

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR EAST CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAST CREEK (“**Declaration**”) is made and entered into by Meritage Homes of Colorado, Inc., an Arizona corporation (“**Declarant**,” as hereinafter more fully defined).

**RECITALS**

A. Declarant is the owner of certain real property situated in the City of Aurora, (“**City**”), County of Arapahoe, State of Colorado, which is described on **Exhibit A** attached hereto and incorporated herein by this reference (“**Community**” or “**Property**”, as hereinafter more fully defined).

B. This Declaration is exempt from the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. (“**Act**”), because there are no mandatory assessments created under this Declaration, and there is no obligation to pay for real estate taxes, insurance premiums, maintenance, or improvements of other real estate or common area created under this Declaration.

C. Pursuant to C.R.S. § 32-1-1004 and other provisions of Title 32 of C.R.S., the Declarant, in imposing this Declaration on the Community, intends to empower the District (as defined in Section 1.8 below) with the authority to provide governmental services, including but not limited to the provision of covenant enforcement and architectural review services, to the Community and to use revenues that are derived from the Community for such purposes.

**AFFIRMATION**

NOW, THEREFORE, the Declarant hereby declares that all of the property described on the attached **Exhibit A**, as supplemented and amended (including by all annexations to this Declaration), shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

**ARTICLE 1. DEFINITIONS**

Section 1.1. Architectural Review Committee or ARC.

“**Architectural Review Committee**” or “**ARC**” means the committee appointed by the Board, as provided in Section 4.1 of this Declaration. The ARC shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

Section 1.2. Board of Directors or Board.

“**Board of Directors**” or “**Board**” means the governing board of the District.

Section 1.3. Builder.

“**Builder**” means and includes any Person who (i) acquired or acquires one or more Lots for the purpose of constructing at least one residence on each such Lot and selling and/or renting such Unit to the public, and/or (ii) acquires one or more Units for sale to any Person fitting the

description in Section 1.3(i); and is designated as a “**Builder**” under this Declaration in a written designation that is signed by the Declarant and Recorded. (Declarant or a Builder may, subject to the terms of this Declaration, create one or more common interest communities within the Community.)

Section 1.4. Community or Property.

“**Community**” or “**Property**” means real estate and Improvements described on the attached Exhibit A, as supplemented and amended, and subject to the provisions of this Declaration. The name of the Community is East Creek.

Section 1.5. Declarant.

“**Declarant**” means Meritage Homes of Colorado, Inc., an Arizona corporation, as well as any other Person(s) to whom Declarant (or any subsequent Declarant), by Recorded document, expressly assigns one or more rights of a Declarant under this Declaration (which shall be the extent of the Declarant’s rights to which such assignee succeeds). Use of the word “**Declarant**” in the Governing Documents denotes the aforesaid entity or their designated assignee(s), as provided in the preceding sentence.

Section 1.6. Declaration.

“**Declaration**” means this Declaration of Covenants, Conditions and Restrictions for East Creek, as supplemented and amended, and also including maps and plats of the Community.

Section 1.7. Development Rights.

“**Development Rights**” means the following rights, or combination of rights, hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to: (a) add real estate to this Community and make such real estate subject to the Governing Documents; (b) create Units; (c) subdivide or replat Units; and (d) withdraw real estate from this Community.

The Declarant may exercise its Development Rights in all or any portion of the Community or real estate proposed to be added to the Community, subject to and in accordance with the terms and conditions of this Declaration, and no assurances are made as to the boundaries or order of exercise of any Development Rights. The Declarant’s rights to exercise Development Rights shall terminate automatically as provided in Section 1.18 of this Declaration (Special Declarant Rights).

Section 1.8. District.

“**District**” means the East Creek Metropolitan District #1, created pursuant to §32-1-101, *et. seq.*, C.R.S., and/or any other metropolitan district to which the then-District may transfer or assign any or all of the rights and duties of the District under this Declaration. Each assignment or transfer, if any, shall be effective upon recording in Arapahoe County, Colorado, of a document of transfer or assignment, duly executed by the then-District.

Section 1.9. Governing Documents.

“**Governing Documents**” means this Declaration and any Rules and Regulations (as hereinafter defined), Guidelines (as hereinafter defined), and any policies and procedures and other documents now or hereafter adopted by the District, as amended or supplemented from time to time relating to design review and/or covenant enforcement.

Section 1.10. Improvements.

“**Improvements**” means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, all landscaping features and hardscaping features, including but not limited to homes, condominiums, buildings, outbuildings, car ports, solar equipment, swimming pools, hot tubs, satellite dishes, antennae, tennis courts, tree houses, gazebos, garages, sheds, signs, patios, patio covers, awnings, solar collectors, yard art (including but not limited to statues, fountains, bird baths, and decorative pieces), paintings or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, dog runs, fences, including gates in fences, basketball backboards and hoops, swing sets and other play structures, screening walls, retaining walls, walkways, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, groundcover, excavation and site work, removal of trees or plantings, exterior light fixtures, poles, signs, exterior tanks, exterior air conditioning, cooling, heating and water softening equipment, if any. The term “Improvements” includes original Improvements and all later changes, modifications, and replacements of Improvements. In addition to all requirements and restrictions set forth herein, all Improvements must comply with all applicable laws, rules, ordinances, zoning restrictions, use restrictions and other requirements of any governmental authority having jurisdiction over the Community.

Section 1.11. Lot.

“**Lot**” means each lot that is platted within the property described on the attached **Exhibit A**, which is subject to this Declaration, or a lot platted and subsequently annexed into the Community and subjected to this Declaration pursuant to Article 9 with the exception of any property publicly dedicated on a recorded plat.

Section 1.12. Intentionally Deleted.

Section 1.13. Owner.

“**Owner**” means each fee simple title holder of a Unit, including Declarant, each Builder, and each 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 1.14. Person.

“**Person**” means a natural person, a corporation, a limited liability company, a partnership, a District, a trust, a joint venture, or any other entity recognized under the laws of the State of Colorado, or any combination thereof.

Section 1.15. Records.

“**Records**” means the official real property records of Arapahoe County, Colorado; “**to Record**” or “**to be Recorded**,” means to file for recording in the Records; and “**of Record**” and “**Recorded**” means having been recorded in the Records.

Section 1.16. Security Interest.

“**Security Interest**” means an interest in one or more Units, real estate or personal property, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed,

land sales contract, lease intended as security, assignment of leases or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.17. Security Interest Holder.

“**Security Interest Holder**” means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest or any successor to the interest of any such Person under such Security Interest.

Section 1.18. Special Declarant Rights.

“**Special Declarant Rights**” means the following rights, which rights are hereby reserved for the benefit of the Declarant and which rights may be further described in this Declaration: (a) to build and complete Improvements; (b) to exercise any Development Right; (c) to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and/or Units; and (d) to use easements through the Community for the purpose of making Improvements within the Community or within real estate which may be added to the Community. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the Property now or hereafter within the Community. The Declarant may exercise any or all of these Special Declarant Rights at any times. Such rights shall terminate automatically either twenty-five (25) years after the date of Recording of this Declaration or five (5) years after such time as any Declarant or any Builder no longer owns any portion of the property described on the attached **Exhibit A** whichever occurs first.

Section 1.19. Unit.

“**Unit**” means Lots that have been subdivided and intended for sale to an Owner.

## ARTICLE 2. DISTRICT

Section 2.1. Authority of the District to Appoint ARC.

The District (through the Board) shall appoint all members of the ARC and may remove all or any of the members of the ARC which have been appointed by the District as provided in Section 4.1. The District shall use reasonable efforts to appoint the ARC in accordance with this Declaration.

Section 2.2. Cooperation and/or Delegation.

The District shall have the right and authority to cooperate with, contract with, and/or delegate to, any community or home owners association, or other district(s), and/or any other Person(s), in order to increase consistency or coordination, reduce costs, or as may otherwise be determined by the Board.

Section 2.3. Rules and Regulations and Policies and Procedures.

From time to time and at any time rules and regulations (“**Rules and Regulations**”) and policies and procedures concerning and governing the Community may be adopted, amended, repealed and enforced by the District (through the Board of Directors), and the District (through the Board of Directors) shall establish penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such Rules and Regulations or policies and procedures. The District shall use commercially reasonable efforts to cause the Rules and Regulations to be issued in accordance with this Declaration. The Rules and Regulations and policies and procedures

may include: procedural requirements; interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications; and covenants, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, including vehicles and animals. Such rules and regulations and policies and procedures may be different for different types of Units, construction or homes. No Rules and Regulations or policies and procedures that are adopted shall be contrary to this Declaration.

Section 2.4. Authenticated Electronic Representation.

Notwithstanding anything to the contrary contained in the Governing Documents, to the extent not prohibited by applicable law, the District may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity (including without limitation telephone and email).

**ARTICLE 3. FINES**

Section 3.1. Personal Obligation for Fines.

Each Owner of a Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees, and shall be personally obligated, to pay to the District any and all fines and penalties, as provided in this Declaration; with such fines and penalties to be established and collected as hereinafter provided. If more than one person or entity is an Owner of a Unit, then all such Owners shall be jointly and severally liable to the District for the payment of all fines and penalties attributable to their Unit.

Section 3.2. Purpose of Fines and Penalties.

The fines and penalties levied by the District are used to protect and maintain the recreation, health, safety and welfare of the residents of the Community through enforcement of the Declaration, Rules and Regulations and Guidelines.

Section 3.3. Liens.

The District has the right and authority to levy and collect fines, to impose liens (as provided in C.R.S. Section 32-1-1001(1)(j)(I), as amended), to negotiate, settle and/or take any other actions with respect to any violation(s) or alleged violations(a) of the Governing Documents. The District may collect, and shall have a statutory perpetual lien pursuant to § 32-1-1001(1)(j)(I), C.R.S. against any Unit to secure: (1) payment for reimbursement by the violating Owner for any remedial work performed by the District to remove, correct or otherwise remedy the violation, (2) payment for expenses incurred in obtaining injunctive relief, including costs and attorneys' fees, (3) payment of any fines levied by the District against such 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. No further Recordation of any claim of lien is required. However, the Board of Directors may prepare and record (or cause to be prepared and recorded) in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Unit, and a description of the Unit. If a lien is filed,

the reasonable costs and expenses thereof shall be added to the due amount for the Unit against which it is filed and collected as part and parcel thereof. The District's lien may be foreclosed as provided by law. The lien of the District for any fees, fines 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 Unit subject to this Declaration shall constitute a waiver of the homestead exemption as against said lien.

Section 3.4. Certificate of Status of Fines and Penalties.

The District shall furnish to an Owner, or such Owner's designee, or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, to the District's registered agent, a written statement setting forth the amount of unpaid fines and penalties, if any, currently levied against such Owner's Unit. The statement shall be furnished within a reasonable time after receipt of the request and is binding on the District, the Board of Directors and every Owner. The District or its agents shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 3.5. Other Charges.

To the extent permitted by law, the District may levy and assess charges, costs and fees, for matters such as, but not limited to, the following, in such amounts(s) as the Board of Directors may determine, including: reimbursement of charges that are made to the District by its managing agent or other Person; copying of District or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other charges incurred by the District. To the extent permitted by law the District may own, operate, lease or contract for the operation of amenities, if any, within the Community. In the event such amenities, if any, are owned, operated (contracted for operation) or leased by the District, the District may, in accordance with applicable law, charge fees for access and use of such amenities (which fees may vary for Owners within the Community and the general public).

**ARTICLE 4. ARCHITECTURAL REVIEW**

Section 4.1. Composition of ARC; Authority of Representative.

The Architectural Review Committee shall consist of three (3) or more natural persons. The Board of Directors of the District has the authority to appoint the ARC. The power to **"appoint"** the Architectural Review Committee shall include the power to: constitute the membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member(s) of the Architectural Review Committee, with or without cause, and appoint the successor(s) thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set by the Board.

The ARC, with the approval of the Board of Directors of the District, shall have the right and authority to: (a) delegate, in writing, some or all of the architectural authority to one or more other Persons, who shall be the ARC's representative to act on its behalf. If the ARC delegates any authority, 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 a representative is appointed, the ARC shall have

the power to withdraw from such representative any of such representative's authority, and shall also have the power to remove or replace such representative.

Section 4.2. Required Review and Approval; Reimbursement for Expenses.

Except as provided in Sections 4.10 and 4.13 of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Unit, unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, retaining walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Architectural Review Committee), shall have been first submitted to and approved in writing by the Architectural Review Committee. Each Owner acknowledges that there may be certain landscaping design requirements imposed by the Board (or other governmental authority) that each Owner may be required to observe at such Owner's sole cost.

The Architectural Review Committee shall endeavor to exercise its judgment to the end that all Improvements reasonably conform to and harmonize with the existing surroundings, residences, landscaping and structures.

The 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 Architectural Review Committee may require that the applicant(s) reimburse the ARC for the actual expenses incurred, or reasonably anticipated to be incurred, by the ARC, in the review and/or approval process.

In addition to the required approvals by the Architectural Review Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and 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 authority, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in, any Improvement. The ARC shall not review or approve any proposed Improvements for compliance with governmental requirements. The ARC makes no representations or warranties with respect to plans reviewed and shall have no liability with respect to review and approval of any plan or specifications.

In addition to the authority that is given to the ARC in this Declaration, as well as such authority as may be implied from any provision(s) of this Declaration, the ARC shall have all authority and to receive and review complaints from one or more Owners, any Declarant, one or more Builders, or any other Person(s), alleging that a violation of any of the Governing Documents has occurred or is occurring.

### Section 4.3. Procedures.

The Architectural Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of the application or request and all plans, specifications and other materials and information which the ARC may require in conjunction with such application or request. If the Architectural Review Committee fails to decide any application or request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then such application or request for approval shall be deemed to have been denied by the ARC.

### Section 4.4. Vote and Appeal.

The affirmative vote of a majority vote of the Architectural Review Committee 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 or committee to act for it, in which case the decision of such representative or committee shall control. In the event a representative or committee acting on behalf of the Architectural Review Committee denies a request for approval, then any Owner 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) days after such decision by the ARC's representative. The decision of the ARC shall be final. No additional or further appeals are permitted, nor will any be recognized.

### Section 4.5. Prosecution of Work After Approval.

After approval of any proposed Improvement by the ARC, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or failure to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval issued by the ARC and a violation of this Article; provided, however, that the ARC may grant extension(s) of time for completion of any Improvement(s). Upon the completion of an 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 (which may be with conditions and/or requirements) has been sought and granted as provided in this Article.

### Section 4.6. Inspection of Work.

The District, the Board of Directors and the ARC, or their duly authorized representatives or committees, shall have the right to inspect any Improvement at any time, including prior to, during, or after completion during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive inspection. Such inspections may be made in order to determine whether or not the proposed Improvement is being completed, or has been completed, in compliance with the approval granted pursuant to this Article.

### Section 4.7. Notice of Non-Compliance.

If, as a result of inspections or otherwise, the ARC determines that any Improvement has been done without obtaining the required approval (which may be with conditions and/or requirements), or was not done in substantial compliance with the approval that was granted, or has



not been completed within one (1) year after the date of approval, subject to any extensions of time granted pursuant to Section 4.5 hereof, then the District shall notify the applicant in writing of the non-compliance. Such notice of non-compliance shall be given not later than sixty (60) days after the ARC receives a Notice of Completion from the applicant. The notice of non-compliance shall specify the particulars of the non-compliance.

Section 4.8. Correction of Non-Compliance.

If the ARC determines that a non-compliance exists, the Owner responsible for such non-compliance shall remedy or remove the same within not more than forty-five (45) days from the date of receipt of the notice of non-compliance. If such Owner does not comply with the ruling within such period, the District may, at its option, record a notice of non-compliance against the Unit on which the non-compliance exists, may impose fines, penalties and interest, may remove the non-complying Improvement, or may otherwise remedy the non-compliance, and the Owner responsible for such non-compliance shall reimburse the District, upon demand, for all costs and expenses, as well as anticipated costs and expenses, with respect thereto. Such fees, costs and expenses shall be the personal obligation of the Owner and shall be part of the District's lien as described in Section 3.3 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 4.9. Standards/Guidelines.

Except as provided in the last sentence of this Section, the Board of Directors of the District has the authority to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, rules and regulations (collectively, "Guidelines") to interpret and implement the design review provisions of this Declaration. Such provisions of the Guidelines may include: clarifying the types of designs and materials that may be considered in design approval; requirements for submissions in order to obtain review by the ARC, procedural requirements, and acceptable Improvement(s) that may be installed without the prior approval of the ARC; architectural standards, design guidelines, requirements, and/or other provisions pertaining to architectural design and approvals; provisions that are different for different types, sizes or prices of Units, construction of residences (including without limitation garages, sprinkler systems, porches and overhangs); and permitting the District, with respect to any violations or alleged violations of any of the Governing Documents, to send demand letters and notices, levy and collect fines and interest, and negotiate, settle and take any other action, including without limitation legal action. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration.

Section 4.10. Variance.

The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Guidelines, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the Community and shall not militate against the general intent and purpose hereof. However, any

variance that may be granted under this Section is only a variance from the requirements of the applicable Governing Document for the individual applicant, and is not a variance from the requirements of any applicable governmental or quasi-governmental agency or entity. No granting of a variance or adjustment to any one applicant/Owner shall constitute a variance or adjustment, or the right to a variance or adjustment, to any or all other applicants/Owners.

Section 4.11. Waivers; No Precedent.

The approval or consent of the Architectural Review Committee 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.

Section 4.12. Liability.

Neither the ARC, nor any members, employees, agents or representative or committee thereof, nor any Declarant, Builder or District, nor any owners, officers, employees or agents thereof (the "**Released Parties**"), shall 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 reviewing any matter, Released Parties shall not be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an Improvement by the ARC, District, or a Declarant, shall 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 Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by, the ARC, District or a Declarant. 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 4.13. Declarant's and District's Exemption; Each Builder's Exemption.

Notwithstanding anything to the contrary in this Declaration, Declarant is exempt from all provisions of this Article and all other provisions of the Governing Documents and any other matters that require ARC review and/or approval, except the requirements to obtain approval of the governmental entities (other than the District or any other governmental entity that enforces any of

the Governing Documents) with jurisdiction thereover as provided in Section 4.2 of this Declaration.

Provided that each Builder's plans and specifications for construction of Improvements are in material accordance with Governing Documents and have been approved in writing by Declarant, each Builder is exempt from the provisions of this Article and all other provisions of the Governing Documents that require ARC review and/or approval, except for the requirements to obtain approval from the governmental entities (other than the District or any other governmental entity that enforces any of the Governing Documents) with jurisdiction thereover as provided in Section 4.2 of this Declaration.

## **ARTICLE 5. INSURANCE**

### **Section 5.1. Insurance.**

The District may maintain insurance in connection with its functions. Such insurance to be maintained by the District may include property insurance, commercial general liability insurance, fidelity coverage and personal liability insurance to protect directors and officers of the District from personal liability in relation to their duties and responsibilities in acting as directors and/or officers on behalf of the District. In addition, the District may maintain insurance against such other risks as the Board of Directors may determine. Nothing herein shall be construed or interpreted as a waiver of the District's governmental immunity as provided by law.

### **Section 5.2. Insurance to be Maintained by Owners.**

Insurance coverage on each Owner's Unit, and the Improvements thereon, as well as on personal property belonging to an Owner to provide for replacement cost coverage, and public liability insurance coverage on each Unit, is the sole responsibility of the Owner of such Unit.

## **ARTICLE 6. EASEMENTS**

### **Section 6.1. Access Easement.**

Each Owner hereby grants to the District, the Board of Directors, the ARC and to their agents, employees and contractors, a right and easement on, over, under, across and through such Owner's Unit for and incidental to inspection and/or enforcement, incidental to any term or provision of any of the Governing Documents. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive entry. The interior of any residence shall not be subject to the easements provided for in this Section.

### **Section 6.2. Drainage Easement.**

Declarant hereby reserves, to itself and to the District, easements for drainage and drainage facilities across the five (5) rear, five (5) front, and five (5) side feet of each Lot; provided, however, that if a residence is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line of such Lot to the exterior wall of the residence on such Lot that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any

Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear, front and side yard drainage easements. Declarant reserves to itself and to the District the right to enter in and upon each such rear, front and side yard drainage easements to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as a Declarant or the District may deem necessary or desirable; provided, however, that such right and authority in the Declarants shall cease at such time as the Special Declarant Rights automatically terminate as provided in Section 1.18 of this Declaration.

Section 6.3. Easement for Unannexed Property.

Declarant and the District hereby reserves, for the use and benefit of any property owned by Declarant and located proximately to the Community which may be annexed pursuant to Article 9 (“Annexable Area”), a non-exclusive, perpetual easement for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, alleys, sidewalks, access ways and similar areas, now or hereafter constructed, erected, installed or located in or on the Community, for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement, reading, and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein collectively the “Annexable Area Easement”). By virtue of this Annexable Area Easement, Declarant generally intends to provide for pedestrian and vehicular access and for utilities services to those portion(s) of the Annexable Area which have not been included in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after Recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration; and expiration of a Declarant’s right to withdraw such portion of the Annexable Area from this Declaration.

**ARTICLE 7. RESTRICTIONS**

Section 7.1. Restrictions Imposed.

The Community shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and transferred, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

Section 7.2. Compliance with Laws.

All Owners, all permittees, and all other Persons, who reside upon or use any Unit or any other portion of the Community, shall comply with all applicable statutes, ordinances, laws, regulations, rules and requirements of all governmental and quasi-governmental entities, agencies and authorities, including without limitation all zoning, PUD, use restrictions and other requirements set forth in any recorded zoning documents or otherwise promulgated by any governmental authority.

Section 7.3. Residential Use; Certain Permitted Business Activities.

Subject to Section 9.4 of this Declaration (Declarant’s and Each Builder’s Use), Units shall be used for residential use only, including uses which are customarily incident thereto, and shall not

be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that the following conditions are satisfied, as determined by the Board: (a) The business conducted is clearly secondary to the residential use of the dwelling unit and is conducted entirely within the dwelling unit; (b) The existence or operation of the business is not detectable from outside of the dwelling unit by sight, sound, smell or otherwise, or by the existence of signs; (c) The business does not result in an undue volume of traffic or parking that affects the Community; (d) The business conforms to all zoning provisions and is lawful in nature; and (e) The business conforms to all District Rules and Regulations and policies and procedures.

#### Section 7.4. Nuisances.

No nuisance shall be permitted which is visible within or otherwise affects the Community or any portion thereof, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of the Units in the Community or any portion thereof. As used herein, the term "**nuisance**" shall include each violation of any of the Governing Documents or law, but shall not include any activities of a Declarant or District which are incidental to the development and construction of, and promotion, marketing, and sales activities in, the Community. No noxious or offensive activity shall be carried on upon any Unit nor shall anything be done or placed on any Unit which is a nuisance.

#### Section 7.5. Animals.

Unless approved by the Board, no animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Community; provided, however, a reasonable number of bona fide household pets (including dogs, cats or other domestic animals) may be kept on a Unit, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Community. The District shall have, and is hereby given, the right and authority to do the following, as well as take such other action(s) with regard to these matters as the Board of Directors may determine: set a maximum number of household pets; regulate the type(s) of pets or animals that are permitted to be kept; determine that any animals or pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; or determine that an Owner is otherwise in violation of any provision of the Governing Documents. If the District determines that any of the foregoing have been or are being violated, the District may take any action(s) to correct the same. The right to keep household pets (or other animals as determined by the Board) is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the District as a result of such pets or animals.

#### Section 7.6. Miscellaneous Improvements.

No advertising or signs of any character shall be erected, placed, permitted or maintained other than: a name plate of the occupant and a street number; a "**For Sale**," "**Open House**," "**For Rent**" and/or security sign(s) of not more than six (6) square each feet posted only for the purpose of selling, renting or evidencing the existence of a security system on such Unit; and political signs and other signs, in conformance with all other laws and regulations; and such other signs, for such length(s) of time, which have the prior written approval of the ARC or are otherwise expressly permitted by the Rule and Regulation or Guidelines or by law; provided, however, that any and all such advertising or signs shall be subject to any and all specifications and/or Guidelines adopted by

the Board of Directors. Notwithstanding the foregoing, any signs, advertising, or billboards, may be used by a Declarant, the District, or a Builder, without regard to any specifications or any Rules and Regulations, and without the prior written approval of the Board, the ARC, or any other Person.

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

Except as may otherwise be permitted in writing by the ARC, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Unit, except inside a residence (including garages, porches and overhangs) or otherwise concealed from view; provided, however, that any such devices may be erected or installed by a Declarant, the District, or a Builder during its development, sales or construction; and provided further, however, that the requirements of this subsection are subject to the Telecommunications Act of 1996 and applicable regulations, as amended from time to time.

No fences shall be permitted without the prior written approval of the ARC, except such fences as may be constructed, installed or located, in the Community, by a Declarant, the District, or a Builder.

This Section 7.6 shall be construed and applied in accordance with all applicable laws.

Section 7.7. Vehicular Parking, Storage and Repairs: Use of Garages.

No house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding, except as hereinafter provided, pickup trucks that are rated 1 ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Unit, unless such parking or storage is entirely within the garage area of such Unit or will be suitably screened from view in accordance with the Rules and Regulations or prior written approval of the Board. However, any such vehicles may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Unit, unless such parking or storage is entirely within the garage area of such Unit. An **“abandoned or inoperable vehicle”** shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of thirty days or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles may be parked for such length(s) of time as determined by the Board and/or as provided in the Rules and Regulations and/or policies and procedures of the District.

In the event the District shall determine that a vehicle is parked or stored in violation hereof, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a

reasonable time thereafter, as determined by the District, the District shall have the right to remove the vehicle at the sole expense of the owner thereof. If a vehicle is removed in accordance with this Section, neither the District nor any officer or agent of the District shall be liable to any Person for towing and storage costs or for any claim of damage as a result of the towing activity. The District's right to remove a vehicle is in addition to, and not in limitation of all other rights of the District, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the District may elect to impose fines or use other available sanctions, rather than exercise its authority to remove a vehicle.

No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent the washing and polishing, on a Unit, of any motor vehicle, boat, trailer, motor cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing subject to any watering restrictions.

Section 7.8. No Activities: No Hazardous Materials or Chemicals.

No activities shall be conducted on any Unit, or within Improvements constructed on any Unit, which are unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Unit, and no open fires shall be permitted on any Unit, except in a contained barbecue unit while attended and in use for cooking purposes, or within a fireplace and/or fire pit, or except such campfires or picnic fires on property which may be designated for such use by the District. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 7.9. No Annoying Lights, Sounds or Odors.

No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Unit which is unreasonably loud or annoying; and no odor shall be permitted from any Unit which is noxious or offensive to others. All outdoor lights must be shielded and floodlights are not permitted. Further, no annoying light, sound or odor shall be permitted in any portion of the Community that may be seen, heard or smelled from any other Unit.

Section 7.10. Restrictions on Trash and Materials.

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate, except inside a suitable, tightly-covered container inside the home (including garages and overhangs along the sides or rear of the home), on any Unit, nor shall any such items be deposited on a street or sidewalk, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any other portion of the Community. No trash, garbage or other refuse shall be burned in outside containers, barbecue pits or the like. All equipment for the storage or disposal of

such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or other trash receptacles shall be maintained in an exposed or unsightly manner.

Section 7.11. Sightly Condition of Units.

Each Unit shall at all times be kept, maintained, repaired and replaced in a good, clean and sightly condition by the Owner thereof.

Section 7.12. Leases.

The term “lease,” as used herein, shall include any agreement for the leasing or rental of a Unit, Improvements thereon, or any portion thereof, and shall specifically include month-to-month rentals and subleases. Any Owner shall have the right to lease his Unit, or any portion thereof, under the following conditions: (a) All leases shall be in writing and for a term of not less than 90 days and no Unit may be rented or leased for short term uses including without limitation short term rentals through VRBO, AirBnB, HomeAway or similar vacation and short term rental services without the approval of the Board; and (b) All leases shall provide that the terms of the lease and lessee’s occupancy of the leased premises shall be subject in all respects to the Governing Documents; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

Section 7.13. Non-Interference with Grade and Drainage.

The grading upon each Unit shall be maintained by the Owner thereof or by any owners association formed for any portion of the Property which is responsible for the maintenance of the grading on such Unit at the slope and pitch fixed by the final grading thereof. No Owner or any such owners 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 Unit is completed by the Builder of residence or structure on the Unit in accordance with the approved lot grading plan as approved by the City of Aurora. Any Owner who changes the established drainage on his or her Unit may void warranties applicable to affected components of the home 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 shall hold harmless the District, Declarant, the Board and the ARC for any and all damage to any party caused by any change to the established drainage on the Owner’s Unit.

Section 7.14. Restrictions on Mining or Drilling.

No portion of the surface of any property within the Community may be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, earth or water. Nothing herein is intended to prevent slant drilling or other techniques to access such minerals, oil and gas in a manner that does not utilize or damage the surface.

## **ARTICLE 8. DISPUTE RESOLUTION**

Section 8.1. Intent and Applicability of Article and Statutes of Limitation.

Each Person subject to this Declaration agrees to encourage the amicable resolution of disputes under any of the Governing Documents, without the emotional and financial costs of



litigation. Accordingly, each Person covenants and agrees to submit all Claims (as defined below) to final, binding arbitration in accordance with the procedures set forth in Section 8.4 hereof, and not to a court of law.

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

No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 8.2. Definition of "Claim" Under this Article.

For purposes of this Article, "**Claim**" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between any Person(s) under any of the Governing Documents, and one or more other Persons, 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, the construction or installation of any Improvements, roads, utilities or other improvements by Declarant, or any rights, obligations or duties under any of the Governing Documents.

Section 8.3. Exclusions from "Claim".

Unless specifically exempted by this Article, all Claims shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all parties thereto otherwise agree in writing, "**Claim**" does not include (and the same shall not be subject to the provisions of this Article) any action by the ARC, the Board of Directors of the District, or the Declarant, to enforce any provision(s) of this Declaration, the Guidelines or the Rules and Regulations, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief), to collect any costs, fees or fines imposed by the District, and/or such other ancillary relief as a court may deem necessary.

Section 8.4. Final, Binding Arbitration.

If a person having a Claim ("**Claimant**") desires to pursue the Claim, Claimant shall initiate final, binding arbitration of the Claim with Judicial Arbitrator Group ("**JAG**") or any other person agreed to by the Claimant and the Person against whom the Claimant has asserted a Claim, in accordance with the then-current rules of JAG or other agreed arbitrator. Any judgment upon the award rendered by the arbitrator shall be final and not subject to appeal and may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the parties to the dispute, there shall be one arbitrator who shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

Each party to a dispute 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 to a dispute unsuccessfully contests the validity or scope of arbitration in a court of law, reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial and on appeal, shall be awarded to the non-contesting party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

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

Section 8.5. Liability for Certain Failures of District or District.

No director or officer of the District or ARC shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation, arbitration, or other dispute resolution, if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent. So long as the Special Declarant Rights remain in effect, this Article 8 shall not be amended, repealed or replaced without the written consent of the Declarant.

## **ARTICLE 9. GENERAL PROVISIONS**

Section 9.1. Enforcement.

This Section 9.1 is subject to Article 8 of this Declaration (Dispute Resolution).

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in any of the Governing Documents, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Remedies shall be cumulative and no remedy shall be exclusive of other remedies that may be available. The District shall use reasonable efforts to enforce the provisions of the governing documents in accordance with the terms of this Declaration. The District, the Declarant and any aggrieved Owner shall have the right, but not the duty, to institute, maintain and prosecute any such proceedings. For each claim, including counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions or any of the Governing Documents, the prevailing party shall be awarded its reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim; except that, any Person who brings an action against any Declarant, any Builder, the District, or the ARC, regarding enforcement, or non-enforcement, of any provision(s) of the Governing Documents, shall not be awarded their costs or any attorney fees. Failure by Declarant, the District or any Owner to enforce any covenant, restriction or other provision contained in any of the Governing Documents, shall in no event give rise to any liability for damages, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other provision of the Governing Documents, regardless of the number of violations or breaches that may occur.

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: (a) the District may record a notice of violation against the Unit on which the violation exists; (b) The District has the right to remove, correct or otherwise remedy any violation in any manner the District deems appropriate; (c) 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; and (d) 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 shall give the Owner to be subject to the fine notice and the opportunity for a hearing before the Board of Directors of the District. 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.

Section 9.2. Severability.

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

Section 9.3. Annexation; Withdrawal.

The Declarant may annex to the Property additional property, including any property which may previously have been withdrawn from the Property. Each such annexation, if any, shall be accomplished by recording of an annexation document that expressly states that the property described therein shall be subject to this Declaration and all terms and provisions hereof.

Declarant hereby reserves the right to Record one or more documents in order to clarify the effect of any annexation(s). Each such document(s), if any such document(s) are Recorded by a Declarant, may state the legal description(s) of any property which has been annexed, and may include such other provisions as a Declarant may determine.

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 effectuated by the Declarant recording a withdrawal document in the Records. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn property from this Declaration so that, from and after the date of recording a withdrawal document, the property so withdrawn shall not be part of the Property or the Community, or in any way subject to the terms hereof.

Section 9.4. Declarant's and Each Builder's Use.

Notwithstanding anything to the contrary, it shall be expressly permissible for Declarant and each Builder, and their respective employees, agents, and contractors, to perform all activities, and to maintain Improvements, tools, equipment, and facilities, on the portion of the Property owned by them and also on public property, incidental to development, construction, use, rental, sale, occupancy, and/or advertising. The foregoing includes locating, maintaining and relocating management offices, signs, sales offices, model units and construction offices and trailers, in such numbers, of such sizes, and at such locations as Declarant or Builder determines, and for access to, from, and incidental to such uses. Nothing contained in this Declaration shall limit the rights of Declarant or a Builder to conduct all construction, promotion, sales, and marketing activities as such Declarant or such Builder determines, and to use the easements provided in this Declaration for those and other purposes. Further, nothing contained in this Declaration shall limit the rights of a Declarant or a Builder, or require a Declarant or a Builder to obtain any approvals: (a) to excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements on any property as sales offices, management offices, model units and/or

construction offices; and/or (c) to require a Declarant to seek or obtain any approvals for any activity.

Section 9.5. Duration, Revocation, and Amendment.

Each and every provision of this Declaration shall run with and bind the land perpetually from the date of Recording of this Declaration. Except as otherwise provided in this Declaration, this Declaration may be amended by the affirmative vote or agreement of Owners holding at least sixty-seven percent (67%) of the Units, with each Unit being allocated one vote; provided, however, prior to the termination of the Special Declarant Rights no amendment of this Declaration shall be effective without the prior written approval of the Declarant. Further, amendments shall be applicable only to disputes, issues, circumstances, events, claims or causes of action that arose out of circumstances or events that occurred after the Recording of such amendment; and no amendment shall be applied retroactively to any earlier occurring disputes, issues, events, circumstances, actions, claims or causes of action.

Notwithstanding anything to the contrary, any of the Governing Documents may be amended, in whole or in part, by the Declarant without the consent or approval of any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, including without limitation the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, and the federal national mortgage association. Such right of amendment shall terminate automatically as provided in Section 1.18 of this Declaration.

Notwithstanding anything to the contrary, any of the Governing Documents, or any map or plat, may be amended in whole or in part, by Declarant without the consent or approval of any other Person in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.18 of this Declaration.

Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, Recorded, and certified by any officer of the District designated for that purpose; provided, however, prior to the termination of the Special Declarant Rights no amendment of this Declaration shall be effective without the prior written approval of the Declarant. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the District has received the requisite approvals. Amendments to this Declaration which may be made by Declarant pursuant to this Declaration may be signed by a Declarant and shall require no other signatory.

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. Registration of Mailing Address.

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the District, and all statements, demands and other notices

intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest shall, subject to Section 2.4 of this Declaration (Authenticated Electronic Representation), be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the District of a registered address, then any statement, demand or other notice may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit.

Section 9.7. Limitation on Liability.

Declarant, any Builder, the District, the ARC, and their respective directors, officers, shareholders, members, partners, agents and employees, shall not be liable to any Person for any action or for any failure to act arising out of any of the Governing Documents, unless the action or failure to act was not in good faith and was done or withheld with malice. Further, the District does not waive, and no provision of this Declaration shall be deemed a waiver of, the immunities and limitations to which the District is entitled as a matter of law, including the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S., as amended. The release and waiver set forth in Section 4.11 (Waiver) shall apply to this Section.

Section 9.8. 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 a Declarant, any Builder, the District, the Board of Directors, the ARC, or their respective owners, officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their 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 shall be specifically set forth in writing. The release and waiver set forth in Section 4.11 (Waiver) shall apply to this Section.

Section 9.9. Disclaimer Regarding Safety.

DECLARANT, EACH BUILDER, THE DISTRICT, THE BOARD OF DIRECTORS, THE ARC, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, OWNERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, EACH BUILDER, THE BOARD OF DIRECTORS, THE ARC, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE GOVERNING DOCUMENTS, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 4.11 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 9.10. Development Within and Surrounding the Community and Adjacent Uses.

Each Owner acknowledges that development within and surrounding the Community 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 Community, views of or from the Community or the Units, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Each Owner acknowledges that the Community is or may be located in or near an airport influence district and is or may be subject to an Avigation Easement. Owner further acknowledges that the Community may be subject to noise, vibrations, fumes, dust, fuel particles, and all other effects of aircraft operating near the Community. By accepting a deed to a Unit, each Owner accepts title to such Unit subject to the foregoing, and waives and releases any claim against the Declarant, any Builder, the District, the Board of Directors, the ARC, and their respective owners, 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 4.11 (Waiver) shall apply to this Section.

Section 9.11. Waiver.

By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges Declarant, each Builder, the District, the Board of Directors, the ARC, and their respective owners, 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, including without limitation those contained in Sections 9.7, 9.8, 9.9 and 9.10.

Section 9.12. 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 9.13. 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 9.14. Use of "Include," "Includes" and "Including".

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

Section 9.15. Action.

Any action that has been or may be taken by a Declarant, the District, a Builder, the Board, the ARC, any Member, any director, any committee, 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 taken by a Declarant, the District, a Builder, the Board, the ARC, any director, any committee, or any other Person, shall be deemed to be taken "**in the sole discretion**" of each of such parties.

Section 9.17. Run with Land; Binding Upon Successors.

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

*[Signatures on following pages.]*

Unofficial Copy

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 21<sup>st</sup> day of March, 2019.

**DECLARANT:**

**Meritage Homes of Colorado, Inc.,**  
An Arizona corporation

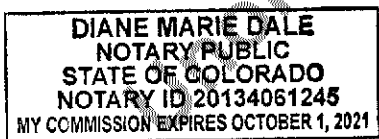
By: [Signature]  
Name: Glenn Nick  
Title: Vice President - Land

STATE OF COLORADO )

COUNTY OF ARAPAHOE ) ss. )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of MARCH, 2019, by GLENN NICK as V.P. LAND of Meritage Homes of Colorado, Inc., an Arizona corporation.

Witness my hand and official seal:



(S E A L)

Notary Public [Signature: Diane Marie Dale]

My Commission Expires: 10/1/2021





**EXHIBIT A  
TO  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR EAST CREEK**

Lots 1 through 13, inclusive, Block 1,  
Lots 1 through 5, inclusive, Block 2,  
Lots 1 through 22, inclusive, Block 3,  
Lots 1 through 24, inclusive, Block 4,  
Lots 1 through 20, inclusive, Block 5,  
Lots 1 through 20, inclusive, Block 6,  
Lots 1 through 26, inclusive, Block 7,  
Lots 1 through 16, inclusive, Block 8, and  
Tracts A through V, inclusive,  
East Creek Subdivision Filing No. 1,  
County of Arapahoe, State of Colorado

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