, the Patio Home Property is exempt from Section 3.14 of these Covenants, and all provisions of the Governing Documents requiring ARC review and/or approval of landscaping or allowing enforcement of landscaping violations by the Metropolitan District. This section does not exempt the Patio Home Property from the requirement for ARC review and/or approval for any other (non-landscaping) Improvements, or the requirement to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 2.3.3 of these Covenants). The Metropolitan District shall likewise maintain the authority to enforce any non-landscaping violations with respect to the Patio Home Property as set forth in the Governing Documents.

ARTICLE 3. RESTRICTIONS

Section 3.1. *General.*

Notwithstanding anything to the contrary, the Property is subject to all covenants, conditions, restrictions, requirements, easements, licenses, and other provisions of all documents recorded in the office of the Clerk and Recorder of Adams County, Colorado, as amended, including those stated on the recorded plats of the Property, or any portion thereof, but only as and to the extent provided in such documents. In addition, the Developer declares that, subject to Section 5.4 hereof, all of the Units 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 these Covenants.

Section 3.2. *Compliance with Law.*

All Owners, and all other Persons, who reside upon or use any Unit or any other portion of the Property, shall comply with all applicable statutes, ordinances, laws, regulations, rules and requirements of all governmental and quasi-governmental entities, agencies and authorities, but the neither the ARC nor the Metropolitan District shall have any obligation to enforce compliance with the statutes, ordinances, laws, regulations, rules and requirements of any other governmental or quasi-governmental entities, agencies and authorities.

Section 3.3. *Residential Use; Professional or Home Occupation.*

Units that consist of platted single-family lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes except that Owners may conduct home occupations and business activities within their residences to the extent permitted by, and in compliance with,

the ordinances of the City and any Guidelines and/or the Rules and Regulations that do not conflict with such City ordinances.

Section 3.4. *Animals.*

No animals, livestock (pigs, cattle, horses, goats, lamas, etc), birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Units except as permitted by, and in compliance with, the ordinances of the City and any Guidelines and/or the Rules and Regulations that do not conflict with such City ordinances. An Owner's right to keep household pets shall be coupled with the responsibility for collecting and properly disposing of any animal waste and to pay for all damage caused by such pets.

Section 3.5. *Temporary Structures; Unsightly Conditions.*

Except as hereinafter provided with the Developer being excluded, no structure of a temporary character, including a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Unit; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures, offices and trailers for construction, marketing or 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 Unit as to be visible from a street or from any other Unit.

Section 3.6. *Miscellaneous Improvements.*

3.6.1. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit 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 of not more than five (5) square feet in the aggregate; except that signs advertising garage sales, block parties, or similar community events, or political signs, may be permitted if the same are in accordance with the Guidelines or have been submitted to the ARC for review and written approval (which may be with conditions and/or requirements), prior to posting of such signs. Notwithstanding the foregoing, any signs, billboards or other advertising may be used by the Developer or by any Builder (with the prior, written approval of the Developer), without regard to the foregoing or any limitations, requirements, specifications or other provisions of the Governing Documents, the ARC, or the Metropolitan District, and without any approval (except as stated earlier in this sentence).

3.6.2. No wood piles or storage areas, shall be so located on any Unit as to be visible from a street or from the ground level of any other Unit.

3.6.3. No types of refrigerating, cooling or heating apparatus shall be permitted on a roof, except as permitted by law, and then only with the prior, written approval of the ARC. Further, no such apparatus shall be permitted elsewhere on a Unit except when appropriately

screened and approved in writing by the ARC. For example, conventional air conditioning units located on the ground of a Unit are permissible when approved in accordance with the preceding sentence.

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

3.6.5. No fences, other than fences constructed or installed by the Developer or a Builder (with the prior, written approval of the Developer), shall be permitted, except with the prior, written approval (which may be with conditions and/or requirements) of the ARC. Any fence(s) constructed on a Unit shall be maintained, repaired and replaced by the Owners of that Unit.

Section 3.7. *Vehicular Parking, Storage and Repairs.*

3.7.1. Subject to the Guidelines and/or the Rules and Regulations (as hereinafter defined), the garage area and driveway of each Unit should first be fully used for the parking of vehicles before any street parking is done. However, notwithstanding the foregoing, street parking is not restricted by this Section.

3.7.2. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, recreational vehicles, golf carts and boat trailers, shall be parked only in enclosed garages or specific areas, if any, which may be designated by ARC. This restriction, however, shall not restrict trucks or commercial vehicles which are necessary for construction or for the maintenance of any portion of the Property, or any Improvements located thereon, nor shall such restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted on the Property except within enclosed garages. For purposes of this Section, the ARC may determine whether a vehicle is considered "**stored**". For example, a vehicle may be considered to be "**stored**" if it is up on blocks or covered with a tarpaulin and remains on

blocks or so covered for seventy-two (72) consecutive hours without the prior approval (which may be with conditions and/or requirements) of the ARC.

3.7.3. No activity, including maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Property unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. Any Owner or other Person undertaking any such activities shall be solely responsible for, and assumes all risks of, such activities, including adoption and utilization of any and all necessary safety measures, precautions and ventilation. However, the foregoing restrictions shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle on a Unit, together with those activities normally incident and necessary to such washing and polishing.

3.7.4 DEVELOPER, EACH BUILDER, THE METROPOLITAN DISTRICT, AND THE ARC, HEREBY DISCLAIM ANY AND ALL OBLIGATIONS REGARDING, RELATING TO OR ARISING OUT OF, THE PERFORMANCE OF ANY MAINTENANCE, SERVICING, REBUILDING, REPAIR, DISMANTLING, OR REPAINTING OF ANY TYPE OF VEHICLE, BOAT, TRAILER, MACHINE OR DEVICE OF ANY KIND, BY ANY OWNER OR OTHER PERSON.

Section 3.8. *Nuisances.*

No nuisance shall be permitted which is visible within or otherwise affects any portion of the Property, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Unit, or any portion thereof, by its residents. As used herein, the term "nuisance" shall include each violation of the Governing Documents. No noxious or offensive activity shall be carried on upon any Unit nor shall anything be done or placed on any Unit which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 3.9. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted on any Unit, or within Improvements constructed on any Unit, which are unsafe or hazardous to any person or property. [DOES THIS PROHIBIT ACTIONS THAT OCCUR IN THE INTERIOR OF A RESIDENCE, (I CAN THINK OF A HOST OF ACTIVITIES THAT SOMEONE MAY DEEM AS UNSAFE OR HAZARDOUS THAT MY KIDS HAVE DONE) OR IS IT LIMITED TO ACTIVITIES THAT ARE EXTERNAL TO A RESIDENCE, AND MAY HAVE AN IMPACT ON OTHER OWNERS?] [IS THIS CONSISTENT WITH 3.11 WHICH ALLOWS AN OWNER TO KEEP GARBAGE, TRASH, DEBRIS, ETC. INSIDE A RESIDENCE?] Without limiting the generality of the foregoing, no firearms shall be discharged upon any Unit, and no open fires shall be lighted or permitted on any Unit (except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace or outdoor fire pit powered by natural gas, propane or something similar). Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at

any Unit, except such as may be contained in household products normally kept at homes for use of the residents thereof, and in such limited quantities so as not to constitute a hazard or danger to person or property.

Section 3.10. *No Annoying Lights, Sounds or Odors.*

No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Unit which is unreasonably loud or annoying; and no odor shall be permitted from any Unit which is noxious or offensive to others. In addition to the foregoing, nothing electromagnetic, no light and no physical emission, which might interfere with aircraft, aviation, communications or navigational aids, shall be permitted.

Section 3.11. *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 Unit nor shall such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Unit. 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. Finally, trash removal services may be subscribed to by the Metropolitan District on behalf of the residents of the Property and, if so: the governing board of the Metropolitan 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 of such trash removal services, as determined by the governing board of the Metropolitan District.

Section 3.12. *Units to be Maintained.*

Subject to Section 3.5 hereof, each Unit (including adjacent tree lawn) shall at all times be maintained, repaired and replaced in a good, clean and slightly condition by the Owners of such Unit.

Section 3.13. *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, or any portion thereof, and shall specifically include month-to-month rentals and subleases. Any Owner shall have the right to lease his Unit, 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 Governing Documents; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

Section 3.14. *Landscaping.*

Within the time frames as hereinafter provided, subject to applicable “**force majeure**” delays as determined by the ARC, the Owner of each Unit (other than Developer or a Builder) shall install landscaping on all portions of the Unit which is not covered by a building or Improvement, as well as on the tree lawn areas adjacent to such Unit in accordance with the Governing Documents and the requirements of the City of Thornton. The Owner of each Unit (other than Developer or a Builder) shall install landscaping on such Unit, and on adjacent tree lawn areas, within one hundred (180) days after the later to occur of acquisition of such Unit by such Owner, if said acquisition occurs between April 1 and July 31; if such acquisition does not occur between such dates, then such landscaping shall be installed by such Owner by the following June 30. Landscaping plans must be submitted to the ARC for review and approval (which may be with conditions and/or requirements), and such approval shall be obtained prior to the installation of landscaping, in accordance with Article 2 of these Covenants. Each Owner shall maintain all landscaping on such Owner's Unit, and on adjacent tree lawn areas, in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds and debris, and replacement of landscaping.

Section 3.15. *Grade and Drainage; Irrigation Recommendations; Drainage Easement; Maintenance of Surface Drainage Improvements and Underdrains.*

3.15.1. Each Owner shall maintain the grading upon his Unit, and grading around the building foundation, at the slope and pitch fixed by the final grading thereof, so as to maintain the established drainage. Each Owner agrees that he will not in any way interfere with the established drainage pattern over his Unit. In the event that it is necessary or desirable to change the established drainage over any Unit, then the Owner thereof shall submit a plan to the ARC for review and approval (which may be with conditions and/or requirements), in accordance with Article 2 of these Covenants, and any such change shall also be made in accordance with all laws, regulations, requirements and resolutions of all applicable governmental entities. For purposes of this Section, “**established drainage**” is defined as the drainage which exists at the time final grading of a Unit by the Developer, or by a Builder, is completed.

3.15.2. The Owner of a Unit should not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Unit. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Unit should water such shrubbery by “**controlled hand-watering**,” and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls and slabs.

3.15.3. Developer hereby reserves to itself, and grants to the Metropolitan District, easements for drainage and drainage facilities across the five (5) rear, five (5) front, and three (3) side feet of each Unit; provided, however, that if a residence is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of

the distance from the nearest lot line to the exterior wall of the residence on such Unit that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Unit nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear, front and side yard drainage easements. Developer reserves to itself and to the Metropolitan District the right to enter in and upon each such rear, front and side yard drainage easements, at any time, to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Developer or the Metropolitan District may determine.

Section 3.16. *Prohibition Against Mining, Drilling and Similar Activities.*

No mining, quarrying, drilling, boring, or exploring for or removing, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, soil, water or earth, shall be conducted on, in or under the Property, any portion thereof, or any Unit therein.

ARTICLE 4. ALTERNATIVE DISPUTE RESOLUTION

Section 4.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.*

4.1.1. Each Bound Party (as defined below) 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 (as defined below) to the procedures set forth in Section 4.6 hereof.

4.1.2. By acceptance of a deed for a Unit, each Owner agrees to abide by the terms of this Article.

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

Section 4.2. *Definitions Applicable to this Article.*

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

4.2.1. "**Bound Party**" means each of the following: the Developer, each Builder, each contractor, subcontractor, supplier, and laborer, the Metropolitan District, to the extent permitted by law, and their respective directors, officers, members, partners, employees and agents; the ARC and the committees and representatives appointed by the ARC, and each of their respective members and agents; all Persons subject to these Covenants; and any Person who is not otherwise subject to these Covenants, but who agrees to submit to this Article. Notwithstanding the foregoing, "**Bound Party**" shall not include any of the Persons identified in this Section, if such Persons 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 Persons shall apply with respect to such Claim, unless such Persons mutually agree to submit such Claim to the provisions of this Article.

4.2.2. "**Claimant**" means any Bound Party having a Claim.

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

4.2.4. "**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 these Covenants.

4.2.5. "**Notice**" means the written notification given by a Claimant to a Respondent which complies with Section 4.5.1 of these Covenants.

4.2.6. "**Party**" means the Claimant and the Respondent individually; "**Parties**" means the Claimant and the Respondent collectively.

4.2.7. "**Respondent**" means any Bound Party against whom a Claimant asserts a Claim.

4.2.8. "**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 otherwise agreed to by the Parties) and upon the expiration of which the Parties have not settled the applicable Claim.

4.2.9. "**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 4.3. *Commencement or Pursuit of Claim Against Bound Party.*

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

4.3.2 Prior to any Bound Party commencing any proceeding against another Bound 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 4.4. *Claims.*

Unless specifically exempted below, all Claims between any of the Bound Parties shall be subject to the provisions of Section 4.6 hereof. Notwithstanding the foregoing, unless all Parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 4.6 hereof:

4.4.1 any action by the ARC, the governing board of the Metropolitan District, or the Developer, to enforce these Covenants, or any provision(s) of the Guidelines or the Rules and Regulations (as hereinafter defined), including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief), and such other ancillary relief as a court may deem necessary;

4.4.2 any suit between or among Owners, which does not include Developer, Builder, the Metropolitan District, or the governing board of the Metropolitan District as a Party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

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

Section 4.5. *Mandatory Procedures.*

4.5.1 *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:

- (a) the nature of the Claim, including all Persons involved and Respondent's role in the Claim;
- (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) the proposed remedy; and
- (d) the fact that Claimant will give the Respondent an opportunity to inspect all property and Improvements potentially involved with the Claim, and that Claimant will meet with Respondent not sooner than thirty (30) days after such inspection to discuss in good faith ways to resolve the Claim.

4.5.2 *Negotiation and Mediation.*

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in the Notice, the governing board of the Metropolitan District may appoint a representative to assist the Parties in negotiation.

(b) Upon a Termination of Negotiations, Claimant shall have 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 4.5.1 of these Covenants.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall 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.

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

(f) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 4.5.2 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 Section 4.5 hereof. In such event, the Party taking action to enforce the agreement shall be entitled to 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.

Section 4.6. *Final, Binding Arbitration.*

4.6.1 Upon termination of mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of JAG, in accordance with the then-current rules of JAG in effect as of the date of the Notice provided in accordance in Section 4.5.1 of these Covenants. 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, there shall be one arbitrator who shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

4.6.2 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, reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in

trial and on appeal, shall be awarded to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

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

ARTICLE 5. GENERAL PROVISIONS

Section 5.1. *Rules and Regulations.*

Any rules and regulations, if any, concerning and governing the Property, may be promulgated, adopted, enacted, modified, amended, repealed, and re-enacted by the governing board of the Metropolitan District (“**Rules and Regulations**”) and such actions shall not be construed as an amendment to these Covenants requiring processing under Section 5.6, hereof. The Rules and Regulations, if any, may state procedural requirements, interpretations, clarifications and applications of any provision(s) of these Covenants or the Guidelines and law, and may include blanket requirements, blanket interpretations, and blanket applications. The governing board of the Metropolitan District has the authority to adopt or vary one or more Rules and Regulations that are different for different types of Units, if any. Any Rules and Regulations, if any, that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, these Covenants.

Section 5.2. *Enforcement.*

5.2.1 Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in these Covenants, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision, and possible remedies include all of those available at law or in equity. The Developer, the Metropolitan District and any aggrieved Owner, shall 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. Except as otherwise provided in Article 4 of these Covenants, in any action instituted or maintained under these Covenants or any other such documents, the prevailing party shall be awarded its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums; except that, any Person who brings an action against the Developer, any Builder, the Metropolitan District, or the ARC, regarding enforcement, or non-enforcement, of any provision(s) of the Governing Documents, shall not be awarded their costs or any attorney fees. Failure by the Developer, the Metropolitan District, the ARC or any Owner, to enforce any covenant, restriction or other provision contained in these Covenants, 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 these Covenants, regardless of the number of violations or breaches that may occur.

5.2.2 The foregoing shall include the right of the Metropolitan 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 5.3. *Severability.*

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

Section 5.4. *Rights and Easements of Developer and Builders.*

Notwithstanding anything to the contrary contained in the Governing Documents, it shall be expressly permissible and proper for Developer and each Builder, and their respective employees, agents, and contractors, to perform all activities, and maintain Improvements, tools, equipment, and facilities, on the portion of the Property owned by them and also on public property, incidental to development, construction, use, rental, sale, occupancy, and/or advertising. The foregoing includes locating, maintaining and relocating management offices, 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 them and also on public property, as determined by the Developer or applicable Builder. In addition, nothing contained in these Covenants shall limit the rights of Developer, or require the Developer, to obtain approvals:

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

5.4.2. 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

5.4.3 to seek or obtain any approvals under these Covenants for any such activity.

Section 5.5. *Conflict of Provisions.*

In the case of any conflict between any of the Governing Documents, these Covenants shall control.

Section 5.6. *Duration, Revocation and Amendment.*

5.6.1 Each and every provision of these Covenants shall run with and bind the Property perpetually from the date of recording of these Covenants. Subject to subsection 5.6.2 of these Covenants, these Covenants may be amended, supplemented and/or terminated, by the affirmative vote or agreement of the Owners of sixty-seven percent (67%) of the Units. Notwithstanding the foregoing, the Metropolitan District shall not be required

to comply with or enforce any Owner-adopted amendments, supplements or termination, until such time as the governing board of the Metropolitan District receives a recorded copy of such amendment, supplement and/or termination.

5.6.2 Notwithstanding anything to the contrary, until all of the Units have been conveyed to the first Owners thereof other than the Developer or a Builder, no amendment, supplement or termination of these Covenants shall be effective, without the prior written approval of the Developer, which may be with conditions and/or requirements. This subsection 5.6.2 shall be in effect until conveyance of all the Units to the first Owners thereof, other than the Developer or any Builder.

5.6.3 Notwithstanding anything to the contrary, these Covenants may be amended, in whole or in part, by the Developer without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, including the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, and the federal national mortgage association. This subsection 5.6.3 shall be in effect until conveyance of all the Units to the first Owners thereof, other than the Developer or any Builder.

5.6.4 Notwithstanding anything to the contrary, these Covenants may be amended, in whole or in part, by the Developer without the consent or approval of any other Owner, any Builder, the Metropolitan District, or any other Person, in order to correct any clerical, typographical, technical or other errors in these Covenants and/or to clarify any provision(s) of these Covenants. This subsection 5.6.4 shall be in effect until conveyance of all the Units to the first Owners thereof, other than the Developer or any Builder.

Section 5.7. *Minor Violations of Setback Restrictions.*

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Unit 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 these Covenants or the Guidelines, if any. A "**minor violation**," for the purpose of this Section, is a violation of not more than two (2) feet beyond the required setback lines or Unit 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 5.8. *Subdivision or Replatting of Units.*

The Developer hereby reserves the right to subdivide or replat any Unit(s) owned by the Developer. Each such subdivision or replatting may change the number of Units in the Property. The foregoing reservation includes the right to move any lot line(s) on Unit(s) for the purpose of accommodating Improvements which are, or may be constructed. This Section 5.8 shall be in

effect until conveyance of all the Units to the first Owners thereof, other than the Developer or any Builder.

Section 5.9. *Annexation.*

The Developer may annex to the Property additional real estate (including Improvements), including any real estate (including Improvements) which may previously have been withdrawn from the Property. Each such annexation, if any, shall be accomplished by recording, in Adams County, Colorado, of an annexation document that expressly states that the real estate (including Improvements) described therein shall be subject to these Covenants and all terms and provisions hereof. However, any such annexation may include provisions which, as to the real estate (including Improvements) described therein, adds to or changes the rights, responsibilities and other requirements of these Covenants. Any such additional or changed provisions may be amended, supplemented, and/or terminated, with the consent of the Owners of 67% of the Units to which those provisions apply. The first three (3) sentences of this Section 5.9, shall be in effect until conveyance of all the Units to the first Owners thereof, other than the Developer or any Builder.

Section 5.10. *Withdrawal.*

The Developer reserves the right to withdraw the Property, or any portion thereof, including one or more Units, from these Covenants, so long as the Developer owns the portion of the Property to be withdrawn. Each withdrawal, if any, may be effected by the Developer recording a withdrawal document in the office of the Clerk and Recorder of the county in which such withdrawn real estate (including Improvements) is located. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn real estate (including Improvements) from these Covenants so that, from and after the date of recording a withdrawal document, the real estate (including Improvements) so withdrawn shall not be part of the "Property". This Section 5.10 shall be in effect until conveyance of all the Units to the first Owners thereof, other than the Developer or any Builder.

Section 5.11. *Notices.*

Any notice permitted or required in these Covenants shall be deemed to have been given and received upon the earlier to occur of (i) personal delivery upon the Person to whom such notice is to be given; or (ii) two (2) days after deposit in the United States mail, postage prepaid, addressed to the Owner at the address for such Owner's Unit.

Section 5.12. *Limitation on Liability.*

The Developer, any Builder, the Metropolitan District, the ARC, 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 any of the Governing Documents, unless the action or failure to act was not in good faith and was done or withheld with malice. Further, the Metropolitan District does not waive, and no provision of these Covenants shall be deemed a waiver of, the immunities and limitations to which the Metropolitan District is entitled as a matter

of law, including the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S., as amended. The release and waiver set forth in Section 5.16 (Waiver) shall apply to this Section.

Section 5.13. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Developer, any Builder, the Metropolitan District, the ARC, or their respective officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as specifically set forth in writing. The release and waiver set forth in Section 5.16 (Waiver) shall apply to this Section.

Section 5.14. *Disclaimer Regarding Safety.*

DEVELOPER, THE BUILDERS, THE METROPOLITAN DISTRICT, THE ARC, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A UNIT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT DEVELOPER, THE BUILDERS, THE METROPOLITAN DISTRICT, THE ARC, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THE GOVERNING DOCUMENTS, IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY. THE RELEASE AND WAIVER SET FORTH IN SECTION 5.16 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 5.15. *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 or the Units, 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 Unit, each Owner accepts title to such Unit subject to the foregoing, and waives and releases any claim against the Developer, any Builders, the Metropolitan District, the ARC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 5.16 (Waiver) shall apply to this Section.

Section 5.16. Waiver.

By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges the Developer, each Builder, the Metropolitan District, the ARC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in these Covenants, including, but not limited, those contained in Sections 5.12, 5.13, 5.14 and 5.15.

Section 5.17. Headings.

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

Section 5.18. 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 5.19. Action.

Any action that has been or may be taken by the Developer, any Builder, the Metropolitan District, the ARC, 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 5.20. Sole Discretion.

All actions which are to be taken by, or on behalf of, the Developer, any Builder, the Metropolitan District, the governing body of the Metropolitan District, the ARC, or any other Person, shall be deemed to be taken "**in the sole discretion**" of such Person.

Section 5.21. Use of "Include," "Includes," and "Including".

All uses, in these Covenants, of the words "**include,**" "**includes,**" and "**including,**" shall be deemed to include the words "**without limitation**" immediately thereafter.

Section 5.22. Runs with the Land; Binding Upon Successors.

The benefits, burdens, and all other provisions contained in these Covenants shall be covenants running with and binding upon the Property and all Improvements which are now or hereafter located on the Property. The benefits, burdens, and all other provisions contained in these Covenants shall be binding upon, and inure to the benefit of the Developer, the Builders and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns; but, no Person shall become a "**Developer**" or a "**Builder**" under these Covenants, except by

written assignment or designation, as more fully provided in Sections 1.4 or 1.2 of these Covenants, respectively.

EXHIBIT A
TO
COVENANTS AND RESTRICTIONS
OF CUNDALL FARMS

(Property)

Lots 1 through 24, inclusive, Block 1,
Lots 1 through 23, inclusive, Block 2,
Lots 1 through 7, inclusive, Block 3,
Lots 1 through 9, inclusive, Block 4,
Lots 1 through 33, inclusive, Block 5,
Lots 1 through 12, inclusive, Block 6,
Lots 1 through 16, inclusive, Block 7,
Lots 1 through 13, inclusive, Block 8,
Lots 1 through 19, inclusive, Block 9,
Lots 1 through 10, inclusive, Block 10,
Lots 1 through 20, inclusive, Block 11,
Lots 1 through 9, inclusive, Block 12,
Lots 1 through 16, inclusive, Block 13,
Lots 1 through 8, inclusive, Block 14,
Lots 1 through 27, inclusive, Block 15,
Lots 1 through 12, inclusive, Block 16,
Lots 1 through 14, inclusive, Block 17,
Lots 1 through 22, inclusive, Block 18,
Lots 1 through 24, inclusive, Block 19,
Lots 1 through 45, inclusive, Block 20,
Cundall Farms Subdivision Filing No. 1, Amendment No. 1,
City of Thornton, Adams County, Colorado.

**COVENANTS AND RESTRICTIONS
OF CUNDALL FARMS**

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Exhibit A - Property