

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
PTARMIGAN WEST
(COMMERCIAL)**

After recording return to:
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TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS	2
ARTICLE 2. ARCHITECTURAL REVIEW	5
Section 2.1 <i>Composition of ARC; Appointment and Authority of Representative.</i>	5
Section 2.2 <i>Architectural Review Requirements; Authority of ARC.</i>	6
Section 2.3 <i>Design Guidelines.</i>	6
Section 2.4 <i>Procedures.</i>	7
Section 2.5 <i>Vote and Appeal.</i>	7
Section 2.6 <i>Prosecution of Work After Approval.</i>	7
Section 2.7 <i>Inspection of Work.</i>	8
Section 2.8 <i>Access Easement.</i>	8
Section 2.9 <i>No Liability.</i>	8
Section 2.10 <i>Variance.</i>	9
Section 2.11 <i>Waivers; No Precedent.</i>	9
Section 2.12 <i>Declarant's and District's Exemption.</i>	10
Section 2.13 <i>Builders Exemption.</i>	10
ARTICLE 3. RESTRICTIONS	10
Section 3.1 <i>Restrictions Imposed.</i>	10
Section 3.2 <i>Commercial and Retail Use.</i>	10
Section 3.3 <i>Signs.</i>	10
Section 3.4 <i>Parking.</i>	10
Section 3.5 <i>Screening of Loading and Receiving Areas.</i>	11
Section 3.6 <i>Miscellaneous Structures.</i>	11
Section 3.7 <i>Storage.</i>	11
Section 3.8 <i>Landscaping</i>	11
Section 3.9 <i>Lighting</i>	12
Section 3.10 <i>Utilities.</i>	12
Section 3.11 <i>Nuisances.</i>	12
Section 3.12 <i>No Hazardous Materials or Chemicals.</i>	12
Section 3.13 <i>No Annoying Lights, Sounds or Odors.</i>	12
Section 3.14 <i>Restrictions on Trash and Materials.</i>	13
Section 3.15 <i>Lots to be Maintained.</i>	13

Section 3.16	<i>Maintenance of and Non-Interference with Grade and Drainage</i>	13
ARTICLE 4.	EASEMENTS	14
Section 4.1	<i>Easements</i>	14
Section 4.2	<i>Maintenance, Repair and Replacement, Right of Access and Easement.</i>	14
Section 4.3	<i>Easement for Access to District Property</i>	14
Section 4.4	<i>Additional Easements.</i>	14
Section 4.5	<i>Limitations on Easements</i>	14
Section 4.6	<i>Recorded Easements.</i>	15
ARTICLE 5.	MAINTENANCE.....	15
Section 5.1	<i>General.</i>	15
Section 5.2	<i>District's Right to Repair, Maintain and Reconstruct.</i>	15
Section 5.3	<i>Owner's Acts or Omissions</i>	15
ARTICLE 6.	COVENANT ENFORCEMENT	16
Section 6.1	<i>Enforcement, Generally</i>	16
Section 6.2	<i>Enforcement Committee.</i>	16
Section 6.3	<i>Purpose and General Authority.</i>	17
Section 6.4	<i>Fees and Expenses.</i>	17
Section 6.5	<i>Remedies.</i>	17
Section 6.6	<i>No Liability.</i>	18
ARTICLE 7.	RESERVED DECLARANT RIGHTS.....	18
Section 7.1	<i>Development Rights</i>	18
Section 7.2	<i>Special Declarant Rights</i>	19
Section 7.3	<i>Period of Declarant's Rights.</i>	19
Section 7.4	<i>Subdivision or Replatting of Lots.</i>	19
Section 7.5	<i>Annexation; Withdrawal.</i>	20
Section 7.6	<i>Rights and Easements of Declarant and Builders.</i>	20
ARTICLE 8.	ALTERNATIVE DISPUTE RESOLUTION.....	21
Section 8.1	<i>Definitions Applicable to this Article 8.</i>	21
Section 8.2	<i>Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.</i>	22
Section 8.3	<i>Commencement or Pursuit of Claim Against Bound Party.</i>	22
Section 8.4	<i>Claims.</i>	22
Section 8.5	<i>Mandatory Procedure.</i>	23

Section 8.6	<i>Award</i>	24
ARTICLE 9. GENERAL PROVISIONS	24
Section 9.1	<i>Powers and Authority</i>	24
Section 9.2	<i>Rules and Regulations</i>	25
Section 9.3	<i>Severability</i>	25
Section 9.4	<i>Minor Violations of Setback Restrictions</i>	25
Section 9.5	<i>Duration, Revocation and Amendment</i>	26
Section 9.6	<i>Notices</i>	26
Section 9.7	<i>Limitation on Liability</i>	26
Section 9.8	<i>No Representations, Guaranties or Warranties</i>	27
Section 9.9	<i>Disclaimer Regarding Safety</i>	27
Section 9.10	<i>Development Within and Surrounding the Property</i>	27
Section 9.11	<i>District May Assign</i>	27
Section 9.12	<i>Waiver</i>	28
Section 9.13	<i>Headings</i>	28
Section 9.14	<i>Gender</i>	28
Section 9.15	<i>Action</i>	28
Section 9.16	<i>Sole Discretion</i>	28
Section 9.17	<i>Use of “Include,” “Includes,” and “Including.”</i>	28
Section 9.18	<i>No Waiver</i>	28
Section 9.19	<i>Exemption</i>	29
Section 9.20	<i>Runs with the Land; Binding Upon Successors</i>	29
Section 9.21	<i>District Lien</i>	29
ARTICLE 10. DISCLOSURES	30
Section 10.1	<i>No Liability for Condition of the Property/Nuisances/Hazards Associated with Adjacent Lands</i>	30
Section 10.2	<i>Land Use Documents</i>	30
Section 10.3	<i>Future Development and Views</i>	31
Section 10.4	<i>Separate Ownership of Surface and Subsurface Rights</i>	31
Section 10.5	<i>Safety and Security</i>	31
Section 10.6	<i>Disruption from Development and Construction</i>	32

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
PTARMIGAN WEST
(COMMERCIAL)**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PTARMIGAN WEST (COMMERCIAL) (the “**Declaration**”) is made and entered as of the 30th day of April, 2020, by WINDSOR INVESTMENTS, LTD., a Wyoming limited liability company (the “**Declarant**”).

RECITALS

A. The Declarant owns that certain real property in Larimer County, Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”).

B. The Declarant desires to subject and place upon the Property certain covenants, conditions, easements, architectural guidelines, reservations, rights-of-way, obligations, liabilities and other provisions and restrictions, for the development, improvement, use, operation, maintenance, repair and enjoyment of the Property, that run with the land.

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

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

DECLARATION

NOW, THEREFORE, the Declarant declares that the Property is subject to this Declaration and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained and altered subject to the terms contained in this Declaration. The terms of this Declaration touch and concern the Property, and (a) run with the land, (b) benefit and burden the Property as an equitable servitude, (c) bind all Persons having or acquiring any interest in the Property or any part of the Property, (d) inure to the benefit of and bind every part of the Property and every interest in the Property, and (e) inure to the benefit of and are enforceable by the Declarant and the District, and their respective designees, assigns and successors in interest.

ARTICLE 1. DEFINITIONS

Section 1.1 *Act.*

“Act” shall mean the Colorado Common Interest Ownership Act at at C.R.S. § 38-33.3-101, *et. seq.*

Section 1.2 *Architectural Review Committee.*

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

Section 1.3 *Builder.*

“Builder” means any Owner other than the Declarant who acquires one or more Lots for the purpose of constructing one or more commercial structures thereon, and who is designated as a “Builder” by the Declarant 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 Larimer County, State of Colorado.

Section 1.4 *Condominium Association.*

“Condominium Association” shall mean any condominium association formed pursuant to the Act relative to any Condominium Lot.

Section 1.5 *Condominium Lot.*

“Condominium Lot” shall mean any Lot which has been subdivided into Condominium Units pursuant to a recorded condominium map and which is subject to a condominium declaration and part of a condominium association created pursuant to the Act. At the time of the recording of this Declaration, there are no Condominium Lots. Notwithstanding, subsequent to the recording of this Declaration, if any Lot is converted to a condominium form of ownership, any such Lot so converted shall be deemed to be a Condominium Lot upon the recording of the condominium map(s) applicable to such Lot.

Section 1.6 *Condominium Unit.*

“Condominium Unit” shall mean each unit created for individual condominium ownership on a Condominium Lot.

Section 1.7 *Declarant.*

“Declarant” shall mean Windsor Investments, Ltd., a Wyoming limited liability company, and/or any other Person to whom the Declarant assigns one or more of the Development Rights or Special Declarant Rights, as defined herein, under this Declaration

(which shall be the extent of the Development Rights and/or Special Declarant Rights to which such assignee succeeds), provided, that no assignment of any Development Rights or Special Declarant Rights shall be effective unless such assignment is duly executed by the assignor Declarant and recorded in Larimer County, Colorado.

Section 1.8 *Design Guidelines.*

“Design Guidelines” means a manual of design guidelines for the Property, or other design or architectural guidelines, to interpret and/or implement any provisions of Article 2 of this Declaration, specifically, and this Declaration in general, as more fully provided for in Section 2.3 of this Declaration. The Declarant shall have the authority to enact, issue promulgate, modify, amend, repeal, and re-enact Design Guidelines during the period set forth in Section 7.3 of this Declaration. Thereafter, the governing board of the District shall have such authority.

Section 1.9 *District.*

“District” means Ptarmigan West Metropolitan District No. 3, and/or any other metropolitan district(s) or non-profit entity to which Ptarmigan West Metropolitan District No. 3 may transfer or assign any or all of the rights and duties of the District under this Declaration. Each such assignment or transfer, if any, shall be effective upon recording in Larimer County, Colorado, of a document of transfer or assignment, duly executed by the District. Notwithstanding the foregoing, by its execution below, Ptarmigan West Metropolitan District No. 3 delegates, transfers, and assigns its rights and duties under this Declaration to Ptarmigan West Metropolitan District No. 1, and Ptarmigan West Metropolitan District No. 1 shall be considered the “District” for all purposes of this Declaration unless Ptarmigan Metropolitan District No. 3 and District No. 1 agree to a revocation of such delegation, transfer or assignment, or unless otherwise assigned as provided herein. In addition to the authority to perform the functions set forth in this Declaration, the District has such other authority with respect to the performance of such functions, 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 1.10 *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 1.11 *Fines.*

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

Section 1.12 *Governing Documents.*

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

Section 1.13 *Improvements.*

“Improvements” means all improvements, structures, buildings, and any and all landscaping features, buildings, outbuildings, geothermal systems, solar systems, hot tubs, satellite dishes, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, walkways, sprinkler systems, garages, roads, driveways, parking areas, fences, gates, basketball backboards and hoops, swing sets or other play structures, screening walls, retaining walls, stairs, decks, fixtures, 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 by the Declarant or a Builder 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 1.14 *Lot.*

“Lot” means each platted lot shown on any recorded subdivision map of the Property, as the same may be resubdivided or replatted from time to time (subject to the restrictions contained in this Declaration), with the exception of any publicly dedicated property, any property owned or leased by the District. The term “Lot” as used herein shall include any Condominium Lots.

Section 1.15 *Occupant.*

“Occupant” means any Person, other than the Declarant, a Builder, the ARC, the Enforcement Committee, if any, and the District, who from time to time uses or occupies a Unit, or any portion thereof, 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 1.16 *Owner.*

“Owner” means each fee simple title holder of a Unit, including the Declarant, 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. If there is more than one fee simple holder of title, “Owner” includes each such Person, jointly and severally.

Section 1.17 *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.

Section 1.18 *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 1.19 *Rules and Regulations.*

“Rules and Regulations” means rules and regulations concerning, without limitation, (i) the use of the Property, (ii) certain use restrictions on the Unit, and/or (iii) other restrictions governing the conduct of Owners, as such rules and regulations are adopted by the Declarant or the governing board of the District and as may be amended from time to time. The Declarant shall have the authority to enact, issue promulgate, modify, amend, repeal, and re-enact Rules and Resolutions during the period set forth in Section 7.3 of this Declaration. Thereafter, the governing board of the District shall have such authority

Section 1.20 *Unit.*

“Unit” shall mean each Lot (including any Condominium Lot) and each Condominium Unit created on any Condominium Lot.

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 as provided herein. The Declarant shall have the authority to appoint the members of the ARC during the period set forth in Section 7.3 of this Declaration. Thereafter, the governing board of the District shall have the authority to serve as, or to appoint the members of, the ARC. 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 entity which then as the power to appoint the ARC.

2.1.2 The ARC may at any time, from time to time, with the consent of the entity then authorized to appoint the members of the ARC, 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, subject to the approval of the entity which then has the authority to appoint the ARC.

Section 2.2 Architectural Review Requirements; Authority of ARC.

2.2.1 Except as provided in Sections 2.3, 2.12 and 2.13 of this Declaration, no Improvement may be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Unit, unless the Improvement is in full compliance with all provisions of this Declaration and the Design Guidelines. Prior to constructing, erecting, placing, altering, planting, applying, installing or modifying an Improvement upon any Unit, the Owner of the Unit (or the board of directors of any Condominium Association formed with respect to any Condominium 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 Governing Documents. An Owner or the board of directors any Condominium Association may designate in writing a Person other than the Owner or the board of directors of the Condominium Association to submit plans and specifications as a co-applicant with Owner or the Condominium Association.

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, landscaping and structures.

2.2.3 The Design Guidelines may provide for the payment of a fee to accompany each request for approval of any proposed Improvement submitted to the ARC. Any such fee shall be uniform for similar types of proposed Improvements or shall be determined in any other reasonable manner. Additionally, in its review of such plans, specifications and other materials and information, the ARC may require that the applicants reimburse the ARC for the actual expenses incurred by the ARC in the review and approval process. Such fee and amounts, if any, shall be the personal obligation of the applicant requesting approval from the ARC and shall be part of the District's lien as described in Section 6.5.3.5 and 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.

Section 2.3 Design Guidelines.

The Declarant shall have the authority to enact, issue promulgate, modify, amend, repeal, and re-enact Design Guidelines during the period set forth in Section 7.3 of this Declaration. Thereafter, the governing board of the District shall have such authority. Without limiting the generality of the foregoing, such Design Guidelines 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. Any Design Guidelines so adopted shall be consistent, and not in conflict, with this Article and this Declaration. In addition, any 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 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 2.4 *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 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. 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 the above-referenced time period 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 2.5 *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 2.6 *Prosecution of Work After Approval.*

After approval of any proposed Improvement, the Owner or the Condominium Association, as applicable, 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. The ARC may request the Owner or the Condominium Association, as applicable, submit construction drawings or other information to the ARC after approval to enable the ARC to determine whether the proposed Improvement is being constructed in accordance with the approved plans. Except for the Declarant or a Builder, failure to complete the proposed Improvement within six (6) months 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, shall void the ARC's approval of the proposed improvement; 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 or Condominium Association, as applicable, provided such request is delivered to the ARC in writing; provided that the Owner or Condominium Association, as applicable, is diligently prosecuting completion of the subject Improvements or other good cause exists at the time such request is made. All extensions must be memorialized in writing by the ARC to take effect.

Section 2.7 *Inspection of Work.*

The ARC, the District, and the Enforcement Committee, if any, and/or any duly authorized representative of any 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 2.8 *Access Easement.*

The Declarant hereby reserves, and each Owner and each Condominium Association formed in relation to any Condominium Lot 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 the common areas of any Condominium Association, excluding any habitable structure and the interior of any structure 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. 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 or the applicable Condominium Association; except that no such notice is required (i) in connection with any exterior, non-intrusive inspections and maintenance; and (ii) in emergency situations.

Section 2.9 *No Liability.*

Neither the Declarant, the ARC, the District, the Enforcement Committee, if any, or any member, director, officer, agent, representative, employee or contractor 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 or disapprove, in regard to any matter whether for damage or in equity. In reviewing or approving any matter, the Released Parties are not 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. If an Owner is making or has made any Improvement to the exterior portion of any Condominium Lot or to any portions of the common elements of any Condominium Association, any approval from the ARC shall not be deemed an approval of the Improvement by the applicable Condominium Association, and the Released Parties assume no liability thereto. Each Owner (i) waives and releases the Released Parties from all claims related to approval or disapproval of any Improvements and (ii) waives and releases all claims against the Released Parties. 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 2.10 *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 2.11 *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 2.12 *Declarant's and District's Exemption.*

Notwithstanding anything to the contrary, the Declarant and the District are exempt from this Article and all provisions of this Declaration that require ARC review and/or approval.

Section 2.13 *Builders Exemption.*

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

ARTICLE 3. RESTRICTIONS

Section 3.1 *Restrictions Imposed.*

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 this Declaration and in the Governing Documents.

Section 3.2 *Commercial and Retail Use.*

3.2.1 The kinds of uses deemed appropriate for the Property include office, retail or other commercial uses, as more fully provided herein or as permitted by the Rules and Regulations. No use shall be permitted in the Rules and Regulations unless such use is of the same general character as those permitted herein and such use will not be detrimental to other uses within the Property.

3.2.2 Notwithstanding anything contained herein to the contrary, no Lot shall be used for residential or dwelling purposes.

Section 3.3 *Signs.*

All signs to be displayed on a Unit must first be approved by the ARC as provided herein. The Design Guidelines may establish standards related to signs, including but not limited to size, design, color and location. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant and/or any Builder (with the written consent of the Declarant) in connection with the sale or rental of Units, or otherwise in connection with development of or construction on the Lots, shall be permissible.

Section 3.4 *Parking.*

Parking on each Lot (including any Condominium Lot) shall be sufficient to support the ordinary parking requirements of the particular business(es) conducted on the Lot, and shall be in

accordance with any requirements of the Town of Windsor in relation to the number of parking spaces required. The Design Guidelines may establish standards related to parking areas, including acceptable parking surface materials, curbs, and striping. The Rules and Regulations may establish rules related to parking behaviors of Owners, Occupants and visitors, including but not limited to rules regulating overnight parking, prohibited vehicles and towing.

Section 3.5 *Screening of Loading and Receiving Areas.*

Truck loading and receiving areas shall be properly screened from public view and, if required by the ARC, from the view of adjacent buildings. The type, style, materials, finish, color and screening elements shall compliment or harmonize with the architectural design of the primary building(s) on the Lot, and shall function to minimize the visual impact upon adjacent areas.

Section 3.6 *Miscellaneous Structures.*

Miscellaneous structures such as storage buildings, trash enclosures, and utility structures shall be located with consideration for the general appearance of the Lot and shall be of a type, style, color and material in keeping with the architectural style of the primary building(s) on the Lot. Waste receptacle areas shall be appropriately screened from public view. All on-site electrical, telephone and other utility lines shall be underground. Utility boxes attached to the surface of any building shall be painted the same color as the surrounding wall surfaces and/or fences or screened in an approved manner. These utility locations shall not be on any surface facing a public street unless appropriately screened from view, as approved by the ARC.

Section 3.7 *Storage.*

No materials, supplies, equipment, finished or semi-finished products or articles of any nature, or temporary structures, shall be stored or permitted to remain on any portion of any Lot outside of a structure constructed thereon, except during construction, and then subject to any conditions or limitations imposed by the ARC. Any temporary structure or materials stored or permitted on any Lot during construction shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants of other Lots, and shall be removed not later than thirty (30) days after the date of substantial completion of the structure in connection with which the temporary structure or storage was used.

Section 3.8 *Landscaping.*

At or promptly following the construction of the initial structure(s) on any Lot, to the extent not installed by the Declarant, the Builder or otherwise, the initial landscaping on the Lot shall be installed by the Owner of such Lot or the applicable Condominium Association with a view towards enhancing the Property and the structure(s) located thereon, to compliment the site and to screen undesirable areas or views, provide micro climate control, establish an acceptable relationship between buildings, other Improvements, parking and other site uses and adjacent Lots and to assist in managing the site drainage and erosion. Such landscaping shall be

undertaken and completed in accordance with a plan submitted to and approved by the ARC. All landscaping plans shall include underground lawn sprinkling systems.

All landscaping required hereunder or otherwise to be provided on any Lot shall be completed within sixty (60) days after substantial completion of construction of any structure to be constructed on the Lot; provided, however, if weather conditions do not at such time permit, then such landscaping shall be completed as soon thereafter as weather conditions permit, subject to any extension of time permitted by the ARC.

Section 3.9 *Lighting.*

All exterior and parking lot lighting shall be designed, altered and maintained only in accordance with plans and specifications approved by the ARC. Lighting shall be compatible and harmonious throughout the entire Property and each Owner or applicable Condominium Association shall keep, or cause to be kept, the Lot lighted in accordance with any minimum requirements set forth in the Design Guidelines.

Section 3.10 *Utilities.*

All utility service connections and installation of wires to structures constructed on any Lot shall remain underground from the nearest available source. No privately owned transformer, meter or other apparatus shall be located on any power pole. All utility devices and apparatus shall be adequately screened to the degree and extent determined by the ARC.

Section 3.11 *Nuisances.*

No nuisance shall be permitted on or within the Property. Any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Unit shall not be permitted. This Section does not apply to the activities of the Declarant, a Builder or the District.

Section 3.12 *No Hazardous Materials or Chemicals.*

No hazardous materials or chemicals may be located, kept or stored in or on any portion of the Property except in products normally kept 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 the Declarant, a Builder or the District.

Section 3.13 *No Annoying Lights, Sounds or Odors.*

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

Section 3.14 *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 structure(s) on any Lot; nor shall such items be deposited on a street or 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 Owners 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 3.15 *Lots to be Maintained.*

Each Unit shall at all times be kept in a clean, sightly and wholesome condition by the Owner thereof or by the Condominium Association created for any Condominium Lot, as required by the governing documents of the Condominium Association. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Unit 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 Unit shall be promptly repaired and replaced by the Owner of the Unit or the applicable Condominium Association, in accordance with this Declaration. "Repaired and replaced," as used in this Section, means restoring the structure or Improvement to substantially the same condition in which it existed immediately prior to such damage or destruction. The cost of such repair or replacement shall be the personal obligation of the Owner or the applicable Condominium Association.

Section 3.16 *Maintenance of and Non-Interference with Grade and Drainage.*

The grading upon each Lot shall be maintained by the Owner thereof or the applicable Condominium Association at the slope and pitch fixed by the final grading thereof. No Owner or Condominium Association shall interfere in any way with the established drainage pattern over any real property maintained by the same, from adjoining or other real property. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading on the Lot is completed by the builder of the structure(s) on the Lot in accordance with the grading plan as approved by the Town of Windsor. Any Owner or Condominium Association that changes the established drainage on a Lot may void warranties applicable to affected components of the structure(s) on the Lot and shall be liable for all costs and expenses of repairing such changes, or any costs, liabilities, damages or causes of action arising out of such changes. Each Owner and Condominium Association shall hold harmless the Declarant, the District, the ARC and the Enforcement Committee, if any, for any and all damage

to any party caused by any change to the established drainage on a Lot.

ARTICLE 4. EASEMENTS

Section 4.1 *Easements.*

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

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

The Declarant declares, establishes, grants, and reserves easements over each Lot in favor of the Declarant, the District, the ARC, and the Enforcement Committee, if any, including each of their respective agents, representatives, contractors and employees, for performing maintenance, repair, or replacement or other services and enforcement of any provision in the Governing Documents. The access easements granted in this Section 4.2 may be exercised only during reasonable hours after reasonable notice to the Owner or applicable Condominium Association of or for any affected Lot; provided, however, that no such notice is required in connection with any exterior, non-intrusive maintenance and in emergency situations entry upon a Lot may be made at any time, provided that Owner or applicable Condominium Association is notified of impending emergency entry as early as is reasonably possible. The interior of any structure(s) on the Lot is not subject to the easements provided for in this Section 4.2.

Section 4.3 *Easement for Access to District Property.*

If any portion of the Property is developed and subjected to a declaration of covenants, conditions and restrictions and becomes part of an owners association governing such portion of the Property, any such declaration shall provide for an easement to all Owners and 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 owners association or which becomes part of the common elements of any such owners association.

Section 4.4 *Additional Easements.*

If the Declarant withdraws any portion of the Property from this Declaration, the Declarant shall retain whatever easements are reasonably necessary or desirable across the Property for access to and utility services for the portion of the Property withdrawn.

Section 4.5 *Limitations on Easements.*

The easements established pursuant to this Declaration (a) shall in no way affect, avoid, extinguish, or modify any other covenants, easements, limitations, reservations, or restrictions affecting all or part of the Property recorded prior to this Declaration and (b) shall not be

interpreted or construed as preventing or precluding the construction, operation, and use of any Unit which is otherwise permitted by the terms of this Declaration.

Section 4.6 *Recorded Easements.*

In addition to all easements and rights-of-way of recorded at the time of or before this Declaration, the Property, and all portions thereof, are subject to the easements shown on any plat of the Property.

ARTICLE 5. MAINTENANCE

Section 5.1 *General.*

The maintenance, repair and replacement of all Improvements on each Lot, including landscaping, exterior building surfaces, roofs, patios, porches, decks, sidewalks, driveways, parking areas, utilities and the interiors of the structure(s) on the Lot, shall be performed by the **Owner thereof at such Owner's sole cost and expense**, or by the Condominium Association for in relation to any Condominium Lot to the extent required by the governing documents for such Condominium Association. Any Improvements constructed or erected upon a Lot by any Owner or Condominium Association after the initial construction of the structure(s) on the Lot by a Declarant, a Builder or otherwise shall be maintained, repaired and replaced by the Owner of the Lot or by the Condominium Association, as applicable.

Section 5.2 *District's Right to Repair, Maintain and Reconstruct.*

In the event any Owner or Condominium Association shall fail to perform its 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 or Condominium Association 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 or the Condominium Association, as applicable, on which such work is performed **and shall be part of the District's lien as described** in Section 6.5.3.5 and 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.

Section 5.3 *Owner's Acts or Omissions.*

Notwithstanding anything to the contrary contained in this 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, Occupant or Condominium Association, the cost of such repair, maintenance, or reconstruction or any expense to avoid such damage shall be the personal obligation of the Owner or Condominium Association, as applicable, to the extent that said Owner or Condominium Association would be liable for the acts of such Persons under the laws of the

State of Colorado and shall be part of the District's lien as described in Section 6.5.5 and 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. A determination of the act or omission of any Owner, Occupant or Condominium Association, and the amount of the Owner's or Condominium Association's liability therefor, as applicable, shall be made by the governing board of the District at a hearing after notice to the Owner or the Condominium Association.

ARTICLE 6. COVENANT ENFORCEMENT

Section 6.1 Enforcement, Generally.

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Rules and Regulations, the 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. The Declarant and the District have the right, but not the duty, to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. Subject to the provisions of Article 8 of this Declaration, in any action instituted or maintained under this Declaration or any of the Governing 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 Declarant, the District, the ARC, and/or the Enforcement Committee, if any, to enforce any covenant, restriction or other provision contained in this Declaration shall in no event give rise to any liability, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other provision of this Declaration. Each Owner, by its acceptance of title to a Lot, assigns and delegates and consents to the assignment and delegation to the District, in their own name as an Owner of a Lot 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 6.2 *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 6 and as elsewhere set forth in this 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 6.3 *Purpose and General Authority.*

The District or the Enforcement Committee, if any, shall review all complaints and notifications provided by the Declarant, a Builder, an Owner, a resident within the Property, or the ARC regarding any alleged violation of the Governing Documents. The District or the Enforcement Committee, if any, also has the right to make an investigation on its own regarding potential violations. The District or the Enforcement Committee, if any, has the authority to determine whether a violation has occurred by any Owner, Occupant or Condominium Association, and upon such determination, may issue to an Owner or Condominium Association a notice of violation identifying the particular circumstances or conditions of the violation and require the Owner or the Condominium Association 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 6.5.

Section 6.4 *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 6.5 *Remedies.*

In the enforcement of the Governing Documents, 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:

6.5.1 The District may record a notice of violation against the Unit on which the violation exists;

6.5.2 The District has the right to remove, correct or otherwise remedy any violation in any manner the District deems appropriate, the cost of which shall be the personal obligation of the applicable Owner or Condominium Association and shall be a part of the District's lien as described in Section 6.5.4.5 of this Declaration;

6.5.3 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;

6.5.4 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, if any, shall give the Owner or Condominium Association to be subject to the Fine notice and the opportunity for a hearing before the governing board of District or the Enforcement Committee, if any. The Rules and Regulations may further define the process by which such Fines may be imposed, including but not limited to establishing the schedule of Fines to be imposed.

6.5.5 The District may collect, and shall have a statutory perpetual lien pursuant to § 32-1-1001(1)(j)(I), C.R.S. against the Unit subject to the violation to secure, (1) payment for reimbursement by the violating Owner or Condominium Association 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 Unit, 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 6.6 *No Liability.*

The Released Parties are not liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing any alleged violation, the Released Parties are not responsible for any issue related to the alleged violation. No Owner or other Person is a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Released Parties. Each Owner and Condominium Association (i) waives and releases the Released Parties from all claims related to the actions of the Released Parties and (ii) waives and releases all claims against the Released Parties. The foregoing release and waiver are made by each Owner and each Condominium Association 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 7. RESERVED DECLARANT RIGHTS

Section 7.1 *Development Rights.*

The Declarant reserves for itself and its successors and assigns the following rights or combination of rights (the "**Development Rights**"), as more fully provided herein:

7.1.1 To create Lots and/or Units;

7.1.2 To subdivide or replat Lots and/or Units; and

7.1.3 To withdraw real estate from the Property.

The Declarant may each exercise the Development Rights on all or any portion of the Property, and no assurances are made as to the boundaries or order of exercise of any such Development Rights.

Section 7.2 *Special Declarant Rights.*

The Declarant reserves for itself and its successors and assigns the following “**Special Declarant Rights**”:

7.2.1 To build and complete Improvements in or on the Property; to exercise any Development Right;

7.2.2 To maintain sales offices, construction offices, management offices, and signs advertising the Property and sale of Lots; and

7.2.3 To use easements through the Property for the purpose of making Improvements within the Property.

The Declarant may each exercise any or all of the Special Declarant rights on all or any portion of the Property.

Section 7.3 *Period of Declarant’s Rights.*

The Declarant may exercise any or all of the Development Rights and/or the Special Declarant Rights at any time and from time to time. The Development Rights and the Special Declarant Rights shall terminate automatically twenty (20) years from the date of the recording of this Declaration.

Section 7.4 *Subdivision or Replatting of Lots.*

The Declarant hereby reserves for itself and its successors and assigns the right to subdivide or replat any Lot(s) and/or Unit(s) owned by the Declarant in the Property. Each such subdivision or replatting may change the number of Lots and/or Units in the Property. The foregoing reservation includes the right to move any lot lines on Lots and/or Units for the purpose of accommodating Improvements which are, or may be constructed. The rights reserved to each Declarant in this Section shall terminate automatically as provided in Section 7.3 of this Declaration.

Section 7.5 *Annexation; Withdrawal.*

7.5.1 The Declarant reserves the right to add additional property to the Property and subject the same to this Declaration, so long as the Declarant owns the property to be added. Each annexation, if any, may be affected by the Declarant by recording an annexation documents in the records of the Clerk and Recorder of Larimer County, Colorado. The rights reserved to the Declarant in this Section shall terminate automatically as provided in Section 7.3 of this Declaration.

7.5.2 The Declarant reserves the right to withdraw the Property, or any portion thereof, including one or more Units, from this Declaration, so long as the Declarant owns the portion of the Property to be withdrawn. Each withdrawal, if any, may be affected by the Declarant recording a withdrawal document in the records of the Clerk and Recorder of Larimer County, Colorado. A withdrawal pursuant to this Section constitutes a divestiture, withdrawal, and deannexation of the withdrawn property from this 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. The rights reserved to the Declarant in this Section shall terminate automatically as provided in Section 7.3 of this Declaration.

Section 7.6 *Rights and Easements of Declarant and Builders.*

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for the Declarant and any Builder (but only with the written consent of the Declarant), 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 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 Declaration shall limit the rights of the Declarant, or require the Declarant, to obtain approvals:

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

7.6.2 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

7.6.3 To seek or obtain any approvals under this Declaration for any such activity.

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 a Declarant to enforce any provisions of the Governing Documents, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief), collection of any Fees or Fines imposed by the District, 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 Declarant, 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 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 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 and Condominium Associations to administer its duties and obligations provided in this 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 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 Property may be adopted, amended or repealed from time to time as provided herein 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 Units and/or the Property not otherwise provided for herein, and may state procedural requirements, interpretations, clarifications and applications of any provision(s) of this Declaration or the Design Guidelines and law, including blanket requirements, blanket interpretations, and blanket applications. The Rules and Regulations may vary for different types of Units. Any Rules and Regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration and all provisions hereof.

Section 9.3 *Severability.*

All provisions of this Declaration are severable. Invalidation of any of the provisions of this 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 9.4 *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 Unit and/or the Condominium Association created relative to any Condominium Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners and Condominium Associations. 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 9.5 *Duration, Revocation and Amendment.*

9.5.1 Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. This Declaration may be amended and/or supplemented by the affirmative vote or agreement of Owners of at least sixty-seven percent (67%) of the Units subject to the Declaration, with each Unit having one vote, and with the prior written consent of the District. In addition, during the time period set forth in Section 7.3 of this Declaration, any amendment to Article 8 of this Declaration shall also require the written consent of the Declarant.

9.5.2 Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner or any other Person, in order to correct clerical, typographical or technical errors. Such right of amendment shall terminate automatically as provided in Section 7.3 of this Declaration.

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

Section 9.6 *Notices.*

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

Section 9.7 *Limitation on Liability.*

The Declarant, 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, no provision of this 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 Declaration apply to this Section 9.7.

Section 9.8 *No Representations, Guaranties or Warranties.*

To the fullest extent permitted by Colorado law, the Declarant, 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 Declarant, 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 9.9 *Disclaimer Regarding Safety.*

THE DECLARANT, 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 9.10 *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 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, as applicable, subject to the foregoing, and waives and releases any claim against the Declarant, the District and/or any Builder, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 9.12 shall apply to this Section 9.10.

Section 9.11 *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 9.12 *Waiver.*

By acceptance of a deed to a Unit, each Owner releases, waives, and discharges the Declarant, 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 Declaration.

Section 9.13 *Headings.*

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

Section 9.14 *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 9.15 *Action.*

Any action that has been or may be taken by the Declarant, 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 9.16 *Sole Discretion.*

All actions which are to be taken by, or on behalf of, the Declarant, 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 9.17 *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 9.18 *No Waiver of Governmental Immunity.*

No term or condition of this 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 9.19 *Exemption.*

Notwithstanding anything in this Declaration to the contrary, (a) neither the Declarant, 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 Declarant 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 Declarant in the Property and (b) nothing contained in this Declaration shall be construed to prevent or limit (i) the **Declarant's** exercise or enjoyment of any Special Declarant Rights or any other right of that Declarant under this Declaration or (ii) the conduct by the Declarant 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 Declarant, 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 Declarant, and/or (b) for activities which the Declarant **deems to be incidental to the Builder's development activities, in the Declarant's sole and absolute discretion.** This exemption terminates upon expiration of the Declarant's rights as provided in Section 7.3 of this Declaration.

Section 9.20 *Runs with the Land; Binding Upon Successors.*

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

Section 9.21 *District Lien.*

The lien of the District for any fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District imposed pursuant to Section 32-1-1001, C.R.S. is not subject to the provision of any homestead exemption as allowed under state or federal law. The acceptance of a deed to a Site subject to this Declaration shall constitute a waiver of the homestead exemption as against said lien.

ARTICLE 10. DISCLOSURES

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

Each Owner and each Condominium Association acknowledges that the Units 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 Units 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 and each Condominium Association recognize and assume the risks of owning and/or maintaining 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 Declarant and the District shall have no liability for any personal injury or property damage resulting from the Property Risks. Each Owner and Condominium Association, 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 or Condominium Association from injury or damage to property or person resulting from the Property Risks; (iii) releases and holds harmless the Declarant 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 Declarant and/or the **Declarant's** agents, contractors, subcontractors, employees, officers, successors, assigns, guests, or invitees, and (iv) indemnifies (including the payment of reasonable costs and attorneys' fees) the Declarant 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 Declarant 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 Declarant or the District.

Section 10.2 *Land Use Documents.*

The Property is being developed in accordance with the land use regulations of Larimer County, Colorado. The Declarant, for itself, its successors and assigns, reserves the right to obtain modifications and amendments to all land use documents, subject to the approval of Larimer 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 Declarant 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 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 Declarant 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 Declarant 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 and Condominium Association 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 Units, 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. Each Owner and Condominium Association waives and releases any claim against the Declarant or the District arising out of or associated with any of the foregoing. Neither the Declarant nor the District guarantee or represent that any view over and across the Units 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 Declarant 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.

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 Property. 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 Declarant nor the District shall in any way be considered insurers or guarantors of safety or security within the Property, 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 and Condominium Association agrees that there are inconveniences which will accompany the construction of Improvements within the Property, 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 and Condominium Association waives any claims associated with the inconveniences, nuisance and hazards associated with such construction.

[The remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Declarant, as the owner of the Property, has hereunto set its hand and seal on the date as set forth above.

**DECLARANT:
WINDSOR INVESTMENTS, LTD.,**

a Wyoming limited liability company

By: Thomas R Muth
Thomas R Muth (Apr 30, 2020)

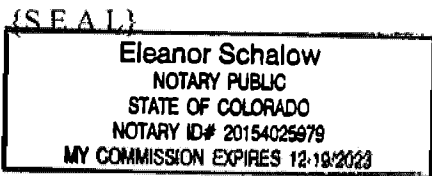
Name: Thomas R. Muth

Title: Manager

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 30th day of April, 2020, by Thomas Muth, as Manager of Windsor Investments, Ltd.

Witness my hand and official seal.



Eleanor Schalow
Notary Public
My Commission expires: 12/18/23

CONSENT OF PTARMIGAN WEST METROPOLITAN DISTRICT NO. 1

The undersigned, Ptarmigan West Metropolitan District No. 1, hereby consents to the
aforesaid Declaration of Covenants, Conditions and Restrictions of Ptarmigan West
(Commercial).

IN WITNESS WHEREOF, the undersigned as hereto set its hand this 30th day of
April, 2020.

PTARMIGAN WEST METROPOLITAN DISTRICT NO.
1

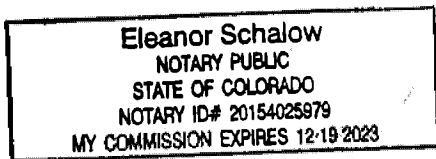
By: David T. Muth
David T Muth (Apr 20, 2020)
Title: Director

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 30th day of April,
2020, by David Muth, as Director of Ptarmigan West Metropolitan
District No. 1.

Witness my hand and official seal.

{ S E A L }



Eleanor Schalow
Notary Public
My Commission expires: 12/19/23

CONSENT OF PTARMIGAN WEST METROPOLITAN DISTRICT NO. 3

The undersigned, Ptarmigan West Metropolitan District No. 3, hereby consents to the aforesaid Declaration of Covenants, Conditions and Restrictions of Ptarmigan West (Commercial).

IN WITNESS WHEREOF, the undersigned as hereto set its hand this 30th day of April, 2020.

PTARMIGAN WEST METROPOLITAN DISTRICT NO.
3

By: David Munka
David Munka (Apr 30, 2020)
Title: Director

STATE OF Colorado)
COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me this 30th day of April, 2020, by David Munka, as Director of Ptarmigan West Metropolitan District No. 3.

Witness my hand and official seal.

{SEAL}

Elmer Zell
Notary Public
My Commission expires: 12/19/23

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF PTARMIGAN WEST (COMMERCIAL)**

(The Property)

EXHIBIT A

LEGAL DESCRIPTION

LAND SITUATE IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN; TOWN OF WINDSOR, COUNTY OF LARIMER, STATE OF COLORADO; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT N, TRACT O, AND TRACT R, WINDSOR VILLAGES AT PTARMIGAN SUBDIVISION, AS SHOWN ON THE PLAT THEREOF, RECORDED AT THE OFFICE OF THE LARIMER COUNTY RECORDER UNDER RECEPTION NUMBER 20190066477.

EXHIBIT A
DATE: MARCH 2020
JOB NO. 0760.0063.00
SHEET 1 OF 2

TST TST, INC. CONSULTING ENGINEERS

748 Whalers Way, Suite 200
Fort Collins, Colorado
Phone: 970.228.0557