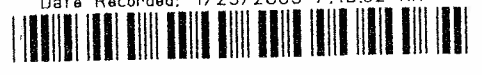


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even Colorado, LLC
Attn: Bill James
10000 N. Meadows Drive
Littleton, CO 80124

Arapahoe County Clerk & Recorder, Nancy A. Doty
Reception #: B5060926
Receipt #: 5238165
Pages Recorded: 30
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Protective Covenants

Of

Beacon Point

PROTECTIVE COVENANTS
OF BEACON POINT
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Exhibit A – Property

Exhibit B – Multifamily Parcel

**PROTECTIVE COVENANTS
OF BEACON POINT**

THESE PROTECTIVE COVENANTS OF BEACON POINT ("Covenants") are made and entered into the date and year hereinafter set forth by LENNAR COLORADO, LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the County of Arapahoe, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference ("Property"); and

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

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

WHEREAS, pursuant to C.R.S. §32-1-1004, it is the intention of the Declarant, in imposing these Covenants on the Property, to empower East Plains Metropolitan District, a metropolitan district that governs the Property, to furnish covenant enforcement and design review services in the Property and to use revenues therefore that are derived from the Property.

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

ARTICLE 1. DEFINITIONS

Section 1.1. *Builder.*

"Builder" means (i) any Person who acquires more than one Lot for the purpose of constructing a residential structure on each such Lot for sale to the public and (ii) any Person who acquires more than one Lot for sale to any Person fitting the description in Section 1.1(i) and/or for constructing a residential structure on any of such Lots for sale to the public.

Section 1.2. *Covenants.*

"Covenants" means this Protective Covenants, as amended and supplemented from time to time.

Section 1.3. *Declarant.*

"Declarant" means Lennar Colorado, 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 under these Covenants (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 Arapahoe County, Colorado.

Section 1.4. *Development Period.*

"Development Period" means the period of time commencing on recordation of these Covenants in Arapahoe County, Colorado and expiring upon conveyance by Declarant of all of the property described on the attached Exhibit A to the first Owners thereof other than the Declarant or a Builder.

Section 1.5. *Improvements.*

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

Section 1.6. *Lot.*

"Lot" means each platted lot that is now or hereafter included in the real property 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 property annexed to these Covenants.

Section 1.7. *Metropolitan District.*

"Metropolitan District" means East Plains Metropolitan District, and/or any other metropolitan district, to whom the then-Metropolitan District may, from time to time, transfer or assign any or all of the rights and duties of the Metropolitan District under these Covenants. Each such assignment or transfer, if any, shall be effective upon recording in Arapahoe County, Colorado, of a document of transfer or assignment, duly executed by the then-Metropolitan District.

Section 1.8. *Owner.*

"Owner" means each fee simple title holder of a Lot, including without limitation Declarant, any Builder 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.

Section 1.9. *Person.*

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

Section 1.10. *Property.*

"Property" means the real estate described on the attached Exhibit A, as 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 resubdivide any portion thereof; provided, however, that the Property shall not include any property that has been withdrawn as provided in Section 5.7 hereof.

ARTICLE 2. DESIGN REVIEW

Section 2.1. *Design Review Requirements.*

2.1.1. Except as provided in Section 2.3 of these Covenants, 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 these Covenants and the Guidelines (as hereinafter defined), if any, and unless at least two (2) sets of 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, windbreaks and grading plan, as well as such other materials and information as may be required by the governing board of the Metropolitan District), shall have been first submitted to and approved in writing by the governing board of the Metropolitan District.

2.1.2. The governing board of the Metropolitan District shall exercise its reasonable judgment to the end that all Improvements 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 governing board of the Metropolitan District may require as a condition to its considering an approval request that the applicant(s) pay or reimburse the Metropolitan District for the expenses incurred by the Metropolitan District in the review process.

2.1.3. 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 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 City

of Aurora, Colorado, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

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

Section 2.2. Guidelines.

The governing board of the Metropolitan District has the authority to promulgate architectural standards, rules, regulations and/or guidelines (collectively the "Guidelines") to interpret and implement the provisions of this Article and these Covenants. Without limiting the generality of the foregoing, such provisions 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 governing board of the Metropolitan District. In addition, such provisions may provide for blanket approvals, interpretations, or restrictions. 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, or may state that only one or more types of fences are acceptable and no other types will be approved. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with these Covenants.

Section 2.3. Declarant's and Builder's Exemption.

2.3.1. The Declarant shall be exempt from the provisions of this Article except for the requirements contained in Section 2.1.3 hereof. This exemption shall terminate upon expiration of the Development Period.

2.3.2. Notwithstanding anything to the contrary contained in these Covenants, as long as a Builder has received design approval from the Declarant, such Builder shall be exempt from the provisions of this Article except for the requirements contained in Section 2.1.3 hereof. This exemption shall terminate upon expiration of the Development Period.

Section 2.4. Procedures.

The governing board of the Metropolitan District shall approve or disapprove all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the governing board may require in conjunction therewith. A stamped or printed notation, initialed by a member of the governing board, affixed to

any of the plans and specifications, shall be deemed a sufficient writing. However, the governing board 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 governing board shall be conclusive evidence of compliance with this Article 2, provided that the Improvements are constructed in compliance with the plans and specifications as approved. Failure to approve within 45 days shall be deemed disapproval.

Section 2.5. *Vote; Appeal.*

A majority vote of the governing board of the Metropolitan District is required to approve a request for architectural approval or any other matter to be acted on by the governing board of the Metropolitan District, unless the governing board 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 governing board of the Metropolitan District 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 governing board, upon a written request therefor submitted to the governing board within thirty (30) days after such decision by the governing board's representative.

Section 2.6. *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 with the requirement that approval for Improvements be obtained from the governing board of the Metropolitan District; provided, however, the governing board of the Metropolitan District, in its discretion, may grant extensions of time for completion of any proposed Improvements.

Section 2.7. *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 governing board of the Metropolitan District. Until the date of receipt of such Notice of Completion, the governing board of the Metropolitan District 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 2.8. *Inspection of Work.*

The governing board of the Metropolitan District or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article; provided, however, that the right of inspection shall terminate sixty (60) days after the governing board of the Metropolitan District shall have received a Notice of Completion from the applicant.

Section 2.9. *Notice of Noncompliance.*

If, as a result of inspections or otherwise, the governing board of the Metropolitan District finds that any Improvement has been done without obtaining the approval of the governing board of the Metropolitan District, 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 2.6 hereof, the governing board of the Metropolitan District shall notify the applicant in writing of the noncompliance; which notice of noncompliance shall be given, in any event, within sixty (60) days after the governing board of the Metropolitan District receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance.

Section 2.10. *Correction of Noncompliance.*

If the governing board of the Metropolitan District determines that a noncompliance exists, the Person responsible for such noncompliance shall remedy or remove (and return the subject property or structure to its original condition) the same within a period of not more than forty-five (45) days from the date of receipt of the notice of noncompliance. If such Person does not comply with the ruling within such period, the governing board of the Metropolitan District may, at its option, 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 governing board of the Metropolitan District, upon demand, for all costs and expenses incurred with respect thereto.

Section 2.11. *Cooperation.*

The governing board of the Metropolitan District shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other architectural review committees, or one or more other boards or committees that exercise architectural or design review functions, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the governing board of the Metropolitan District in its discretion. The costs and expenses for all such matters, if any, shall be shared or apportioned between such boards or committees and the Metropolitan District, as the governing board of the Metropolitan District may determine in its discretion from time to time. Additionally, the governing board of the Metropolitan District shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other architectural review committees, or one or more other boards or committees that exercise architectural review functions, 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 governing board of the Metropolitan District; in any such instance, the governing board of the Metropolitan District shall provide for remittance to such entity of any amounts collected by the governing board of the Metropolitan District or to the Metropolitan District of any amounts collected by such entity.

Section 2.12. *Access Easement.*

Each Lot shall be subject to an easement in favor of the Metropolitan District and the governing board, including the agents, employees and contractors thereof: for performing any of the actions contemplated in this Article, including without limitation Sections 2.8 and 2.10 hereof. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any other property or any Lot, the Owner responsible for the damage or expense to avoid damage, or the governing board of the Metropolitan District if it is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; 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 warned of impending 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 2.13. *No Liability.*

The governing board of the Metropolitan District and the members thereof, as well as any representative of the governing board 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 governing board of the Metropolitan District 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 governing board of the Metropolitan District 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 governing board of the Metropolitan District.

Section 2.14. *Variance.*

The governing board of the Metropolitan District, in its sole discretion, may grant reasonable variances or adjustments from any conditions and restrictions imposed by these Covenants, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 2.15. *Waivers; No Precedent.*

The approval or consent of the governing board of the Metropolitan District, 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 governing board 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 3. RESTRICTIONS

Section 3.1. *Restrictions Imposed.*

The Property is subject to all requirements, covenants, restrictions and other matters stated on the recorded plats of the Property, or any portion thereof, as well as on all other documents recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado, as amended. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in these Covenants. Notwithstanding anything to the contrary, any of the provisions, conditions, limitations, restrictions agreements or covenants contained in these Restrictions may hereafter be modified or supplemented in any respect as to any portion(s) of the Property by one or more documents that are approved in writing, in advance, by the governing board of the Metropolitan District, and recorded in each County in which such portion(s) of the Property are located, provided that, if any such modification or supplement affects any portion of the Property owned by a Person other than Declarant, that Person's or, in the case of a portion of the Property owned by multiple Persons, two-thirds (2/3rds) of such Persons' prior written consent to such modification or supplement shall be required.

Section 3.2. *Multifamily Subassociation.*

Prior to the sale of any Lot within the real property described on Exhibit B attached hereto and incorporated herein by this reference (the "Multifamily Parcel") to any Person other than Declarant or any Builder, the Declarant or the Builder which owns the Multifamily Parcel or any portion thereof may record a Declaration of Covenants, Conditions and Restrictions (the "Subassociation Declaration") with respect to the Multifamily Parcel or applicable portion thereof and form a homeowners association (the "Subassociation") in connection therewith. If a Builder wishes to record a Subassociation Declaration, such Subassociation Declaration and any design or architectural standards, rules, regulations and/or guidelines (the "Subassociation Guidelines") in connection therewith or pursuant thereto shall be subject to Declarant's consent, not to be unreasonably withheld, which consent shall be obtained prior to recording of the Subassociation Declaration; the Subassociation Declaration shall not be amended (other than amendments to correct clerical, typographical or technical errors) without the prior consent of the governing board of the Metropolitan District, which consent shall not be unreasonably withheld. A Subassociation, if formed, shall be responsible for enforcement and application of the applicable Subassociation Guidelines; in addition, to the extent provided in the Subassociation Declaration and/or Subassociation Guidelines the Subassociation may own portions of the Multifamily Parcel and/or be responsible for maintenance of portions of the Multifamily Parcel including, but not limited to, maintenance of portions of Lots. If, as to any portion of the Multifamily Parcel, a Subassociation is formed and the Declarant approves a Subassociation Declaration and Subassociation Guidelines with respect thereto, as to such portion of the Multifamily Parcel, all references in these Covenants

to the Guidelines shall mean and refer to the Subassociation Guidelines and such portion of the Multifamily Parcel, and any part thereof, shall not be subject to the Guidelines but shall only be subject to the Subassociation Guidelines.

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

Subject to Section 5.8 of these Covenants, Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

3.3.1. the business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

3.3.2. the existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

3.3.3. the business does not result in an undue volume of traffic or parking within the Property;

3.3.4. the business conforms to all zoning requirements and is lawful in nature;
and

3.3.5. the business conforms to the Guidelines as well as any rules and regulations that may be imposed by the governing board of the Metropolitan District from time to time on a uniform basis.

Section 3.4. *Household Pets.*

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners and residents of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), 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 Lots. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed and accompanied by the Owner or his or her representative, who shall be responsible for collecting and properly disposing of any animal waste. The governing board of the Metropolitan District shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household 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 that an Owner or resident is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to household pets; or that an Owner or resident is otherwise in violation of the provisions of this Section. In any such case, the governing board of the Metropolitan District may take such action(s) as it may deem appropriate.

An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred as a result of such pets.

Section 3.5. *Temporary Structures; Unsightly Conditions.*

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

Section 3.6. *Miscellaneous Improvements.*

3.6.1. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent," or security sign of not more than five (5) square feet in the aggregate. Notwithstanding the foregoing, signs, advertising, or billboards used by the Declarant (or by any Builder with the express written consent of the Declarant, not to be unreasonably withheld) in connection with the sale or rental of the Lots, or otherwise in connection with development of or construction on the Lots, shall be permissible.

3.6.2. No clotheslines, drying yards, service yards, wood piles, storage areas or chain-linked (or other) dog runs, shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot.

3.6.3. No types of refrigerating, cooling or heating apparatus shall be permitted on a roof. Further, no such apparatus shall be permitted elsewhere on a Lot except when appropriately screened and approved by the governing board of the Metropolitan District. Without limiting the foregoing, conventional air conditioning units located on the ground of a Lot are permissible when approved in accordance with the preceding sentence. Notwithstanding the foregoing, with respect to the Multifamily Parcel, refrigerating, cooling and heating apparatus shall be permitted in such locations within the Multifamily Parcel (which may include locations on common areas within the Multifamily Parcel) as are approved by the Declarant in accordance with Section 2.3.2 or in accordance with a Subassociation Declaration and Subassociation Guidelines adopted in accordance with Section 3.2, without requirement of additional approval from the governing board of the Metropolitan District.

3.6.4. Except as may otherwise be permitted by the governing board of the Metropolitan District, 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 Lot, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant or by any Builder during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended, the governing board of the Metropolitan District shall be empowered to adopt rules and regulations governing the types of "antenna" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or applicable regulations, as amended, establish reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

3.6.5. Other than fences which may be constructed, installed or located by the Declarant (or by a Builder as part of Improvements approved by Declarant in accordance with Section 2.3.2 hereof) in its development of, or construction of, Improvements in the Property, no fences shall be permitted except with the prior written approval of the governing board of the Metropolitan District. Any fences constructed on a Lot shall be maintained by the Owners of that Lot.

3.6.6. No wind generators shall be constructed, installed, erected or maintained on any Lot.

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

3.7.1. Except as otherwise provided in Section 3.6.2 hereof and/or in rules and regulations which may be adopted by the governing board of the Metropolitan District from time to time, vehicles shall be parked only in the garages, in the driveways, if any, serving the Lots, or in appropriate spaces or areas which may be designated by the governing board of the Metropolitan District from time to time, except that, any vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. Notwithstanding the foregoing, there shall be certain parcels within the Multifamily Parcel which shall be used for surface parking lots which will serve the Multifamily Parcel exclusively. Vehicles shall be subject to such reasonable rules and regulations as the governing board of the Metropolitan District or, if applicable, Subassociation, may adopt from time to time. The Declarant or, in the event a Subassociation has been established with respect to the Multifamily Parcel, the Subassociation, may designate certain parking areas (which may include parking garages) for visitors or guests and the governing board of the Metropolitan District (or, if applicable, a Subassociation) may adopt reasonable rules and regulations, from time to time, governing such areas.

3.7.2. Except as may otherwise be set forth in the rules and regulations or Guidelines, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers,

boats and other watercraft, recreational vehicles, golf carts and boat trailers, shall be parked only in enclosed garages or specific areas, if any, which may be designated by the governing board of the Metropolitan District or, in the event a Subassociation has been established with respect to the Multifamily Parcel, the Subassociation from time to time. This restriction, however, shall not restrict trucks or commercial vehicles which are necessary for construction or for the maintenance of any portion of the Property or any Improvements located thereon, nor shall such restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted in the Property except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours without the prior approval of the governing board of the Metropolitan District.

3.7.3. In the event the governing board of the Metropolitan District shall determine that a vehicle is parked or stored in violation of subsections 3.6.1 or 3.6.2 hereof, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall 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 governing board of the Metropolitan District in its discretion from time to time, the governing board of the Metropolitan District shall have the right to remove the vehicle at the sole expense of the owner thereof.

3.7.4. 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 Property unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. Any Owner or other Person undertaking any such activities shall be solely responsible for, and assumes all risks of, such activities, including adoption and utilization of any and all necessary safety measures or precautions, including but not limited to, ventilation. **DECLARANT AND EACH BUILDER HEREBY DISCLAIM ANY AND ALL OBLIGATIONS REGARDING, RELATING TO OR ARISING OUT OF THE PERFORMANCE OF ANY MAINTENANCE, SERVICING, REBUILDING, REPAIR, DISMANTLING, OR REPAINTING OF ANY TYPE OF VEHICLE, BOAT, TRAILER, MACHINE OR DEVICE OF ANY KIND WITHIN ANY LOT BY ANY OWNER OR OTHER PERSON.** The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle on a Lot, together with those activities normally incident and necessary to such washing and polishing.

Section 3.8. *Nuisances.*

No nuisance shall be permitted which is visible within or otherwise affects any portion of the Property, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the

term "nuisance" shall include each violation of these Covenants and the Guidelines, if any, but shall not include any activities of the Declarant or of a Builder. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no unlawful use shall be permitted or made of the Property or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Property, or any portion thereof, shall be observed.

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

No activities shall be conducted on any Lot or within Improvements constructed on any 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 Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot 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 3.10. *No Annoying Lights, Sounds or Odors.*

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled from any Lot. In addition to the foregoing, no electromagnetic, light or any physical emission which might interfere with aircraft, aviation, communications or navigational aids shall be permitted.

Section 3.11. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup; provided, however, no such container may be deposited on a street for garbage pickup prior to 5:00 a.m. on the day such garbage will be picked up. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. Notwithstanding the foregoing, with respect to the Multifamily Parcel only, subject to the provisions of Sections 2.3.2 and 3.2, trash dumpsters or facilities may be located within the Multifamily Parcel for use by Persons owning Lots within the Multifamily Parcel only.

Section 3.12. *Lots to be Maintained.*

Subject to Section 3.5 hereof, each Lot shall at all times be kept in a clean and sightly condition by the Owner(s) thereof. Notwithstanding the foregoing, to the extent provided by a Subassociation Declaration and/or Subassociation Guidelines, the applicable Subassociation may be responsible for some maintenance obligations with respect to Lots within the Multifamily Parcel.

Section 3.13. *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, as long as all leases provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of these Covenants and the Guidelines; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

Section 3.14. *Landscaping.*

Landscaping shall be installed on the side, front and back yards of each Lot by the Owner thereof within one (1) year after acquisition of title to such Lot by the first Owner of such Lot (other than Declarant or a Builder), subject to delays for moratoriums imposed by any governmental entity. Landscaping plans must be submitted to the governing board of the Metropolitan District for review, and the approval of such plans shall be obtained from the governing board prior to the installation of landscaping, except where installed by the Declarant or a Builder who is exempt from Article 2 hereof. Each Owner shall maintain all landscaping on such Owner's Lot in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds and debris, and replacement of landscaping.

Section 3.15. *Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.*

3.15.1. Each Owner shall maintain the grading upon his Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner agrees that he will not in any way interfere with the established drainage pattern over his Lot. In the event that it is necessary or desirable to change the established drainage over any Lot, then the Owner thereof shall submit a plan to the governing board of the Metropolitan District for its review and approval, in accordance with the provisions of Article 2 of these Covenants and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Lot by the Declarant, or by a Builder, is completed.

3.15.2. The Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5)

feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery by "controlled hand-watering," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls and slabs.

Section 3.16. *Erosion Control.*

The storm water program throughout the United States arises from the Clean Water Act of 1972 and regulations established by the U.S. Environmental Protection Agency, as well as other laws and regulations. These requirements may be implemented and expanded through state and local regulations and permits, but the federal laws are federally enforceable. The use of landscape materials (such as top soil, mulches, natural and manufactured fertilizers, crushed rock, sand, etc.) that potentially deposit silts, dusts, and debris into the storm water system near a Lot must be managed to reasonably preclude run-off or other disbursement (such as being blown) during stormy conditions. These materials should not be placed upon or adjoining any hard-surfaces such as driveways, walkways, curb, gutter, or street, where the potential for runoff is very high. If temporary storage results in these materials being located on these areas, then erosion control devices must be in place at the time of such storage. Some examples of erosion control devices are sandbags, encased straw, small stone rolls, straw bales, plastic tarps, etc. Extreme care must also be taken when handling or storing chemicals such as oils, fuels, paints, fertilizers (liquid or dry), trash, etc., and such items must also be reasonably prevented from entering the storm water system. Generally, the storm water system starts at the curb or drainage system on each Lot and ends up eventually in the Nation's waterways.

ARTICLE 4. ALTERNATIVE DISPUTE RESOLUTION

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

4.1.1. Each Bound Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit any Claims (as defined below) to the procedures set forth in Section 4.5 hereof.

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

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

Section 4.2. *Definitions Applicable to this Article.*

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

4.2.1. "AAA" means the American Arbitration Association.

4.2.2. "Bound Party" means each of the following: Declarant, its officers, directors, employees and agents; any Builder or contractor, and their respective directors, officers, members, partners, employees and agents, who construct or place residences or other Improvements on the Property; the Metropolitan District, its officers, directors, members and agents; all Persons subject to these Covenants; and any Person not otherwise subject to these Covenants who agrees to submit to this Article. Notwithstanding the foregoing, "Bound Party" shall not include any of the parties identified in this Section 4.2.2, including but not limited to Declarant, a Builder, and/or any Owner, in the event such parties have jointly entered into a separate written agreement providing for dispute resolution applicable to the Claim; in such circumstance, the dispute resolution mechanism set forth in such separate written agreement between such parties shall apply with respect to such Claim unless the parties mutually agree to submit such Claim to the provisions of this Article.

4.2.3. "Claimant" means any Bound Party having a Claim.

4.2.4. "Claim" means, except as exempted by the terms of this Article, any claim, grievance or dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Bound Party under any of the Governing Documents; (ii) the design or construction of Improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

4.2.5. "Governing Documents" means these Covenants and the Guidelines, if any.

4.2.6. "Notice" means the written notification given by a Claimant to a Respondent and which shall comply with the requirements of Section 4.5.1 hereof.

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

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

4.2.9. "Termination of Mediation" means a period of time expiring thirty (30) days after submission of the matter to mediation (or within such other time as determined by the mediator or agreed to by the Parties) and upon the expiration of which the Parties have not settled the Claim.

4.2.10. "Termination of Negotiations" means a period of time expiring thirty (30) days after the date of the Notice (or such other period of time as may be agreed upon by the Parties) and upon the expiration of which the Parties have not resolved a Claim.

Section 4.3. *Commencement or Pursuit of Claim Against Bound Party.*

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

4.3.2. Prior to any Bound Party commencing any proceeding to which another Bound Party is a party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

Section 4.4. *Claims.*

Unless specifically exempted below, all Claims between any of the Bound Parties shall be subject to the provisions of Section 4.5 hereof. Notwithstanding the foregoing, unless all Parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 4.5 hereof:

4.4.1. any suit by the governing board of the Metropolitan District or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to enforce any of the provisions of these Covenants;

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

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

Section 4.5. *Mandatory Procedures.*

4.5.1. *Notice.* Prior to proceeding with any claim against a Respondent, each Claimant shall give a Notice to each Respondent, which Notice shall state plainly and concisely:

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

4.5.1.2 the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

4.5.1.3 the proposed remedy; and

4.5.1.4 the fact that Claimant will give the Respondent an opportunity to inspect all Property and Improvements potentially involved with the Claim, and that

Claimant will meet with Respondent not sooner than thirty (30) days after such inspection to discuss in good faith ways to resolve the Claim.

4.5.2. Negotiation and Mediation.

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

4.5.2.2. Upon a Termination of Negotiations, Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Supplemental Rules for Residential Construction Mediation Rules in effect on the date of the notice that is provided for in Section 4.5.1 of these Covenants. If there are no Supplemental Rules for Residential Construction Mediation Rules then in effect, the AAA's Construction Industry Mediation Rules shall be utilized.

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

4.5.2.4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

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

4.5.2.6. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 4.5.2 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 4.5 hereof. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

4.5.3. Binding Arbitration.

4.5.3.1. Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplemental Rules for Residential Construction Arbitration Rules in effect on the date of the notice that is provided for in Section 4.5.1 of these Covenants. If there are no Supplemental Rules for Residential Construction Arbitration Rules then in effect, the AAA's Construction Industry Arbitration Rules shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

4.5.3.2. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

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

Section 4.6. *Amendment.*

Notwithstanding anything to the contrary contained in these Covenants, for twenty-five (25) years after termination of the Development Period, this Article may not be amended without the prior written consent of the Declarant.

ARTICLE 5. GENERAL PROVISIONS

Section 5.1. *Enforcement.*

This subsection is subject to Article 4 of these Covenants (Alternative Dispute Resolution). Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in these Covenants, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. The Metropolitan District 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. Except as otherwise provided in Article 4 hereof, in any action instituted or maintained

under these Covenants or any other such documents, the prevailing party shall be entitled to 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 or any Owner to enforce any covenant, restriction or other provision herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

Section 5.2. *Severability.*

All provisions of these Covenants are severable. Invalidation of any of the provisions, including without limitation any provision(s) of Article 4 of these Covenants (Alternative Dispute Resolution), by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 5.3. *Duration, Revocation and Amendment.*

5.3.1. Each and every provision of these Covenants shall run with and bind the land perpetually from the date of recording of these Covenants. Except as otherwise provided in these Covenants (including without limitation Section 4.6), these Covenants may be amended by a vote or agreement of the Owners of at least sixty-seven percent (67%) of the Lots; provided that, during the Development Period, no such amendment shall be effective without the prior, written consent of the Declarant.

5.3.2. Notwithstanding anything to the contrary contained in these Covenants, these Covenants or any map or plat, may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner or any other Person, in order to correct clerical, typographical, or technical errors, or to clarify any of these Covenants or any provision hereof. The Declarant's right of amendment set forth in the preceding sentence shall terminate concurrently with expiration of the Development Period.

5.3.3. Notwithstanding anything to the contrary contained in these Covenants, these Covenants, or any map or plat, may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner or any other Person, in order to comply with the requirements, standards, or guidelines of the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, including the Federal Housing Administration, the Veterans Administration, or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities. The Declarant's right of amendment set forth in the preceding sentence shall terminate concurrently with expiration of the Development Period.

5.3.4. No challenge to an amendment of these Covenants shall be effective unless it is challenged within one (1) year of the date of recordation of such amendment.

Section 5.4. *Minor Violations of Setback Restrictions.*

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of these Covenants or the Guidelines, if any. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

Section 5.5. *Subdivision or Replatting of Lots.*

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant, and Declarant hereby reserves the right for Builders who own all or a portion of the Multifamily Parcel to subdivide or replat any such Lot(s) owned by such Builder and located within the Multifamily Parcel. Each such subdivision or replatting may change the number of Lots in the Property. Without limiting the generality of the foregoing, the foregoing reservation includes the right to move any Lot line(s) on Lot(s) for the purpose of accommodating Improvements which are, or may be constructed. The rights provided for in this Section shall terminate concurrently with termination of the Development Period.

Section 5.6. *Withdrawal.*

During the Development Period, the Declarant reserves the right to withdraw the Property, or any portion thereof, from these Covenants so long as the Declarant owns the portion of the Property to be withdrawn. 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 effected by the Declarant recording a withdrawal document in the office of the Clerk and Recorder of the county in which such withdrawn property is located. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn property from these Covenants so that, from and after the date of recording a withdrawal document, the property so withdrawn shall not be part of the Property.

Section 5.7. *Annexation.*

The Declarant may at any time, from time to time, annex to the Property additional real estate, including without limitation any real estate 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 and unequivocally provides that the real estate described therein shall be subject to these Covenants and all terms and provisions hereof. However, any such annexation may include provisions which, as to the property described therein, adds to or changes the rights, responsibilities and other requirements of these Covenants. Any such additional or changed provisions may be amended with the consent of the Owners of 67% of the Lots to which those provisions apply.

Section 5.8. *Declarant's and Builder's Use.*

Notwithstanding anything to the contrary contained in these Covenants, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, as well as any Builder (but only with the express written consent of the Declarant, such consent not to be unreasonably withheld), to perform such reasonable activities, and to maintain upon portions of the Lots as Declarant or Builder deems reasonably 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, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its reasonable discretion from time to time. Further, nothing contained in these Covenants shall limit the rights of Declarant or any Builder (but only with the express written consent of the Declarant, such consent not to be unreasonably withheld) or require the Declarant or any Builder (but only with the express written consent of the Declarant, such consent not to be unreasonably withheld) to obtain approvals:

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

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

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

Section 5.9. *Notices.*

Any notice permitted or required in these Covenants 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 5.10. *Limitation on Liability.*

The Declarant, any Builder, the Metropolitan District, any Subassociation and their directors, officers, shareholders, members, partners, agents or employees, shall not be liable to any Person for any action or for any failure to act arising out of these Covenants and the Guidelines, if any, 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 5.13 (Waiver) shall apply to this Section.

Section 5.11. *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 Declarant, any Builder, the Metropolitan District, any Subassociation, 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 5.13 (Waiver) shall apply to this Section.

Section 5.12. *Disclaimer Regarding Safety.*

DECLARANT, THE BUILDERS, THE METROPOLITAN DISTRICT, ANY SUBASSOCIATION, 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 DECLARANT, THE BUILDERS, THE METROPOLITAN DISTRICT, AND ANY SUBASSOCIATION, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN OR IN THE 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 5.13 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 5.13. *Waiver.*

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, each Builder, the Metropolitan District, any Subassociation, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in these Covenants, including without limitation, those contained in Sections 5.10, 5.11, and 5.12.

Section 5.14. *Headings.*

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

Section 5.15. *Gender.*

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

Section 5.16. *Runs with the Land; Binding Upon Successors.*

The benefits, burdens, and all other provisions contained in these Covenants shall be covenants running with and binding upon the Property and all Improvements which are now or hereafter become a part of the Property. The benefits, burdens, and all other provisions contained in

these Covenants shall be binding upon, and inure to the benefit of the Declarant, the Builders and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein and the Owner of the Property, has hereunto set its hand and seal this 27th day of April, 2005.

DECLARANT:

LENNAR COLORADO, LLC, a Colorado limited liability company

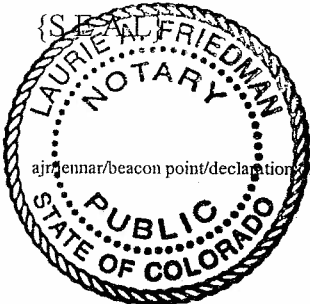
By: [Signature]
Its: Brian Daly, President

STATE OF COLORADO)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 27th day of April, 2005, by Brian Daly as President of Lennar Colorado, LLC, a Colorado limited liability company, Declarant.

Witness my hand and official seal.

[Signature]
Notary Public
My Commission expires: _____



ajr/lennar/beacon point/declaration of restrictions /20001.27019/4/26/05 3:44 PM

My Commission Expires 07/08/2007

EXHIBIT A
TO
PROTECTIVE COVENANTS
OF BEACON POINT

(Property)

LEGAL DESCRIPTION

A parcel of land located in the North Half of Section 20 and the West Half of Section 21, Township 5 South, Range 65 West of the Sixth Principal Meridian, City of Aurora, County of Arapahoe, State of Colorado, being more particularly described as follows:

Beginning at the North One-Quarter corner of said Section 20; Thence North 89°58'40" East, along the North line of the Northeast One-Quarter of said Section 20, a distance of 2302.74 feet; Thence South 00°48'46" West, a distance of 78.77 feet; Thence North 89°11'14" West, a distance of 66.98 feet; Thence along a tangent curve to the left, having a central angle of 14°53'14", a radius of 750.00 feet, an arc length of 194.87 feet, a chord bearing of South 83°22'09" West and a chord distance of 194.33 feet; Thence South 20°47'53" West, a distance of 255.46 feet; Thence South 43°15'21" West, distance of 328.99; Thence North 90°00'00" West, a distance of 208.90; Thence along a non-tangent curve to the left, having a central angle of 43°26'33", a radius of 750.00 feet, an arc length of 568.66 feet, a chord bearing of South 02°19'30" East and a chord distance of 555.14 feet; Thence South 24°02'47" East, a distance of 659.46 feet; Thence along a curve to the left, having a central angle of 24°10'38", a radius of 545.00 feet, an arc length of 229.97 feet, a chord bearing of South 36°08'06" East and a chord distance of 228.27 feet; Thence South 48°13'25" East, a distance of 232.45 feet; Thence along a curve to the left, having a central angle of 93°01'38", a radius of 550.00 feet, an arc length of 893.00 feet, a chord bearing of North 85°15'46" East and a chord distance of 798.09 feet, to a point of reverse curvature; Thence along a curve to the right, having a central angle of 53°20'32", a radius of 800.00 feet, an arc length of 744.80 feet, a chord bearing of North 65°25'13" East and a chord distance of 718.19 feet; Thence South 87°54'31" East, a distance of 365.88 feet to the East line of the Southwest One-Quarter of the Northwest One-Quarter of said Section 21; Thence South 87°54'31" East a distance of 231.05 feet; Thence South 71°03'17" East, a distance of 361.41 feet; Thence South 29°32'02" East, a distance of 157.68 feet; Thence South 30°59'19" West, a distance of 926.26 feet; Thence South 12°13'42" West, a distance of 289.57 feet; Thence South 58°33'33" West, a distance of 162.15 feet, to the said East line of the Northwest One-Quarter of the Southwest One-Quarter of said Section 21; Thence South 58°33'33" West, a distance of 1955.91 feet Thence South 34°24'35" East, a distance of 185.02; Thence along a curve to the right, having a central angle of 38°38'40", a radius of 1050.00 feet; an arc length of 708.20 feet, a chord bearing of South 15°05'15" East and a chord distance of 694.85 feet; Thence South 04°14'05" West, a distance of 307.25 feet; Thence North 89°16'10" West, a distance of 2566.61 feet, to the West line of the Southeast One-Quarter of said Section 20; Thence South 00°45'00" West, along said West line of the Southeast One-Quarter of Section 20, a distance of 41.38 feet to the South One-Quarter corner of said Section 20; Thence along the West and North lines of the property recorded at reception number A8033440, in the Office of the Arapahoe County Clerk and Recorder, the following four (5) courses:

1. North 89°36'01" West, a distance of 12.29 feet;
2. North 02°13'14" West, a distance of 41.57 feet;
3. North 00°43'13" East, a distance of 2612.79 feet;
4. North 00°42'43" East, a distance of 2652.03 feet;
5. North 89°58'38" East, along the North line of the Northwest One-Quarter of said Section 20, a distance of 17.28 feet, to the Point of Beginning.

The above Parcel contains 14,733,341 square feet or 338.23 acres, more or less.

Basis of Bearings for this description is the West line of the Northeast One-Quarter of said Section 20, being South 00°44'39" West, a distance of 2,653.27 feet.

EXHIBIT B
TO
PROTECTIVE COVENANTS
OF BEACON POINT

(Multifamily Parcel)

Tracts A and C,

Beacon Point Subdivision Filing No. 1,

County of Arapahoe,

State of Colorado.

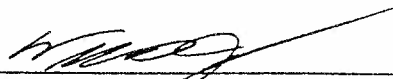
I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Creekside Eagle Bend Owners Association, Inc. a Colorado non-profit corporation, and

That the foregoing Bylaws constitute the Bylaws of said Association as duly adopted at a meeting of the Board of Directors thereof, held on the 23rd day of October, 2002.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Association this 23rd day of October, 2002.

(SEAL.)



William D. James, Secretary

ajr/ush/creekside eagle bend/bylaws of creekside eagle bend/20001.36044/10/23/02 11:12 AM

AMENDED AND RESTATED

RULES AND REGULATIONS

GOVERNING

**EAST PLAINS METROPOLITAN DISTRICT
BEACON POINT METROPOLITAN DISTRICT**

AND

HIGH PLAINS METROPOLITAN DISTRICT

adopted and enforced by Joint Resolution

of the Boards of Directors of

***EAST PLAINS METROPOLITAN DISTRICT
BEACON POINT METROPOLITAN DISTRICT***

AND

HIGH PLAINS METROPOLITAN DISTRICT

October 20, 2006

**AMENDED AND RESTATED
 RULES AND REGULATIONS
 GOVERNING
 East Plains Metropolitan District
 Beacon Point Metropolitan District
 and
 High Plains Metropolitan District**

*Adopted and Enforced By Joint Resolution
 of the Boards of Directors of
 East Plains Metropolitan District
 Beacon Point Metropolitan District
 and
 High Plains Metropolitan District*

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**AMENDED AND RESTATED
RULES AND REGULATIONS
GOVERNING
EAST PLAINS METROPOLITAN DISTRICT
BEACON POINT METROPOLITAN DISTRICT
AND
HIGH PLAINS METROPOLITAN DISTRICT**

*Adopted and enforced by Joint Resolution
of the Boards of Directors of*

*East Plains Metropolitan District
Beacon Point Metropolitan District
and
High Plains Metropolitan District*

PREAMBLE:

The Boards of Directors of the East Plains Metropolitan District, the Beacon Point Metropolitan District, and the High Plains Metropolitan District (the "Districts") have adopted the following Rules and Regulations, pursuant to Section 32-1-1001(l)(m), C.R.S., by joint resolution, a copy of which is attached hereto as **Exhibit A** and the contents of which are incorporated herein by reference. The Districts have adopted these Amended and Restated Rules and Regulations in order to provide for the orderly and efficient conduct of their business and affairs, the combined boundaries of which make up the communities known as Beacon Point and High Plains ("Communities").

The Districts' Boards of Directors expressly reserve the right to amend or make revisions to these Rules and Regulations from time to time in their sole discretion, in order to provide for the orderly construction, management, operation and control of the Districts' public facilities and services and to promote the health, and safety and welfare of the residents and property owners of the Communities. These Rules and Regulations are supplementary to, and are not to be construed as an abridgement of, the lawful rights of the Districts' Boards of Directors to manage the Districts as outlined in Title 32 of the C.R.S., governing special districts. These Amended and Restated Rules and Regulations specifically supersede any and all prior rules and regulations of the Districts, in their entirety. All such prior rules and regulations shall no longer be of any force or effect.

ARTICLE 1. DEFINITIONS

As used in these Rules and Regulations, unless the context clearly indicates otherwise, the following words, defined below and capitalized throughout the text of these Rules and Regulations, shall have these respective meanings:

Boards or **Boards of Directors**: shall refer to the Boards of Directors of the East Plains Metropolitan District, the Beacon Point Metropolitan District, and the High Plains Metropolitan District; the Districts' governing bodies.

Communities: the property constituting the legal boundaries of the Districts as they currently exist and as they may be amended in the future by any available legal means.

Customer: any person or entity that receives services from the Districts.

Districts: The East Plains Metropolitan District, the Beacon Point Metropolitan District, the High Plains Metropolitan District, or their Boards.

District Manager: the independent contractor engaged by the Districts to perform and provide management and/or similar services, with, and to the extent authorized by, the Districts.

District Services: any of the services provided by the Districts that are authorized by the "Service Plan" (defined below).

Fee Schedule: the schedule of fees charged by the Districts, as amended from time to time; a copy of the Fee Schedule is on file with the District Manager, and is attached hereto as **Exhibit C**.

Person: any person or entity, in both the singular and the plural.

Property Owner or **Owner**: the record owner of any real property that is located within the Districts' boundaries.

Rules and Regulations: these Rules and Regulations, as adopted by the Districts' Boards of Directors, together with any and all amendments, policies and resolutions which may be adopted by the Boards from time to time.

Service Plan: the documents entitled "Consolidated Service Plan for East Plains Metropolitan District, Beacon Point Metropolitan District, and High Plains Metropolitan District" dated September 9, 2002 and "Amended And Restated Consolidated Service Plan For East Plains Metropolitan District, High Plains Metropolitan District, Beacon Point Metropolitan District, City Of Aurora, Colorado," dated August 6, 2004, and "Amended and Restated Consolidated Service Plan for East Plains Metropolitan District, High Plains Metropolitan District, Beacon Point Metropolitan District, City of Aurora, as updated with Modifications made under the March 10, 2006 Resolution Regarding Adoption of Non-material Modifications to the Amended

and Restated Service Plans for East Plains Metropolitan District, High Plains Metropolitan District, taken and read together, as both may be amended from time to time.

Shall or **May**: whenever “shall” is used herein, it denotes a mandatory direction that may have penalties associated with its violation; whenever “may” is used herein, it denotes a permissible direction.

ARTICLE II. GENERAL

2.1 SCOPE OF RULES AND REGULATIONS. These Rules and Regulations shall be treated and considered as new and comprehensive rules and regulations governing the operations and management of the Districts. Any and all prior Rules and Regulations of the Districts shall be deemed specifically superceded hereby.

The Boards of Directors have determined to adopt these Rules and Regulations in order to assist the Districts and their management staff in implementing the decisions and policies of the Board. It is intended that any Person desiring to transact business with the Districts as an owner or developer of property or a resident within the boundaries for the Districts shall comply with these Rules and Regulations. It is further intended that the District Manager and the management staff shall utilize these Rules and Regulations as a tool for assuring uniform treatment to Persons within the Districts and fair response to issues which confront the Districts. The District Manager shall provide copies of these Rules and Regulations to any Person who requests them for a fee determined by the Board. No Person shall be entitled to any exemption from the applicability of these Rules and Regulations due to the failure of that Person to become familiar with policies and standards of the Districts contained herein, and in supplements hereto.

2.2 GENERAL PURPOSE AND AUTHORITY. The purpose of these Rules and Regulations is to provide for the orderly construction, management, operation and control of the public utility systems, facilities, improvements and services of the Districts, including additions, extensions and connections thereto. The Districts are a governmental entity and political subdivision of the State of Colorado and body corporate with all powers of public or quasi-municipal corporations, which are specifically granted or implied for carrying out the objectives and purposes of the Districts. The Districts construct operate and maintain certain facilities for their benefit and that of property owners and residents within their boundaries.

2.3 PUBLIC HEALTH, SAFETY AND WELFARE. It is hereby declared that the Rules and Regulations hereinafter set forth serve a public interest and are necessary for the protection of the health, safety, prosperity, security, and general welfare of the residents and property owners of the Districts.

2.4 RULES OF CONSTRUCTION. These Rules and Regulations governing the Communities, adopted and enforced by joint resolution of the Districts, are promulgated pursuant to statute in the exercise of the Boards' discretion to provide a tool for management of the Districts and for the orderly provision of essential services. It is intended that these Rules and Regulations shall be liberally construed to affect the general purposes set forth herein, and that each and every part hereof is separate and distinct from all other parts. No refusal, failure or omission of the Boards or their agents to apply or enforce these Rules and Regulations shall be construed as an alteration, waiver, or deviation herefrom or from any grant of power, duty or responsibility, or any limitation or restriction upon the Boards of Directors or the Districts by virtue of statutes now existing or subsequently amended, or under any contract or agreement existing between the Districts and any other entity. Nothing contained herein shall be so construed as to prejudice or affect the right of the Districts to secure the full benefit and protection of any law now in effect or may subsequently be enacted by the Colorado General

Assembly pertaining to the governmental or proprietary affairs of the Districts. The Boards reserve the right to construe any provision hereof in their sole discretion in order to effectuate lawful purposes of the Districts and to attempt to ensure orderly and non-discriminatory treatment of all Persons or entities subject to these Rules and Regulations now or in the future. In all circumstances, these Rules and Regulations shall be construed in the broadest sense possible to enable the Districts to perform their functions in accordance with law.

The Rules and Regulations must be complied with by all Persons absent receipt of a proper written waiver approved by the Boards. It is the responsibility of each resident and property owner to obtain and read the Rules and Regulations of the Districts, as adopted and enforced by the Districts. No person shall obtain, by virtue of the Rules and Regulations, any right or cause of action against the Districts or their management arising as a result of the enforcement or lack of enforcement of the Rules and Regulations by the Districts.

2.5 AMENDMENT/MODIFICATION/WAIVERS. The Boards shall retain the power to amend these Rules and Regulations as they deem appropriate. Neither notice of such amendments nor public hearing shall be required to be provided by the Districts prior to exercising their amendment, modification or waiver powers. The Districts have the power to revise their Rules and Regulations from time to time either by formal action of the Boards or by implication and have authority to waive the application of their Rules and Regulations to their own activities, or to the activities of others. Supplemental policies of the Districts may be adopted from time to time in order to assist the Boards and their management staff in managing the affairs of the Districts. When possible, copies of such policies shall be attached hereto as contained in **Exhibit B**. Additional Exhibits affecting these Rules and Regulations may be added by Board resolution from time to time. The Boards, or the District Manager acting on instructions of the Board, shall have the sole authority to waive, suspend or modify these Rules and Regulations. Any Person claiming the benefit of such waiver, suspension or modification shall be required to obtain a written waiver signed by the District Manager. Such waiver shall not be deemed an amendment of the Rules and Regulations. No waiver shall be deemed a continuing waiver.

2.6 CONFLICTS. In case of any conflict between any provision of these Rules and Regulations, the Districts shall be entitled to resolve such conflict in their own favor at the Districts' sole discretion, it being the intention of the Boards that these Rules and Regulations shall be construed or interpreted by the Districts in such manner so as to maximize the ability of the Districts to govern and manage the Districts and their facilities.

2.7 DEFINITIONS FOR TERMS USED IN RULES AND REGULATIONS. Unless the context specifically states otherwise, the meaning of terms used herein shall be as set forth herein.

2.8 GENERAL POLICIES. The Districts articulate herein their rules, regulations, and policies for the provision of public services and facilities, and for management and operation of the same. From time to time, the Boards of Directors adopt official policies of the Districts. On occasion, such policies are reflected in official "resolutions" or "policies" of the Boards of Directors. **Exhibit B** hereof contains official policies of the Districts incorporated into formal

“resolutions” as of the date of adoption of these Rules and Regulations. Additional Exhibits may be added to these Rules and Regulations from time to time either by addition to **Exhibit B** in the case of adoption of resolutions or policies, or by the addition of new Exhibits. Additional policies may also be found in the minutes of the Districts’ Board meetings. To the extent any policy found in minutes of Board meetings which pre-date and conflict with any resolution of the Boards, the resolution shall be deemed to supersede the minutes, unless the Boards determine otherwise after such conflict is brought to the attention of the Boards. To the extent policies found in minutes of meetings post-date resolutions of the Districts and conflict with such resolutions, the policy stated in the Minutes shall be binding unless the Boards determine otherwise after such conflict is brought to the attention of the Boards. The Districts shall have the right, at all times, to repeal and re-enact resolutions of the Boards unless any resolution specifically states that it is irrevocable. A number of informal policies of the Districts may exist which are known to the District Manager and the Districts’ Boards of Directors. In any case where a person has questions about District policies, questions may be directed to the District Manager who has authority to respond, or who may refer such requests to the Board. In all circumstances, the Boards of Directors retain authority and responsibility for the policies of the Districts.

ARTICLE III. DESCRIPTION OF THE DISTRICTS

3.1 PURPOSE OF THE DISTRICTS. The Districts were organized with authority to provide certain services and facilities to residents and property owners within the areas generally known as “High Plains” and “Beacon Point.” The Districts are a quasi-municipal corporations and political subdivisions of the State of Colorado, and as such, exercise certain governmental powers for the benefit of their constituents. Pursuant to their Service Plan, the Districts have the authority to provide water, street, traffic and safety controls, transportation, parks and recreation, sanitation, security services, and design review and covenant enforcement services to the extent of their available resources. For additional information regarding the covenants the Districts are authorized to enforce, please see the Declaration of Protective Covenants attached to these Rules and Regulations as **Exhibit D**. The Districts have power to tax properties within their boundaries and to impose fees for services available from or provided by the Districts. The Districts derive their power from Colorado statutes and from their Service Plans. The Service Plan contains general information about the facilities, services, and powers of the Districts and may be amended from time to time to deal with the evolving needs of the Districts. The Districts have the authority to construct facilities and improvements for District Services, as they deem expedient, in accordance with the authority granted to the Districts in their Service Plan. The Service Plan is an “enabling document” granting to the Districts certain powers and authorities. The Service Plan does not impose upon the Districts any responsibility which they are not required to accept pursuant to state law or which they do not specifically accept by official decision of the Boards.

3.2 THE GOVERNING BODY. The Districts are governed by elected Boards of Directors. The Boards each consist of five (5) individuals who, as residents or property owners within the Districts, are qualified to serve as directors. Directors are generally elected to four (4) year terms at elections held in May of even-numbered years. The Boards elect from their membership a president, vice-president, treasurer, and appoint a secretary.

3.3 DISTRICT BOARD MEETINGS. Meetings of the Boards of Directors are subject to the “Sunshine Law” of the State of Colorado and are open to the public. From time to time the Boards meet in “Executive Session” to receive legal advice or to discuss ongoing contract negotiations, litigation matters, or other legally privileged matters. Executive sessions are closed to the public. Minutes of meetings are prepared for each meeting and, after approval by the Boards, are available for public inspection. The Districts’ policy is not to tape record their meetings, except as required by law nor do they attempt to maintain a verbatim transcript of their discussions.

3.4 DISTRICT MANAGEMENT. The Districts are managed by professional management consultants engage by the Boards. The District Manager oversees the day-to-day administration of the Districts and operation of District facilities. All consultants of the Districts serve at the will of the Boards. The District Manager operates within approved guidelines established by the Boards of the Districts and exercises only that discretion which is granted by the Boards as necessary for day-to-day operations and for implementation of decisions and policies of the Boards.

3.5 DISTRICT SERVICES AND FACILITIES. In general terms, the Districts have the power and authority to provide water, street, traffic and safety controls, transportation, parks and recreation, and sanitation improvements and infrastructure to the area located within their boundaries and also have the power and authority to provide security services as well as covenant enforcement and design review services. For additional information regarding the covenants the Districts are authorized to enforce, please see the Declaration of Protective Covenants attached to these Rules and Regulations as **Exhibit D**. The Districts' Service Plan contains maps which show the current and projected location of District services and facilities, and provides a general description of those facilities. Reference is made to the Service Plan for general descriptions of services and facilities which may be provided by the Districts. The Districts have powers of eminent domain to condemn private properties for public use.

3.6 SUBDIVISION AND ZONING REFERRALS. The Districts have no authority over subdivision, zoning or other land use matters for property within the Districts. The City of Aurora controls land use decisions within the boundaries of the Districts, with the exception of certain land use decisions related to public facilities constructed by the Districts.

3.7 RATES, FEES, TOLLS AND CHARGES. The Districts have power to charge various rates, fees, tolls, charges and penalties, and may impose taxes for services and facilities provided by the Districts. In most cases the failure of a resident or property owner to pay such fees creates a right in the Districts to claim a lien on the affected property and to foreclose on that lien. The Districts exercise such power for the overall benefit of the Districts and reserve the right to exercise their discretion on a case-by-case basis in determining whether to claim a lien and foreclose it.

3.8 OTHER PUBLIC UTILITIES. Electric, natural gas, telephone and cable television services are available within the Districts and are provided by various commercial companies.

ARTICLE IV. OWNERSHIP AND OPERATION OF FACILITIES

4.1 DISTRICT FACILITIES. Systems constructed by the Districts shall be operated and maintained by the Districts pursuant to these Amended and Restated Rules and Regulations.

4.2 DISTRICT OWNERSHIP. All improvements constituting any part of District systems shall be the sole property of the Districts, unless otherwise specifically agreed by the Districts or Customer. Notwithstanding that Customers shall be entitled to receive Service from the Districts pursuant to these rules and Regulations, no legal or equitable ownership in District systems or improvements shall be deemed to exist in favor of any Person other than the Districts.

4.3 RIGHT OF ENTRY. The District Manager, employees and consultants of the Districts, or other personnel authorized by the District Manager, bearing proper credentials and identification, shall be permitted by all residents or landowners within the Districts to enter upon all properties or appurtenances for the purpose of installation, replacement, repair, maintenance, inspection, or observation reasonably necessary in connection with the services and facilities provided by the Districts. The granting of Right of Entry by the resident or landowner is a condition precedent and a condition subsequent to the provision of services by the Districts. Refusal to permit such access to District personnel in the performance of their duties may result in discontinuation of services to the property in question, or cause additional charges to the resident or landowner for increased costs or damages sustained as a result of refusing the Right of Entry.

4.4 LIMITATION OF LIABILITY OF DISTRICT. Except as provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., it is expressly stipulated that no claim for damage shall be made against the Districts by reason of any action or inaction of the Boards in connection with any improvements or facilities for which the Districts have operations or maintenance responsibility.

ARTICLE V. RULES CONCERNING DISTRICT SERVICES AND FACILITIES

5.1 ENTITLEMENT TO DISTRICT SERVICES. District Services will be provided by the Districts to all Customers, subject to these Rules and Regulations. No Person or entity which does not pay applicable fees and other related charges, as may be adopted by the Boards and as may be updated from time to time, or provide evidence that appropriate fees have been paid for the benefit of such Person or entity shall be entitled to continued service. It shall be incumbent upon the applicant for District Services to furnish satisfactory evidence of payment of applicable fees whenever such evidence is requested by the Districts. Notwithstanding that a Person or entity has paid appropriate fees for service, no Person or entity shall be entitled to receive continued District Services if property taxes or other fees due from such Person or entity have become delinquent. District Services shall be suspendable or revocable at the Districts' discretion upon non-payment of any valid fees or charges owing to the Districts or any other violation of these Rules and Regulations. In the event of non-payment, the Customer shall be given not less than ten (10) days advance notice in writing of the revocation.

5.2 DISTRICT SERVICES TO PERSONS OUTSIDE THE DISTRICTS' BOUNDARIES. Charges for District Services to persons outside the Districts' boundaries shall be determined in the sole discretion of the Boards of Directors. It is expected that charges for District Services for persons owning property or residing outside District boundaries shall equal at least the actual cost of District Services, plus, at a minimum, the estimated mill levy payments and other fees for which such property would be responsible if it were included in the Districts. In every case where the Districts furnish Service to persons owning property or residing outside the Districts' boundaries, the Districts reserve the right to discontinue Service when, in the judgment of the Boards of Directors, it is in the best interest of the Districts to do so, except as may be limited by written agreement.

5.3 INCLUSION OR EXCLUSION OF PROPERTY. Properties located outside the boundaries of the Districts may propose inclusion (annexation) of such property into the Districts. Individuals who own property within the boundaries of the Districts may seek to have that property excluded from the Districts. All requests for inclusion of property within the boundaries of the Districts shall be made pursuant the provisions of § 32-1-401, *et seq.*, C.R.S. All requests for exclusion of property shall be considered pursuant to the provisions of § 32-1-501, *et seq.*, C.R.S.

5.4 TAMPERING. No unauthorized person or entity shall uncover, use, alter, or disturb the Districts' facilities or improvements without first obtaining a written authorization from the Districts. No Person shall maliciously, willfully, or negligently, break, damage, destroy, uncover, deface or tamper with any portion of the Districts' facilities or improvements. Any Person who violates the provisions of this Section shall be prosecuted to the full extent of Colorado law.

5.5 VIOLATIONS. Any Person violating any of the provisions of these Rules and Regulations shall become liable to the Districts for any expense, loss or damage occasioned by reason of such violation, and upon non-payment thereof, shall be assessed a penalty in an amount set forth in the Districts' Fee Schedule which penalty shall be a lien upon the violator's property, as allowed by § 32-1-1001, C.R.S., as amended, or a lien upon the property to which the violator

was providing services at the time of the violation in question, whichever the District Manager deems appropriate. In the event the Districts determine to revoke or suspend District Services to any Person or entity for violation of any of the provisions of these Rules or Regulations, the Districts shall not be liable for any claim for damage resulting therefrom.

5.6 FEES FOR SERVICES. Development fees, working capital fees, service charges, miscellaneous fees, and other applicable fees shall be in the amounts shown in the Joint Fee Resolution attached hereto as **Exhibit C**, as may be amended from time to time.

Following efforts to collect overdue payments of any fee or charge assessed by the Districts under these Rules and Regulations and/or Colorado law, if it becomes necessary for the Districts to initiate foreclosure proceedings as allowed by § 32-1-1001(1)(j), C.R.S., as amended, the Districts shall in each such case be entitled to assess all legal fees, costs of collection, and a foreclosure penalty against the subject property in an amount set forth in the Districts' Fee Schedule which penalty shall be payable in full upon assessment and shall be included in the lien then being foreclosed. Payment of said foreclosure penalty and any and all other fees outstanding against the subject property shall be a precondition to the resumption of District Services.

ARTICLE VI. HEARINGS

6.1 APPLICABILITY. The hearing and appeal procedures established by this Article shall apply to all complaints concerning the interpretation, application, or enforcement of the Rules and Regulations of the Districts, as they now exist or may hereafter be amended. The hearing and appeal procedures established by this Article shall not apply to complaints arising out of the interpretation of the terms of District contracts or complaints that arise with regard to personnel matters. Complaints that arise with regard to personnel matters shall be governed exclusively by the Districts' personnel rules as the same may be amended from time to time. *Please note that the Declaration of Protective Covenants attached to these Rules and Regulations as Exhibit D have provisions for a hearing and review process by the Districts. To the extent that any of the terms of this Article VI and the terms of such Declaration conflict, the terms of the Declaration shall control.*

6.2 COMPLAINT. Complaints concerning the interpretation, application, or enforcement of Rules and Regulations of the Districts must be presented in writing to the District Manager, or such representative as he or she may designate. Upon receipt of a complaint, the District Manager or designated representative, after a full and complete review of the allegations contained in the complaint, shall take such action and/or make such determination as may be warranted and shall notify the complainant of the action or determination by mail within fifteen (15) days after receipt of the complaint. Decisions of the District Manager which impact any of the Districts financially will not be binding upon the District(s) unless approved by the Boards of the District(s) affected by the complaint at a special or regular meeting of the Boards.

6.3 HEARING. In the event the decision of the District Manager or his representative is unsatisfactory to the complainant, a written request for formal hearing may be submitted to the District Manager or such hearing officer as the District Manager may appoint within twenty (20) days from the date written notice of the decision was mailed. A deposit in an amount as set forth in the Districts' Fee Schedule shall be made with the Districts along with the request for the hearing. This amount shall be retained by the Districts to cover the costs of the hearing until the final decision following such hearing. The amount shall be refunded to the complainant if the District Manager renders a final decision in favor of the complainant.

Upon receipt of the request, if it be timely and if any and all other prerequisites prescribed by these Rules and Regulations have been met, the District Manager or hearing officer shall conduct a hearing at the Districts' convenience but in any event not later than fifteen (15) days after the submission of the request for formal hearing. The formal hearing shall be conducted in accordance with and subject to all pertinent provisions of these Rules and Regulations. Decisions of the District Manager which impact the Districts financially will not be binding upon the Districts unless approved by the Boards of Directors at a special or regular meeting of the Boards.

6.4 RULES. At the hearing, the District Manager or hearing officer shall preside. The complainant and representatives of the Districts shall be permitted to appear in person, and the complainant may be represented by any Person of his choice or by legal counsel.

The complainant or his representative and the District representatives shall have the right to present evidence and arguments; the right to confront and cross-examine any Person; and the right to oppose any testimony or statement that may be relied upon in support of or in opposition to the matter complained of. The District Manager or hearing officer may receive and consider any evidence, which has probative value commonly accepted by reasonable and prudent Persons in the conduct of their affairs.

The District Manager or hearing officer shall determine whether clear and convincing grounds exist to alter, amend, defer, or cancel the interpretation, application, and/or enforcement of the Rules and Regulations that are the subject of the complaint. The decision shall be based upon evidence presented at the hearing. The burden of showing that the required grounds exist to alter, amend, defer, or cancel the action shall be upon the complainant.

6.5 FINDINGS. Subsequent to the formal hearing, the District Manager or hearing officer shall make written findings and an order disposing of the matter and shall mail a copy thereto to the complainant not later than fifteen (15) days after the date of the formal hearing.

6.6 APPEALS. In the event the complainant disagrees with the findings and order of the District Manager at the formal hearing, the complainant may, within fifteen (15) days from the date of their mailing, file with the Districts a written request for an appeal thereof to the Boards of Directors. The request for an appeal shall set forth with specificity the facts or exhibits presented at the formal hearing upon which the complainant relies and shall contain a brief statement of the complainant's reasons for the appeal. The Districts shall in response compile a written record of the appeal consisting of (1) a transcript of the recorded proceedings at the formal hearing, (2) all exhibits or other physical evidence offered and reviewed at the formal hearing, and (3) a copy of the written findings and order. The Boards shall consider the complainant's written request and the written record on appeal at the next regularly scheduled meeting held not earlier than ten (10) days after the filing of the complainant's request for appeal. Such consideration shall be limited exclusively to a review of the record on appeal and the complainant's written request for appeal. No further evidence shall be presented by any party to the appeal and there shall be no right to a hearing de novo before the Boards of Directors.

6.7 BOARD FINDINGS. The Boards of Directors shall make written findings and an order concerning the disposition of the appeal presented to it and shall cause notice of the decision to be mailed to the complainant within thirty (30) days after the hearing. The Boards of Directors will not reverse the decision of the District Manager or hearing officer unless it appears that such decision was contrary to the manifest weight of the evidence made available at the formal hearing.

6.8 NOTICES. A complainant shall be given notice of any hearing before the District Manager, the hearing officer, or before the Boards of Directors, by certified mail at least seven (7) calendar days prior to the date of the hearing, unless the complainant requests or agrees to a hearing in less time. When a complainant is represented by an attorney, notice of any action, finding, determination, decision, or order affecting the complainant shall also be served upon the attorney.

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EXHIBIT A
Joint Resolution Approving Rules and Regulations

EXHIBIT B
Policies and Procedures Governing the East Plains
Recreation Center and Recreation Amenities

EXHIBIT C
Joint Resolution and First and Second Amendments
to Joint Resolution Concerning the Imposition of
District Development Fees