

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
THE OVERLOOK SUBDIVISION AND  
HUNTERS OVERLOOK METROPOLITAN DISTRICT NOS. 1-4**

**Declarant:** Severance Overlook Investments, LLC, a Colorado limited liability company

**Metropolitan**

**District:** Hunters Overlook Metropolitan District Nos. 1-8

Hunters Overlook Metropolitan District Nos. 1-8  
7251 W. 20th Street, L-200  
Greeley, Colorado 80634



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LENDER'S CONSENT  
METROPOLITAN DISTRICTS' CONSENT  
Exhibit A: Legal Description of Property

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**DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE OVERLOOK SUBDIVISION AND  
HUNTERS OVERLOOK METROPOLITAN DISTRICT NOS. 1-4**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE OVERLOOK SUBDIVISION AND HUNTERS OVERLOOK METROPOLITAN DISTRICT NOS. 1-4 (the "Declaration") are made and entered into to be effective as of the 19 day of SEPTEMBER 2017 by Severance Overlook Investments, LLC, a Colorado limited liability company, its heirs, affiliates, successors and assigns, (collectively referred to hereinafter as "Declarant"), upon the following terms and conditions:

**RECITALS**

WHEREAS, Declarant is the owner of that certain real property located in Weld County, Colorado, within the Town of Severance ("Town"), as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, as supplemented and amended from time to time, (the "Property"); and

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

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

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

WHEREAS, the Hunters Overlook Metropolitan District No. 1 (the "Metropolitan District," as hereinafter more fully defined) was organized under the laws of the State of Colorado pursuant to the Service Plan for Hunters Overlook Metropolitan Districts Nos. 1-8 (the "Districts") approved by the Board of Trustees of the Town on June 5, 2017 by Resolution 2017-14R (the "Service Plan"), which Metropolitan District shall, pursuant to Section 32-1-1004 (8) of the Colorado Revised Statutes, enforce the covenants, conditions, restrictions, easements, and provide design review services as set forth herein, for that certain real estate and Improvements in the County of Weld, State of Colorado, which is described on **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the representatives of the Districts submitted to the Town Board a Service Plan for the Districts which granted authority to the Districts to construct some or all of the public improvements, which may be provided in accordance with an approved Development Plan or other agreement with the Town; and



WHEREAS, this Declaration shall run with the land and be binding on and inure to the benefit of all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-kind, and assigns; and

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

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

NOW, THEREFORE, in addition to the foregoing, the Declarant for itself, its successors and assigns, and for and on behalf of all existing Owners, hereby declares that the Property and any Future Parcel(s) which is annexed to this Declaration in the manner provided for herein shall, from the date it so becomes annexed, be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions set forth above and herein, as the same may be amended and/or supplemented from time to time; provided that the provisions of this Declaration and its Covenants shall apply only to those portions of the Property actually used for residential purposes or designated for such use.

## **ARTICLE I** **DEFINITIONS**

Section 1.1 Definitions. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Plat of the Property shall have the meanings provided in the following sections of this Article:

1.1.1 "Affiliate" means any and all partnerships, ventures, limited liability companies or other entities in which the Declarant owns or any of the entities comprising the Declarant owns, either directly or indirectly, a controlling interest.

1.1.2 "Agent" means a person, firm, corporation or other entity employed or engaged as an independent contractor by the Declarant or Metropolitan District.

1.1.3 "Annexed Property" means any Future Parcel(s) or portion thereof, which is annexed to this Declaration by means of a Supplemental Declaration.

1.1.4 "Architectural Review Committee" or "ARC" shall mean and refer to the committee or committees created pursuant to the terms of this Declaration established to review and approve plans for the construction or alteration of Improvements on Lots as set forth in **Article II** of this Declaration.

1.1.5 "Board of Directors" or "Board" means the Board of Directors of the Hunters Overlook Metropolitan District No. 1, its successors and assigns.

1.1.6 "Covenants" means the covenants, conditions, restrictions and easements of the Overlook Subdivision and Hunters Overlook Metropolitan District Nos. 1-4 contained in this Declaration, as amended and supplemented from time to time.

1.1.7 "Declarant" or "Developer" means Severance Overlook Investments, LLC, a Colorado limited liability company and/or any other Person to whom the Declarant may, at any time from time to time, assign one or more of the Declarant's rights (which shall be the extent of the Declarant's rights to which such assignee succeeds); provided, that no assignment of any Declarant rights shall be effective unless such assignment is duly executed by the assignor Declarant and recorded in Weld County, Colorado. The term "Declarant" as used herein includes any entity that results from reorganization or restructuring of the existing entity or the conversion thereof to another form of entity. For purposes of determining which Lots or Future Parcels are owned by Declarant, "Declarant" shall automatically be deemed to include "Affiliates" as that term is defined in this Article I.

1.1.8 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for The Overlook Subdivision and Hunters Overlook Metropolitan District Nos. 1-4, as amended and supplemented from time to time.

1.1.9 "Dedicated Easements" shall mean the utility and/or drainage easements granted through the Property to the appropriate governmental entity, or public or private utility for providing utility service or drainage facilities to the Property.

1.1.10 "Development" shall mean The Overlook Subdivision development subject to this Declaration, consisting of the Property described in **Exhibit A** attached hereto and incorporated herein by this reference, as supplemented and amended from time to time. The Development is intended to be the property within the boundaries of Hunters Overlook Metropolitan Districts Nos. 1, 2, 3 and 4 and all future Annexed Property.

1.1.11 "District Properties" means all real and personal property including any Improvements, common areas, facilities and related appurtenances, now or hereafter owned by the Metropolitan District, or with respect to which the Metropolitan District holds an easement for the use, care or maintenance thereof held for the common use and enjoyment of certain of the Owners, or certain Owners, as the case may be, and for other purposes as may be permitted hereunder.

1.1.12 "Future Parcels" means and refers to any real property adjacent to the Property or in its vicinity which the Declarant identifies as annexable to this Declaration or included into the Development, in any recorded document executed by it which refers to this Declaration, as hereafter provided. Declarant need not own future Parcels so long as the Owner thereof consents to the potential annexation of such real estate to this Declaration. Future Parcels may be added to this Declaration by the Declarant, provided such Future Parcels are properly annexed to the Town, included within one of the Hunters Overlook Metropolitan Districts, and provided such inclusion is in accordance with law and any Service Plan or Town requirements.



1.1.13 "Governing Board," means the governing board of Hunters Overlook Metropolitan District No. 1.

1.1.14 "Guidelines" shall mean the guidelines and rules published, and as amended and supplemented from time to time in accordance with the terms therein, by the Architectural Review Committee.

1.1.15 "Hunters Overlook Water Rules and Regulations" shall mean and refer to the separate document to be adopted by the Board of Directors of the Districts, and incorporated herein when adopted and approved, and including future amendments.

1.1.16 "Improvement(s)" shall mean and include the following: (a) the construction, installation, alteration, demolition in whole or in part, or expansion of any exterior improvement, building, structure, appurtenance, or other improvements, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sidewalks, trails, bridges, sprinkler systems, garages, driveways, parking areas, fences, including gates in fences, basketball backboards and hoops, swing-sets or other play structures, screening walls, retaining walls, stairs, decks, exterior light fixtures, poles, signs, exterior tanks, utilities, facilities, pipes, lines, solar panels, radiant gas piping and exterior air conditioning, cooling, heating and water softening equipment, if any; (b) the staking, clearing, grading, excavation, filling or similar disturbance to the surface of the land, including without limitation any change of grade, change of ground level, change of drainage pattern, or change of stream bed or course, ditch improvements, drainage, retention and detention ponds or facilities, storm sewer and other collection facilities; (c) all initial planting of and subsequent material modifications to landscaping, hedges, windbreaks, berming, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, and all planting, clearing or removing of trees, shrubs, grass or perennial plants, but in each instance excluding removal of dead or diseased plants and trees and excluding any replacement that is substantially similar to the item being replaced; (d) any change or alteration to the exterior appearance of Improvements previously approved by the ARC, including any change in finish material, color or texture; (e) the repainting and resurfacing of exterior surfaces of structures, including roofing materials, gutters, downspouts, drain spouts, exterior siding or stucco finish, entry doors, windows, trim around doors and windows, surfaces of garage doors, external vents and flues and glass surfaces, exclusive of any replacement that is substantially identical to the item being repainted or resurfaced; and (f) reconstruction of any structures.

1.1.17 "Lot" means each platted lot that is now or hereafter included in the real estate described on the attached **Exhibit A**, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting), as well as any other platted lots now or hereafter included in any real estate annexed to this Declaration.

1.1.18 "Metropolitan District" or "District" means the Hunters Overlook Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado, its successor or assign, and/or any other metropolitan district(s) to whom the Metropolitan District may, from time to time, transfer or assign any or all of the rights, duties obligations, and responsibilities delineated in this Declaration. Each such assignment or transfer,

if any, shall be effective upon recording in Weld County, Colorado, of a document of transfer or assignment, duly executed by the Metropolitan District. In the event that Metropolitan District ceases to exist, Declarant may appoint a successor entity to serve as enforcer of this Declaration, which entity shall assume all rights and responsibilities of the Metropolitan District under this Declaration. The terms and conditions of this Declaration shall apply to property within The Overlook Subdivision and property within the boundaries of each of the Hunters Overlook Metropolitan Districts Nos. 1-4, which boundaries may be amended from time to time.

1.1.19 "Non-Potable Water and Maintenance Fee" shall mean and refer to the annual fee assessed to each residential unit, and other parties receiving direct benefit from the Non-Potable Water System and payable to the District in accordance with the Hunters Overlook Metropolitan District Water Rules and Regulations.

1.1.20 "Non-Potable Water System" shall mean and refer to the raw-water irrigation system constructed and installed by the Declarant and/or the District benefitting the development to water all landscaping within the Hunters Overlook community using non-potable irrigation water together with the reservoir, pressurization and distribution system from which the water is obtained and all water and water rights and the related systems, land and infrastructure appurtenant thereto.

1.1.21 "Owner" means each fee simple title holder of a Lot, including without limitation the Declarant or any other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.

1.1.22 "Period of Declarant Control" shall mean that period of time in which the Declarant is entitled to enforce, amend, revise and/or supplement this Declaration, promulgate rules and regulations subject to this Declaration, and appoint members of the ARC. The Period of Declarant Control will begin with the recording of this Declaration and shall continue to run for twenty (20) years after the date of the recording of the final Plat of the final filing within the Property, unless terminated earlier by Declarant.

1.1.23 "Person" means a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other entity or any combination thereof and includes, without limitation, each Owner, builder, Developer and the Declarant.

1.1.24 "Project Documents" means this Declaration, rules and regulations, Guidelines and any documents now or hereafter adopted by or for the Metropolitan District, as amended or supplemented from time to time.

1.1.25 "Property" means the real estate described on the attached **Exhibit A**, and any Future Parcel(s), or portion thereof, which has been annexed hereto by a Supplemental Declaration or otherwise as provided herein; all of which may be supplemented and amended from time to time, as the same may now or hereafter be improved, and as the Declarant may now or hereafter subdivide or re-subdivide any portion thereof; provided, however, that the Property shall include any real estate and Improvements that are annexed and

shall not include any real estate or Improvements that have been withdrawn, as provided in this Declaration.

1.1.26 "Supplemental Declaration" shall mean a declaration or covenants recorded by Declarant, with respect to any Future Parcel, or portion thereof, which annexes such parcel to the terms of this Declaration. A Supplemental Declaration may establish additional covenants, conditions and restrictions applicable to such portion of real property, may contain exceptions, deletions or modifications from the covenants, conditions, restrictions and easements contained herein applicable to such portion of real property. Any recorded document that establishes or creates a declaration or covenant shall be deemed to be a Supplemental Declaration for the purposes of this Declaration, whether or not it is labeled or identified as such.

1.1.27 "Town" shall mean the Town of Severance, Colorado.

1.1.28 "Utility Easements" shall mean the reciprocal, nonexclusive easements for the purpose of providing utility easements granted pursuant to this Declaration or which may be created and identified as such in a Supplemental Declaration or other recorded document executed by Declarant and the Owner of a Lot.

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

## **ARTICLE II** **DESIGN AND/OR ARCHITECTURAL REVIEW**

Section 2.1 Appointment of Members to ARC. The Governing Board shall appoint the members of the ARC. There shall initially be three (3) members of the ARC. Members of the ARC may be, but need not be, directors of the Governing Board. The Governing Board may also appoint a second ARC to review Improvements that are subsequent to the Improvements originally constructed on any Lot.

Section 2.2 Term. Each member of the ARC shall serve at the pleasure of the Governing Board. In the event of the death, incapacity, or resignation of any member of the ARC, the Governing Board shall appoint a successor.

Section 2.3 Design Review Requirements.

2.3.1 No Improvements shall be constructed, erected, placed, altered, planted, applied or installed upon any Lot unless said Improvements are in full compliance with the provisions of the Project Documents and unless complete plans and specifications have been first submitted to and approved in writing by the ARC.

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

the review process. A compliance deposit may also be required as a condition precedent to review and approval of any plans.

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

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

2.3.5 In addition to the foregoing Sections, the ARC shall likewise have the power to delegate the responsibility for reviewing any application submitted to the ARC to a professional architect, landscape architect, engineer, or other professional who is qualified to review the issues raised in the application. The ARC shall also have the power to require that the applicant pay the fees reasonably incurred by the ARC in retaining such professional to review the application submitted.

Section 2.4 Guidelines. The Governing Board of the Metropolitan District is authorized to promulgate design and/or architectural standards, rules, regulations and/or guidelines (collectively the Design Guidelines, hereinafter referred to as "Guidelines"). Any such Guidelines may be included in rules and regulations promulgated by the Metropolitan District as set forth in Section 6.1 of this Declaration ("Rules and Regulations"). Without limiting the generality of the foregoing, such Guidelines may contain provisions to clarify the designs and materials that may be considered in design approval, may state requirements for submissions, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the ARC. By way of example, and not by way of limitation, such provisions may state that a certain style of roofing material and color is acceptable, or may state that only one or more types of fences are acceptable and no other types will be approved. The published Guidelines that may apply to a specific area may vary in another specified area, as determined by the ARC. Each area shall be identified and specified in the Guidelines established for said areas. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration.

Section 2.5 Procedures. The ARC shall approve or disapprove all requests for approval within thirty (30) calendar days after the complete submission of all plans, specifications, and other materials and information which the ARC may require in conjunction

therewith. A stamped or printed notation, initialed by a member of the ARC, affixed to any of the plans and specifications, shall be deemed a sufficient writing. However, the ARC shall not be required to maintain records of plans, specifications or other documents or information that have been submitted to it for approval. Approval by the ARC shall be conclusive evidence of compliance with this **Article II**, provided that the Improvements are constructed in compliance with the plans and specifications as approved. Failure to approve within thirty (30) calendar days shall be deemed disapproval.

Section 2.6 Voting and Appeals. A majority vote of the ARC is required to approve a request for architectural approval or any other matter to be acted on by the ARC, 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 an appeal of such decision to the full ARC, upon a written request therefor submitted to the ARC within ten (10) calendar days after such decision by the ARC's representative. In the event the full ARC decides a request for architectural approval that is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Governing Board, upon a written request therefor submitted to the Governing Board within ten (10) calendar days after such decision by the ARC. Notwithstanding anything to the contrary in this Declaration, the Governing Board may intercede of its own volition in matters of architectural approval by the ARC, and the Governing Board may reverse, alter, amend, adjust, change, or otherwise modify any decisions of the ARC at any time, so long as any one or more Owners are not unduly prejudiced thereby.

Section 2.7 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application or to complete the Improvement in complete conformance with the conditions and requirements of the approval shall constitute noncompliance and the compliance deposit if any, shall become non-refundable; provided, however, the ARC, in its sole discretion, may grant extensions of time for completion of any proposed Improvements and proportional amounts of compliance deposit redemption.

Section 2.8 Notice of Completion. Upon the completion of any Improvement, the applicant for approval of the same shall give a written "Notice of Completion" to the ARC. Until the date of receipt of such Notice of Completion, the ARC shall not be deemed to have notice of completion of any Improvement on which approval has been sought and granted as provided in this Article.

Section 2.9 Inspection of Work. The ARC or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion in order to determine whether the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article; provided, however, that the right of inspection shall terminate sixty (60) calendar days after the ARC shall have received a Notice of Completion from the applicant.

Section 2.10 Notice of Noncompliance. If, as a result of inspections or otherwise, the ARC finds that any Improvement has been done without obtaining the approval of the ARC, or was not done in substantial compliance with the approval that was granted, or was not completed within one (1) year after the date of approval, subject to any extensions of time granted pursuant to Section 2.7 hereof, the ARC shall notify the applicant in writing of the noncompliance; which notice of noncompliance shall be given, in any event, within sixty (60) calendar days after the ARC receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance.

Section 2.11 Correction of Noncompliance. If the ARC determines that a noncompliance exists, the Person responsible for such noncompliance shall remedy or remove the same (and return the subject real estate and/or Improvements or structure to its original condition) within a period of not more than thirty (30) calendar days from the date of receipt of the notice of noncompliance. If such Person does not comply with the ruling within such period, the ARC may, at its option, retain the compliance deposit, if any, record a notice of noncompliance against the Lot on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the Person responsible for such noncompliance shall reimburse the ARC, upon demand, for all costs and expenses incurred with respect thereto in excess of the retained compliance deposit.

Section 2.12 Cooperation and Delegation. The Governing Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, any other architectural review committees, or one or more other boards or committees, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Governing Board in its discretion. The costs and expenses for all such matters, if any, shall be shared or apportioned between such other boards or committees and the Metropolitan District, as the Governing Board may determine in its discretion from time to time. Additionally, the Governing Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, other architectural review committees, or one or more other boards or committees, to collect fees, charges, or other amounts which may be due to such entity and to permit any such entity to collect fees, charges, or other amounts which may be due to the Metropolitan District; in any such instance, the Governing Board shall provide for remittance to such entity of any amounts collected by the Governing Board or to the Metropolitan District of any amounts collected by such entity.

Section 2.13 Access Easement. Each Lot is subject to an easement in favor of the ARC and the Metropolitan District, including their agents, representatives, employees and contractors thereof: for performing any of the actions contemplated in this Declaration, including without limitation Sections 2.9 and 2.11 hereof; and/or for and incidental to investigation and/or enforcement of any term or provision of any of the Project Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any of the Property, including without limitation any Lot, the Owner responsible for the damage or expense to avoid damage, or the Metropolitan District if it is responsible, is liable for the cost of prompt repair and remediation. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive matter;

and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to the easements provided for in this Section.

Section 2.14 No Liability. The Metropolitan District, the Governing Board, the ARC, and the members thereof, as well as any representative of the Metropolitan District, the Governing Board and the ARC appointed to act on its behalf, shall not be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter within its jurisdiction hereunder. In reviewing any matter, the Metropolitan District, the Governing Board, and the ARC shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor compliance with any other standards or regulations, and any approval of an Improvement by the Metropolitan District, the Governing Board, or the ARC shall not be deemed an approval of any such matters. No Owner or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Metropolitan District, the Governing Board, or the ARC.

Section 2.15 Variance. The ARC, in its sole discretion, may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other real estate and Improvements in the neighborhood and shall not militate against the general intent and purpose hereof. In the event the Town requires a variance, said variance shall be granted in advance of submitting a request for variance to the ARC. Town approval of a variance does not obligate the ARC to also grant the same variance or adjustment.

Section 2.16 Waivers; No Precedent. The approval or consent of the ARC, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ARC or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

### **ARTICLE III** **USE RESTRICTIONS**

Section 3.1 Restrictions Imposed. The Property is subject to all requirements as follows;

Section 3.2 Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to jeopardize property values or to be detrimental to the well-being of any other Owner.

Section 3.3 Restriction and Further Subdivision. No Lot upon which a dwelling unit has been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such lot nor any easement or other interest herein shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments. Any builder/resale signs shall be removed within two (2) weeks after sale.

Section 3.4 Single-Family Residence. No dwelling unit or Lot shall be used for any purpose other than as a single-family residence, and no business or commercial activity shall be carried on within the project other than those authorized by the Town Zoning Ordinance as presently enacted or as amended in the future.

Section 3.5 No Violation of Law. Nothing shall be done or kept in or on any Lot within the project which would be in violation of any statute, rule, ordinance, regulation, permit, or validly imposed requirement of any governmental body.

Section 3.6 Appearance. All Lots within the project shall be kept in a clean, safe, and attractive condition, and no rubbish, refuse, or garbage shall be allowed to accumulate.

Section 3.7 Restrictions on Signs. No signs or advertising devices of any nature shall be erected or maintained on any Lot other than a sign advertising the sale of the Lot and/or dwelling unit contained thereof. Any sign used to advertise the Lot and/or a dwelling unit shall be no greater than two feet (2') in length and two feet (2') in width.

Section 3.8 Conditions for Architectural Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in landscaping or other work which in any way alters the exterior of any Lot, dwelling unit, common area or the Improvements located thereon from its natural or improved state existing at the date such property was first subject to this Declaration shall be made or done without compliance with the procedures set forth in Article II of this Declaration regarding architectural review.

Section 3.9 Rules and Regulations. Every Owner, guest, or member of the family, and employee shall strictly adhere to the Guidelines adopted from time to time by the District. The Governing Board may adopt general rules to regulate potential problems relating to the use of the Property, including but not limited to keeping of animals, storage items, vehicles, storage and use of machinery, use of outdoor drying linen, antennas, signs, trash, trash containers, maintenance, and removal of vegetation on the properties.

Section 3.10 Parking. No trailers, motor homes, camper units, boats, snowmobiles, all-terrain vehicles, motorcycles or similar recreational vehicles shall be stored or permitted to remain for more than three (3) consecutive days on any Lot except within enclosed garages, or within fully screened, fenced areas (for which the vehicle, boat or camper in question shall not exceed the height of the fence), as approved by the ARC. Without limiting the foregoing, the ARC or the Governing Board shall have the power to grant permission to store such vehicles on a Lot under such conditions as such entity shall deem appropriate to protect the rights of other Owners. In addition, no trucks, mobile homes, large commercial vehicles, unused vehicles, snowmobiles, all-terrain vehicles or motorcycles shall be kept, placed, stored or maintained upon



any Lot in such a manner that such vehicle is visible from neighboring Lots or any road. Commercial vehicles engaged in the delivery or pick up of goods or services shall be exempt from the provisions of this section provided that they do not remain in excess of the reasonable period of time required to perform such commercial function. For purposes of this section, a three fourths (3/4) ton or smaller vehicle, commonly known as a "pick-up truck" shall not be deemed to be a "truck" or "commercial vehicle." The term "unused vehicle" shall mean and refer to any vehicle which has not been driven under its own propulsion for a period of four (4) days or longer. Furthermore, no Owner shall park on or about a Lot (or on the streets adjoining any Lot) for more than three (3) consecutive days more than one (1) automobile, non-commercial pickup truck or other vehicle, it being the intent of this provision that Owners shall not regularly park more than one personal passenger vehicle outside the garage on such Owner's Lot.

Section 3.11 Household Pets. No animals, livestock, poultry, venomous reptiles or bees of any kind shall be raised, bred, kept or boarded upon any Lot, except that dogs, cats or other household pets as the same may be defined and determined by the Governing Board may be kept on any portion of the Property, provided the same are not kept, bred or maintained for any commercial purposes. The Governing Board may, in its sole discretion, limit the number, size and weight of household pets which may be kept upon any Lot. However, each Lot Owner shall have the right to keep a maximum of two (2) household pets on any Lot. Household pets shall be subject to any Guidelines adopted by the Governing Board and all governmental ordinances or applicable laws . Each owner of a pet shall be responsible for cleanup and removal of such pet's excrement upon the Lot.

Section 3.12 Control of Antennas and Receiving Equipment. Exterior television receiving or transmitting devices of any type, except satellite dishes 21" in diameter or smaller, receiving or transmission equipment for microwave transmissions and any radio receiving or transmitting devices of any type are expressly prohibited unless approved in writing by the ARC.

Section 3.13 Underground Electric Lines. All electric, television, radio, telephone line installations and connections from any property line of a Lot to a dwelling unit or other structures shall be placed underground, except that during the construction of a dwelling unit the contractor or builder may install a temporary utility line which shall be promptly removed upon completion of construction.

Section 3.14 No Hazardous Activities. No activities shall be conducted in the project and on Improvements constructed on a Lot which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Lots and no open fires shall be lighted or permitted on the Lots except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed substantially enclosed fire pit.

Section 3.15 No Annoying Light, Sound, or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. No sound shall be emitted in any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others.

Section 3.16 Dog Runs, Clotheslines, Storage Sheds, and Storage Areas. No clotheslines, dog runs, service yards, wood piles, storage areas or storage sheds shall be located on any Lot as to be visible from a street and/or public view without prior written approval by the ARC.

Section 3.17 Trash and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be placed on any street, Lot or driveway unless placed in a container suitably located, solely for the purpose of trash pickup. All equipment and/or containers for the storage or disposal of such materials shall be kept in a clean and sanitary condition and out of public view except on trash service days.

Section 3.18 Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers, or boats, may be performed on any Lot unless it is done within completely enclosed structures located in the dwelling unit which screen the sight and sound of the activity from the street and from adjoining property, nor shall any such activity be performed on the common area. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 3.19 Storage. No tanks for the storage of gas, fuel, oil, chemicals or other materials shall be erected, placed, or permitted above or below the surface of the Lot.

Section 3.20 Trash Burning. Trash, leaves, and other similar materials shall not be burned within the project.

Section 3.21 Maintenance of Property.

3.21.1 Owner Obligation. Each Owner shall keep any Lot owned and all improvements thereon in good order and repair free of debris, all in a manner and with such frequency as is consistent with reasonable property management. Each Lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lots so that the same are visible from any neighboring Lot or street, except as necessary during the period of construction. Each Owner agrees to comply with a landscape maintenance standard regarding landscaping, including undeveloped Lots which will not have a weed growth that exceeds twelve inches (12") in height.

3.21.2 Failure to Maintain Premises. In the event an Owner of any Lot shall fail to maintain the Lot and improvements situated thereon as provided in this Declaration, either the District or any other Lot Owner shall have the right to initiate a civil action to enforce the Owner's obligation under 6.2.1 regarding maintenance of Property. If either the Owner or the District shall be successful in proving that the terms and conditions of 6.2.1 have not been complied with, the Owner who initiates that civil action or the District shall be entitled to recover all costs of the action, reasonable attorney's fees and shall be entitled to request that a mandatory injunction be issued requiring the defaulting Lot Owner to maintain the Property in accordance with this Declaration. It is the intent of this Declaration to allow either the District or Lot Owner

to obtain equitable relief in the event maintenance of Property is not performed by a Lot Owner subject to this Declaration.

Section 3.22 Site Grading. Site grading shall be adequate for drainage away from the dwelling unit and adjacent dwelling units; however, the grading shall not be forced to allow basement garden level or walkout windows and door, except through the use of area walls. Dwelling units shall be sited to complement existing or dwelling units on adjacent sites. Grade level decks, patios and outside living areas are encouraged and large elevated decks or patios are discouraged. The drainage and grading plan as approved by the local government agencies is to ensure proper drainage and cannot be altered from the approved grading and drainage plan. See Paragraph 5.8.

**ARTICLE IV**  
**RESERVATION OF DEVELOPMENT RIGHTS**

Section 4.1 Declarant and Builder Exemption. Notwithstanding anything to the contrary contained in any of the Project Documents, the Declarant (and any builder designated in writing by Declarant) shall be exempt from the Project Documents, including without limitation the requirement to obtain design approval from the ARC and any covenants or restrictions. Notwithstanding the foregoing, neither the Declarant nor any builder shall be exempt from the requirement to obtain approval from all governmental entities with jurisdiction over the Property.

Section 4.2 General Provisions. Declarant, for a period of twenty (20) years from and after the recording in the real estate records of Weld County, Colorado, of the final plat of the final filing within the Property, will have the following development rights (collectively, the "Development Rights") with respect to all of the Property:

4.2.1 Period of Declarant Control. Declarant shall have the right to maintain its position as Declarant hereunder and shall have the right to exercise any and all rights, duties and powers granted herein to the District at any time during the Period of Declarant Control. Such right, duty or power shall be automatic, without any need for formal action being taken to evidence the same. Accordingly, all reference herein to the District shall, to the extent appropriate be construed to mean and refer equally to Declarant during the Period of Declarant Control. Notwithstanding anything set forth herein to the contrary, Declarant shall have all rights of an Owner hereunder.

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

4.2.3 Annexation. The right at any time, from time to time, to annex to the Property additional real estate and Improvements, including without limitation any real estate and Improvements which may previously have been withdrawn from the Property. By each such annexation, if any, the Declarant shall be deemed to have amended the term "Property" to include such annexed real estate and Improvements. Each such annexation, if any, shall be accomplished by recording of a Supplemental Declaration adding such Property, recorded in the real property records of the Clerk and Recorder of the County where the Property is located. Such Supplemental Declaration will expressly and unequivocally provide that the Property and

Improvements described therein shall be subject to this Declaration and all terms and provisions hereof. Any such annexation may include provisions, which, as to the Property and Improvements described therein, adds to or changes the rights, responsibilities and other requirements of this Declaration.

4.2.4 Create Lots. The right to create Lots on the Property.

4.2.5 Subdivide Lots. The right to subdivide Lots on any part of the Property, and the right to relocate boundaries between Lots.

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

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

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

(c) Declarant shall prepare and record in the real property records of county where the applicable real estate is located whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the owners of the Withdrawn Property and the owners of the Property shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

4.2.7 Merger. The right to merge or consolidate the Property with another community of the same form of ownership.

4.2.8 Sales and Construction Activities. The right, for Declarant and any builder (but only with the express written consent of the Declarant), and their employees, agents, and contractors to perform, from time to time, and to maintain upon portions of the Lots, such

activities and materials as Declarant or such builder deems necessary or incidental to the construction and sale of Lots and development and construction of Improvements. The foregoing includes, without limitation, locating, maintaining and relocating management offices, construction trailers, construction offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its discretion from time to time. Construction activities shall be in compliance with and not exceed times permitted for construction as provided in the Town Code. Further, nothing contained in any of the Project Documents shall limit the rights of Declarant or a builder, with Declarant's express written approval:

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

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

(c) to seek or obtain any approvals under any of the Project Documents.

4.2.9 Master Association. The right to make the Property subject to a master association.

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

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

4.2.12 Site Plan Modification/Expansion. Nothing in this Declaration shall preclude the Declarant from modifying any site plan, subject to the approval of the required governmental authorities, including but not limited to the purpose of expanding the square footage of Improvements permitted to be constructed on the Lots owned by Declarant, provided that such modification does not have a material and adverse impact on any Lot not owned by Declarant, and does not violate any then-existing zoning, land use, or other requirements of the Town or County in which the Property is located or any other governmental entity having jurisdiction.

Section 4.3 Supplemental Provisions Regarding Development Rights. Without limiting the generality of the foregoing, certain of these Development Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and

any Plat in connection with the exercise of any Development Rights, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

Section 4.4 Utility Easements. Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, non-potable water system, gas, telephone, and electrical, cable and other communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits, and conduits under and over the Property. No water, sewer, gas, telephone, electrical, communications or other utility or service lines, systems or facilities may be installed or relocated on the surface of the Property, unless approved by the ARC. These items may be temporarily installed above ground during construction, if approved by the ARC, subject to the requirements, if any, of any governmental authority having jurisdiction over the Property.

Section 4.5 Drainage Easements. Declarant reserves for itself and its successors and assigns an easement to enter on any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Every Lot shall be burdened with easements for natural drainage of storm water runoff from the other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property without the consent of the ARC and the Owner of the affected property.

Section 4.6 General Provision. Any Person using these general easements provided under Sections 4.4 and 4.5 above shall use its best efforts to install and maintain the easements for utilities or drainage without disturbing the uses of the Owners and the Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and in the case of utility work, shall restore the surface to its original condition as soon as possible after completion of its work, and shall comply with all requirements of the Guidelines and the ARC. Should any Person furnishing a service covered by these general easements request a specific easement by separate recordable document, Declarant shall have, and is hereby given the right and authority, with the prior approval of the ARC, to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, void, extinguish, or modify any other recorded easement affecting the Property.

Section 4.7 Reservation for Construction. Declarant hereby reserves for itself and its successors and assigns a perpetual easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress. Declarant may make the location of these easements and rights-of-way certain with the prior approval of the ARC, by instruments recorded in the real estate records of Weld County, Colorado. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action is approved by the ARC and does not hamper the enjoyment of the Property by the Owners.

Section 4.8 Rights Incidental to the Construction Easement. Declarant expressly reserves the right to perform construction work and to store materials in secure areas, in Lots owned by it and in the common areas and the future right to control such work and repairs, and the right of access thereto, until its completion. Declarant may perform all work without the consent or approval of any Owner or mortgagee. Declarant reserves an easement through the Property as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's Development Rights reserved in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the land not designated as reserved for future development in this Declaration or on any Plat for the purpose of furnishing utility and other services to the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the common areas.

Section 4.9 Maintenance Easement. A blanket easement is hereby reserved to Declarant for the benefit of the Declarant, Declarant's affiliates, successors and specific assigns, and granted to the Metropolitan District and any member of the Governing Board or ARC, and their respective officers, agents, employees, contractors and assigns, upon, across, over, in and under the Property and any Lot, and a right to make such use of the Property or Lot as may be necessary or appropriate to make repairs or to perform the duties, obligations, functions and maintenance which the Metropolitan District, the Governing Board, or the ARC are obligated or permitted to perform pursuant to the Project Documents, including the right to enter upon any Lot for the purpose of performing maintenance and repair thereon, as required by this Declaration, together with the right of access, ingress and egress necessary for such installation, maintenance, operation, repair, replacement and upkeep.

Section 4.10 Operations and Maintenance Services and Costs. The Declarant hereby authorizes the Metropolitan District to provide certain operations and maintenance services to the Property in lieu of a homeowners' association (as may be authorized or limited by law and the Service Plan for the Districts), which services may include, operation and maintenance of any District pools, clubhouse, recreation center or recreation facilities, open space, common areas, greenbelts, landscaped medians, monuments, entry features, fencing, landscape buffers and setbacks, ponds, lakes, trails, paths and walkways, non-potable irrigation water facilities and improvements, detention/retention ponds and drainage facilities, covenant enforcement and architectural/design review services, and operations and maintenance services for public facilities and improvements not otherwise dedicated to the Town. Each Lot Owner may be charged an annual fee, for operation and maintenance services provided by the Metropolitan District as described herein. The annual fee shall subject to adjustment at the discretion of and as determined by the Governing Board of the Metropolitan District based upon the Metropolitan District's annual budget, and amendments thereto from time to time. The Board of Directors of the District shall not be liable for any omission or improper exercise by any agent or independent contractor of any duty, power or function so delegated by written instrument executed by or on behalf of the Governing Board.

Section 4.11 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall

be subject to the easements as shown on any recorded Plat of the Property, or any portion thereof, and the easements established in this Declaration.

Section 4.12 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 4.13 Easements Deemed Appurtenant. Any and all conveyances made by Declarant to any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights created herein for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

Section 4.14 Order of Exercise of Development Rights. The fact that Declarant may exercise one or more of Declarant's Development Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right with respect to any other portion of the Property. The Declarant may exercise its Development Rights on all or any portion of the Property in whatever order of development the Declarant, in its sole discretion, determines.

Section 4.15 Rights Transferable. Any Development Rights created or reserved under this Article or elsewhere in this Declaration for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the real estate records of Weld County, Colorado. Such instrument shall be executed by the transferor (Declarant) and the transferee.

## **ARTICLE V**

### **RELEASE, WAIVER AND CERTAIN DISCLOSURES**

Section 5.1 Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of proposed setback or offset lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback or offset, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the Covenants or the Guidelines, if any. A "minor violation," for the purpose of this Section, is a violation of not more than one (1) foot beyond the proposed setback or offset lines, so long as there is no encroachment into the established minimum setbacks and offsets determined by the Guidelines, plat and Town policies. Any encroachment into the minimum established setback or offset area shall require a variance. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures. The release and waiver set forth in Section 5.6 (Waiver) shall apply to this Section.

Section 5.2 Limitation on Liability. The Declarant, the Metropolitan District, the Governing Board, the ARC, and their directors, officers, shareholders, partners, members, agents and employees, shall not be liable to any Person for any action or for any failure to act arising



out of this Declaration or the Project Documents, unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 5.6 (Waiver) shall apply to this Section.

Section 5.3 No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, the Metropolitan District, the Governing Board, the ARC or by any of their officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as specifically set forth in writing. The release and waiver set forth in Section 5.6 (Waiver) shall apply to this Section.

Section 5.4 Disclaimer Regarding Safety.

THE DECLARANT, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ARC, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT THE DECLARANT, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ARC, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED HEREIN OR IN THE COVENANTS AND GUIDELINES, IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY. THE RELEASE AND WAIVER SET FORTH IN SECTION 5.6 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 5.5 Development Within and Surrounding the Property. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of Improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Property, view of or from the Property or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Metropolitan District, the Governing Board, the ARC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 5.6 (Waiver) shall apply to this Section.

Section 5.6 Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Metropolitan District, the Governing Board, the ARC,

and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, and any Guidelines, rules and regulations, and other documents now or hereafter adopted by or for the Metropolitan District, including without limitation, those contained in Sections 5.1 through 5.5 of this Declaration.

Section 5.7 Colorado Governmental Immunity Act. Notwithstanding anything to the contrary, the parties hereto understand and agree that liability for claims for injuries to persons, real estate or Improvements arising out of the negligence of the Metropolitan District, its boards, officials, and employees, is controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S. and §24-30-1501, et seq. C.R.S. Any provision of this Declaration, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Metropolitan District to the above-cited laws.

Section 5.8 Drainage.

5.8.1 Acknowledgment. Soils within the State of Colorado consist of expansive soils, low density soils, and moisture retentive soils which will adversely affect the integrity of a dwelling unit if the dwelling unit and the Lot on which it is constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

5.8.2 Moisture. Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the dwelling unit constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the dwelling unit.

5.8.3 Grading and Drainage. Each Owner of a Lot shall maintain the grading and drainage patterns of the Lot and yard as indicated in the subdivision plans on file with the Town. No Owner shall modify or change the topography or contour of any drainage areas or easements, including swales, constructed on the Lots and other portions of the Property from the shape and outline established by the Declarant or Persons or entities acting on behalf of the Declarant; provided, however, that an Owner shall be permitted to modify the drainage areas on his or her Lot upon receiving written approval therefore from ARC. Any Owner who in any way materially modifies the drainage pattern on the land without such consent shall be subject to sanctions contained herein for violations of this Declaration.

5.8.4 Water Flow. The Owner of a Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established for the Lot.

5.8.5 Action by Owner. To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

(a) Not to install improvements, including, but not limited to, landscaping, items related to landscaping, walls, walks, driveways, parking pads, patios, fences, additions to a dwelling unit, or any other item or improvement which will change the grading of the Lot.

(b) To fill with additional soil any back filled areas adjacent to the foundation of the dwelling unit and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time maintain the grading and drainage patterns of the Lot.

(c) Not to water the lawn or other landscaping on the Lot excessively.

(d) Not to plant flower beds (especially annuals) and vegetable gardens adjacent to or within four (4) feet of the foundation and slabs of the dwelling unit.

(e) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

(f) To install a moisture barrier (such as polyethylene) under any gravel beds except any gravel beds in back filled areas).

(g) To maintain the gutters and down spouts which discharge water into extensions or splash blocks by assuring that (i) gutters and down spouts remain free and clear of all obstructions and debris; (ii) water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) splash blocks are maintained under sill cocks.

(h) To re-caulk construction joints opening up between portions of exterior slabs and garage slabs in order to seal out moisture.

5.8.6 Disclaimer. Declarant shall not be liable for any loss or damage to a dwelling unit caused by, resulting from, or in any way connected with soil conditions or failure of an Owner to control and/or maintain drainage on any Lot.

## **ARTICLE VI**

### **GENERAL PROVISIONS**

Section 6.1 Rules and Regulations. Rules and regulations concerning and governing the Property may be adopted, enacted, modified, amended, repealed, and re-enacted from time to time by the Governing Board and the ARC. Any such rules and regulations may be included in Guidelines promulgated by the ARC as set forth in Section 2.4 herein. Such rules and regulations may be incorporated into this Declaration. The rules and regulations may state procedural requirements, interpretations, clarifications and applications of this Declaration and law, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Governing Board and the ARC have the authority to adopt or vary one or more rules and regulations that are different for different types of Lots, if any. Any rules and

regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

Section 6.2 Enforcement.

6.2.1 Enforcement of the covenants, conditions, restrictions, easements, reservations, and other provisions contained in this Declaration, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. The Metropolitan District, the Governing Board, the ARC, and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under this Declaration or any other Project Documents, the prevailing party shall recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Metropolitan District, the Governing Board, the ARC, or any Owner (including without limitation the Declarant) to enforce any covenant, restriction or other provision shall in no event be deemed a waiver of the right to do so thereafter.

6.2.2 Without limiting the generality of the foregoing, the Metropolitan District, the Governing Board, and/or the ARC shall have the right to send demand letters and notices, to levy and collect fines, to negotiate, settle and to take any and all other actions with respect to any violation(s) or alleged violation(s) of any of the Project Documents.

6.2.3 The decision of the Metropolitan District, the Governing Board or the ARC to pursue enforcement action in any particular case shall be left to their discretion, subject to the duty to exercise judgment and be reasonable, and further restricted in that the Metropolitan District, the Governing Board or the ARC shall not be arbitrary or capricious in taking enforcement action. A decision of the Metropolitan District, the Governing Board or the ARC not to pursue enforcement action shall not be construed as a waiver of their right to enforce such provisions at a later time under other circumstances or preclude them from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Metropolitan District, the Governing Board or the ARC may determine that, under the circumstances of a particular case:

(a) the Metropolitan District's, the Governing Board's or the ARC's legal position is not strong enough to justify taking any or further action;

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(c) it is not in the Metropolitan District's, the Governing Board's or the ARC's best interest, based upon hardship, expense, limited effect on other Owners or other reasonable criteria, to pursue enforcement action.

Section 6.3 Duration, Amendment and Supplement.

6.3.1 Each and every provision of this Declaration shall run with and bind the Property perpetually from the date of recording of this Declaration. Subject to subsection 6.3.2 of this Section, this Declaration may be amended and/or supplemented by the

affirmative vote or agreement of the Owners of sixty-seven percent (67%) of the Lots. Notwithstanding the foregoing, the Metropolitan District shall not be required to comply with or enforce any such Owner adopted amendments or supplements to this Declaration until such time as the Metropolitan District receives a recorded copy of such amendment and/or supplement in compliance with Section 6.5 of this Declaration (Notices).

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

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

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

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

6.3.6 Subsections 6.3.2, 6.3.3, 6.3.4 and 6.3.5 of this Section shall not be amended or deleted without the prior written approval of the Declarant.

Section 6.4 Severability. All provisions of this Declaration are severable. Invalidation of any provision of this Declaration by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 6.5 Notices. Any notice permitted or required in this Declaration shall be deemed to have been given and received upon the earlier to occur of (a) personal delivery upon the Person to whom such notice is to be given; or (b) two (2) days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to the Owner at the address for such Owner's Lot.

Section 6.6 Headings. The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 6.7 Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 6.8 Runs with the Land; Binding Upon Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property and all Improvements which are now or hereafter become a part of the Property and any Future Parcel(s). The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Metropolitan District, the Declarant, the Developer, and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

## **ARTICLE VII** **NON-POTABLE SYSTEM**

Section 7.1 Parties and Properties Governed. The District, the Town, and any other parties who receive benefit from the non-potable water system shall be subject to and governed by the Hunters Overlook Metropolitan District Water Rules and Regulations which will be approved by the District, as amended from time to time.

Section 7.2 Outdoor Watering. Property Owners living within the Overlook Subdivision or any of the Hunters Overlook Metropolitan Districts shall be required to utilize the Hunters Overlook Non-Potable Water System and abide by the Districts' Water Rules and Regulations

Section 7.3 Disclaimer. Non-potable irrigation water is not fit for human consumption. Owners shall take appropriate precautions to prevent any Person from drinking the non-potable irrigation water or otherwise making any other use of such water which may be damaging to a Person's health. To the extent such water may be harmful to animals, the Owner or keeper of such animals shall take appropriate precautions to prevent the animal from drinking the non-potable irrigation water or otherwise exposing the animal to such water in a manner which would be damaging to the animal's health. The Districts shall not be liable for any claim resulting from the use of non-potable irrigation water for any purpose other than the irrigation of landscaping, and by accepting a deed to a Lot, the Lot Owner knowingly, voluntarily, and expressly waives and releases any such claims against the Districts, its officers, directors, agents, employees, members, successors, and assigns.

Section 7.4 Quantity and Quality of Water. At the time of final approval of the plat, the Declarant obtained and provided to the Town a report of a licensed engineer addressing the quantity and quality of water. In the engineer's opinion, the quantity and quality of water to be obtained is sufficient to irrigate all landscaping within the Districts and the Overlook Subdivision, as well as all landscaping within any parks, open spaces, or other public or private lands to be served by the Non-Potable Water System. Neither the Declarant nor the Town has independent knowledge as to the adequacy of the quantity or quality of the water to be obtained, but has relied solely upon the engineer's opinion. The Declarant, the Town, and the District make no warranties, express or implied, as to the quantity or quality of water which may be

obtained. The Owner of each Lot by acceptance of a deed to such Lot, waives and releases the Declarant, its managers, members, agents, and employees and their respective heirs, personal representatives, successors, and assigns, as well as the Town, its board members, employees, agents, and their respective heirs, personal representatives, successors, and assigns, and the District, its officers, directors, agents, employees, members, successors, and assigns from all claims and possible claims, known or unknown, arising out of or as a result of deficiency in the quantity or quality of water which may be obtained.

Section 7.5 Adjacent Properties. The District shall have the right to use the Non-Potable Water System to provide raw water irrigation for landscaping on properties adjacent to the Property. In such event, the District shall enter into an agreement with the adjacent property owner for the payment of the costs and expenses incurred by the District in providing raw water to the adjacent property for the irrigation of landscaping on such property.









**EXHIBIT A TO  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR THE OVERLOOK SUBDIVISION AND  
HUNTERS OVERLOOK METROPOLITAN DISTRICT NOS. 1-4**

Lots 1-25, Block 1; Lots 1-10, Block 2; Lots 1-20, Block 3;  
Lots 1-20, Block 4; Lots 1-20, Block 5; Lots 1-16, Block 6;  
Lots 1-29, Block 7; Lots 1-30, Block 8; Lots 1-14, Block 9; Lots 1-14, Block 10;  
Lots 1-16, Block 11; Lots 1-6, Block 12; Lots 1-16, Block 13; Lots 1-28, Block 14;  
Lots 1-2, Block 15; Lots 1-10, Block 16; Lots 1-39, Block 17; Lots 1-28, Block 18;  
Lots 1-18, Block 19; Lots 1-11, Block 20; Lots 1-12, Block 21; Lots 1-14, Block 22;  
Lots 1-22, Block 23; Lots 1-8, Block 24; Lots 1-8, Block 25; Lots 1-5, Block 26;  
Lots 1-4, Block 27; Lots 1-20, Block 28; Lots 1-14, Block 29; Lots 1-20; Block 30;  
Lots 1-18, Block 31, Lots 1-28, Block 32; Lots 1-36, Block 22; and  
Tracts A, B, C, D, E, F, G, H, I, and J;  
The Overlook Subdivision Filing No. 1,  
Part of the South Half of Section 2, Township 6 North, Range 67  
West of the 6<sup>th</sup> Principal Meridian, Town of Severance, County of Weld,  
State of Colorado as recorded June 7, 2017 at Reception No. 4308452 of the real estate  
records of the Clerk and Recorder of Weld County, Colorado

*IB*

*(Legal Description of Future Inclusion Area for Hunters Overlook Metropolitan Districts)*

(May be added at a future date through Annexation.)

*B*