

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF INDEPENDENCE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF INDEPENDENCE (“**Declaration**”) is made and entered into by Craft Bandera Acquisition Company, LLC, a Colorado limited liability company (“**Declarant**,” as hereinafter more fully defined) to be effective this _____ day of _____, 20__.

RECITALS

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

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

C. Pursuant to C.R.S. § 32-1-1004, as amended, and other provisions of Title 32 of C.R.S., as amended, the Declarant, in imposing this Declaration on the Community, intends to empower the District (as defined in **Section 1.9** below) with the authority to provide governmental services, including but not limited to the provision of covenant enforcement and architectural review services, to the Community and to use revenues that are derived from the Community for such purposes.

AFFIRMATION

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

ARTICLE 1. DEFINITIONS

Section 1.1. Architectural Control Committee or ACC.

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

Section 1.2. Board of Directors or Board.

“**Board of Directors**” or “**Board**” means the body, regardless of name, designated in this Declaration, to act on behalf of the District. Such Board or Board of Directors shall be the governing body of the District, as defined by C.R.S. § 32-1-103(1.5), as amended.

Section 1.3. *Builder.*

“**Builder**” means and includes any Person who: (i) acquired or acquires one or more Lots or Multifamily Parcels for the purpose of constructing at least one residence on each such Lot or Multifamily Parcel and selling and/or renting such Unit to the public; and/or (ii) acquires one or more Units for sale to any Person fitting the description in Section 1.3(i); and is designated as a “**Builder**” under this Declaration in a written designation that is signed by the Declarant and Recorded. (Declarant or a Builder may, subject to the terms of this Declaration, create one or more common interest communities within the Community.)

Section 1.4. *Common Area.*

“**Common Area**” means any property located within the Community now or hereafter owned or leased by the District. Common Areas shall be open to Owners and their Permittees and may be open to the general public, subject to rules, regulations and closure by the District. Those areas described on Exhibit B are, or are anticipated to become, Common Area.

Section 1.5. *Community or Property.*

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

Section 1.6. *Declarant.*

“**Declarant**” means Craft Bandera Acquisition Company, LLC, a Colorado limited liability company, as well as any other Person(s) to whom Declarant (or any subsequent Declarant), by Recorded document, expressly assigns one or more rights of a Declarant under this Declaration (which shall be the extent of the Declarant’s rights to which such assignee succeeds). Use of the word “**Declarant**” in the Governing Documents denotes the aforesaid entity or their designated assignee(s), as provided in the preceding sentence.

Section 1.7. *Declaration.*

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

Section 1.8. *Development Rights.*

“**Development Rights**” means the following rights, or combination of rights, hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to:

- 1.8.1. add real estate to this Community and make such real estate subject to the Governing Documents;
- 1.8.2. create Units and/or Common Area;
- 1.8.3. subdivide or replat Units;

1.8.4. withdraw real estate from this Community;

Any of the Declarants may exercise its Development Rights in all or any portion of the Community or real estate proposed to be added to the Community, subject to and in accordance with the terms and conditions of this Declaration, and no assurances are made as to the boundaries or order of exercise of any Development Rights. The Declarants' rights to exercise Development Rights shall terminate automatically as provided in Section 1.20 of this Declaration (Special Declarant Rights).

Section 1.9. *District.*

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

Section 1.10. *Governing Documents.*

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

Section 1.11. *Improvements.*

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

Section 1.12. *Lot*

“**Lot**” means each lot that is platted within the property described on the attached **Exhibit A**, which is subject to this Declaration, or a lot platted and subsequently annexed into the Community

and subjected to this Declaration pursuant to Section 10.3 or 10.5 with the exception of any property publicly dedicated on a recorded plat or pursuant to any other legally permitted and valid and Recorded conveyance.

Section 1.13. *Multifamily Parcel.*

Multifamily Parcel means any property zoned and used or intended to be used for residential condominiums, duplexes, townhomes, apartments or any other multifamily or attached residential uses, if any.

Section 1.14. *Owner.*

“**Owner**” means each fee simple title holder of a Unit, including Declarant, each Builder, and each other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation. There may be more than one (1) Owner of a Unit.

Section 1.15. *Permittees.*

“**Permittees**” means any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors, of an Owner.

Section 1.16. *Person.*

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

Section 1.17. *Records.*

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

Section 1.18. *Security Interest.*

“**Security Interest**” means an interest in one or more Units, real estate or personal property, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.19. *Security Interest Holder.*

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

Section 1.20. *Special Declarant Rights.*

“**Special Declarant Rights**” means the following rights, which rights are hereby reserved for the benefit of the Declarant or the District, to the extent that the District is authorized to exercise such rights pursuant to applicable law, and which rights may be further described in this

Declaration: to build and complete Improvements; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and/or Units; to use easements through the Community for the purpose of making Improvements within the Community or within real estate which may be added to the Community. All of the Special Declarant Rights may be exercised by a Declarant or the District with respect to any portion of the Property now or hereafter within the Community. A Declarant or the District may exercise any or all of these Special Declarant Rights at any times. Such rights shall terminate automatically either thirty-five (35) years after the date of Recording of this Declaration or at such time as any Declarant or any Builder no longer owns any portion of the property described on the attached **Exhibit A** or **B**, whichever occurs first.

Section 1.21. *Unit.*

“**Unit**” means Lots and Multifamily Parcels, but does not include any Common Area or any publicly dedicated property.

ARTICLE 2. DISTRICT

Section 2.1. *Authority of the District to Appoint ACC.*

The District (through the Board) shall appoint all members of the ACC and may remove all or any of the members of the ACC which have been appointed by the District as provided in Sections 4.1.1 and 4.1.2. The foregoing agreement of the District to appoint members of the ACC shall be enforceable by the Owners pursuant to Article 10 below.

Section 2.2. *Intentionally Omitted.*

Section 2.3. *Cooperation and/or Delegation.*

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

Section 2.4. *Rules and Regulations and Policies and Procedures.*

From time to time and at any time rules and regulations (“**Rules and Regulations**”) and policies and procedures concerning and governing the Community may be adopted, amended, repealed and enforced by the District (through the Board of Directors) in accordance with C.R.S. § 32-1-1001(1)(m), as amended, and the District (through the Board of Directors) shall establish penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such Rules and Regulations or policies and procedures in accordance with C.R.S. §§ 32-1-1001(1)(j) and (k), as amended. The foregoing agreement of the District to promulgate Rules and Regulations shall be enforceable by the Owners pursuant to Article 10 below. The Rules and Regulations and policies and procedures may include, without limitation: procedural requirements; interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications; and covenants, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, including vehicles and animals. Such rules and regulations and policies and procedures may be different for different types or prices of Units,

construction or homes. No Rules and Regulations or policies and procedures that are adopted shall be contrary to this Declaration or applicable law.

Section 2.5. *Notice of Meetings and Other Matters of the District.*

Notices of any meetings, newsletters and other correspondence or documents concerning the ACC shall be sent to Declarant at the same time that such notices, newsletters, and other correspondence or documents are sent to the Owners. However, the foregoing shall expire upon automatic termination of the Special Declarant Rights as provided in Section 1.20 of this Declaration (Special Declarant Rights).

Section 2.6. *Authenticated Electronic Representation.*

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

ARTICLE 3. FINES

Section 3.1. *Personal Obligation for Fines.*

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

Section 3.2. *Purpose of Fines and Penalties.*

The fees, rates, tolls, charges and penalties levied by the District are used to protect and maintain the recreation, health, safety and general welfare of the residents of the Community and of the people of the State of Colorado through enforcement of the Declaration, Rules and Regulations and Guidelines.

Section 3.3. *Liens.*

The District has the right and authority to impose and collect fees, rates, tolls, charges and penalties (collectively, “Fees”), to impose liens (as provided in C.R.S. § 32-1-1001(1)(j)(I), as amended), to negotiate, settle and/or take any other actions with respect to any violation(s) or alleged violation(s) of the Governing Documents (as provided in C.R.S. §§ 32-1-1001(1)(c), (1)(h) and (1)(n), as amended). No further Recordation of any claim of lien is required and, until paid, all such Fees imposed by the District shall constitute a perpetual lien on and against the property

served, and any lien may be foreclosed in the same manner as provided by the laws of Colorado for the foreclosure of mechanics' liens. However, the Board of Directors or any officer of the ACC or any managing agent of the District, may prepare and record in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Unit, and a description of the Unit. If a lien is filed, the reasonable costs and expenses thereof shall be added to the due amount for the Unit against which it is filed and collected as part and parcel thereof. The District's lien may be foreclosed as provided by applicable law.

Section 3.4. *Certificate of Status of Fines and Penalties.*

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

Section 3.5. *Other Charges.*

To the extent permitted by applicable law, pursuant to C.R.S. § 32-1-1001(j), as amended, the District may levy and assess Fees, for matters such as, but not limited to, the following, in such amounts(s) as the Board of Directors may determine, including, without limitation: reimbursement of charges that are made to the District by its managing agent or other Person; copying of District or other public records (in accordance with the Colorado Open Records Act, C.R.S. §§ 24-72-201, *et seq.*); returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other reasonable charges incurred by the District. To the extent permitted by applicable law and C.R.S. §§ 32-1-1001(1)(d), (h) and (i), as amended, the District may own, operate, lease or contract for the operation of amenities, if any, within the Community. In the event such amenities, if any, are owned, operated (contracted for operation) or leased by the District, the District may, in accordance with applicable law, charge Fees for access and use of such amenities (which Fees may vary for Owners within the Community and the general public).

ARTICLE 4. ARCHITECTURAL REVIEW

Section 4.1. *Composition of ACC; Authority of Representative.*

4.1.1. The Architectural Control Committee shall consist of three (3) or more natural persons. The Board of Directors of the District has the authority to appoint the ACC and/or to delegate some or all architectural authority, as provided in Section 4.1.2 hereof. The power to “**appoint**” the Architectural Control Committee shall include, without limitation, the power to: constitute the membership of the Architectural Control Committee; appoint member(s) to the Architectural Control Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member(s) of the Architectural

Control Committee, with or without cause, and appoint the successor(s) thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set by the Board.

4.1.2. The District shall have the right and authority to, without limitation: (a) delegate, in writing, some or all of the architectural review authority to one or more other Persons, who shall be the ACC's representative(s) to act on its behalf. If the ACC delegates any authority, then the actions of such representative(s) shall be considered to be the actions of the ACC, subject to the right of appeal as provided below. However, if such a representative by the ACC is appointed, the District shall have the power to withdraw from such representative any or all of such representative's authority, and shall also have the power to remove or replace such representative(s).

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

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

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

4.2.3. In its review of such plans, specifications and other materials and information, the Architectural Control Committee may require that the applicant(s) reimburse the ACC for the actual costs and expenses incurred, or reasonably anticipated to be incurred, by the ACC, in the review and/or approval process. Such costs and expenses may include reasonable attorneys' fees and costs and reasonable engineering fees and costs.

4.2.4. In addition to the required approvals by the Architectural Control Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the applicable governmental authority, if required, shall be a precondition to commencement of construction of, alteration of, addition

to or change in, any Improvement. The ACC shall not have the authority to review, deny or approve any proposed Improvements for compliance with the additional governmental requirements described in this Section 4.2.4.

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

Section 4.3. *Procedures.*

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

Section 4.4. *Vote and Appeal.*

The affirmative vote of a majority vote of the Architectural Control Committee is required to approve a request for approval pursuant to this Article (which may be granted with conditions and/or requirements, in the ACC's sole discretion), unless the ACC has appointed a representative(s) or committee(s) to act on its behalf, in which case the decision of such representative(s) or committee(s) shall control. In the event a representative or committee acting on behalf of the Architectural Control Committee denies a request for approval, then any Owner shall have the right to an appeal of such decision to the full ACC, upon a written request therefor submitted to the ACC within ten (10) days after such decision by the ACC's representative. The appeal shall be heard by the ACC at a public hearing, and the appellant shall be provided an opportunity to appear at the public hearing and present any evidence in support of the appeal; the ACC may provide for any further reasonable rules and guidelines concerning the appellate process as it determines to be necessary. The decision of the ACC shall be final. No additional or further appeals are permitted, nor will any be recognized.

Section 4.5. *Prosecution of Work After Approval.*

After approval of any proposed Improvement by the ACC, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval, and at no cost to the District or the ACC. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or failure to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval issued by the ACC and a violation of this Article; provided, however, that the ACC may grant extension(s) of time for completion of any Improvement(s) in its own sole and reasonable discretion. Upon the completion

of an Improvement, the applicant for approval of the same shall give a written "**Notice of Completion**" to the ACC. Until the date of receipt of such Notice of Completion, the ACC shall not be deemed to have notice of completion of any Improvement for which approval (which may be with conditions and/or requirements) has been sought and granted as provided in this Article.

Section 4.6. *Inspection of Work.*

The ACC, or its duly authorized representative(s) or committee(s), shall have the right to inspect any Improvement at any time, including prior to, during, or after completion during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive inspection. Such inspections may be made in order to determine whether or not the proposed Improvement is being completed, or has been completed, in compliance with the approval granted pursuant to this Article. However, such right of inspection shall terminate sixty (60) days after the ACC has received a Notice of Completion from the applicant.

Section 4.7. *Notice of Non-compliance.*

If, as a result of inspections or otherwise, the ACC determines that any Improvement has been done without obtaining the required approval (which may be with conditions and/or requirements), or was not done in substantial compliance with the approval that was granted, or has not been completed within one (1) year after the date of approval (except landscaping, as provided below), subject to any extensions of time granted pursuant to Section 4.5 hereof, then the ACC shall notify the applicant in writing of the non-compliance. Such notice of non-compliance shall be given not later than sixty (60) days after the ACC receives a Notice of Completion from the applicant. The notice of non-compliance shall specify the particulars of the non-compliance.

Section 4.8. *Correction of Non-compliance.*

If the ACC determines that a non-compliant circumstances exists, the Person responsible for such non-compliance shall remedy or remove the same within not more than forty-five (45) days from the date of receipt of the notice of non-compliance. If such Person does not comply with the ruling within such period, the ACC may, at its option, record a notice of non-compliance against the Unit on which the non-compliance exists, may impose Fees, may remove the non-complying Improvement at the sole cost and expense of the Owner of the non-compliant Unit (which shall be reimbursed to the ACC upon receipt of an invoice detailing the same), or may otherwise remedy the non-compliant event, and the Person responsible for such non-compliance shall reimburse the ACC, upon demand, for all reasonable costs and expenses, as well as anticipated reasonable costs and expenses, including reasonable management, attorneys' and engineering fees and costs with respect thereto.

Section 4.9. *Standards/Guidelines.*

Except as provided in the last sentence of this Section 4.9, based upon the authority granted to the District pursuant to C.R.S. §§ 32-1-1001(1)(m) and 32-1-1004(8), as amended, the Architectural Control Committee has the authority to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, rules and regulations (collectively and as may be approved, amended, restated, replaced or revised, "**Guidelines**") to interpret and

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implement the design review provisions of this Declaration. Such provisions of the Guidelines may include, without limitation: clarifying the types of designs and materials that may be considered in design approval; requirements for submissions in order to obtain review by the ACC, procedural requirements, and acceptable Improvement(s) that may be installed without the prior approval of the ACC; architectural standards, design guidelines, requirements, and/or other provisions pertaining to architectural design and approvals; provisions that are different for different types, sizes or prices of Units, construction or residences (including garages, sprinkler systems, porches and overhangs); and permitting the ACC, with respect to any violations or alleged violations of any of the Governing Documents, to send demand letters and notices, levy and collect Fees and interest, and negotiate, settle and take any other action. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration. However, after appointment of the ACC by the District, any architectural standards, guidelines, rules and regulations, or any modifications to existing architectural standards, guidelines, rules and regulations, proposed by the Architectural Control Committee, shall not be effective until the same have been approved by the Board of Directors.

Section 4.10. *Variance.*

The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 7 of this Declaration (Restrictions) or of the Guidelines, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the Community and shall not militate against the general intent and purpose hereof. However, any variance that may be granted under this Section is only a variance from the requirements of the applicable Governing Document for the individual applicant, and is not a variance from the requirements of any applicable governmental or quasi-governmental agency or entity. No granting of a variance or adjustment to any one applicant/Owner shall constitute a variance or adjustment, a continuing variance or adjustment, or the right to a variance or adjustment, to any or all other applicants/Owners.

Section 4.11. *Waivers; No Precedent.*

The approval or consent of the Architectural Control Committee or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC, or any representative(s) thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

Section 4.12. *Liability.*

Neither the ACC, nor any members, employees, agents or representative or committee thereof, nor any Declarant, Builder or District, nor any owners, officers, employees or agents

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thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove. In reviewing any matter, neither the ACC, nor any Declarant, Builder or District, shall be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an Improvement by the ACC, District, or a Declarant, shall not be deemed an approval of any such matters. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by, the ACC, District or a Declarant.

Section 4.13. Declarant's and District's Exemption; Each Builder's Exemption.

4.13.1. Notwithstanding anything to the contrary, Declarant is exempt from all provisions of this Article and all other provisions of the Governing Documents and any other matters that require ACC review and/or approval, except the requirements to obtain approval of the governmental entities (other than the District or any other governmental entity that enforces any of the Governing Documents) with jurisdiction thereover as provided in Section 4.2.4 of this Declaration.

4.13.2. Provided that each Builder's plans and specifications for construction of Improvements are in material accordance with Governing Documents and have been approved by Declarant, each Builder is exempt from the provisions of this Article and all other provisions of the Governing Documents and any other matters that require ACC review and/or approval, except for the requirements to obtain approval from the governmental entities (other than the District or any other governmental entity that enforces any of the Governing Documents) with jurisdiction thereover as provided in Section 4.2.4 of this Declaration.

ARTICLE 5. INSURANCE

Section 5.1. Insurance.

The District may maintain insurance in connection with its functions. Such insurance to be maintained by the District may include, without limitation, property insurance, commercial general liability insurance, fidelity coverage and personal liability insurance to protect directors and officers of the District from personal liability in relation to their duties and responsibilities in acting as directors and/or officers on behalf of the District. In addition, the District may maintain insurance against such other risks as the Board of Directors may determine. Except as may be required pursuant to applicable law, the District may determine, in its own sole and reasonable discretion, the limits of any insurance coverage it obtains on its own, or the Board's, behalf. Nothing herein shall be construed or interpreted as a waiver of the District's governmental immunity as provided by applicable law.

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

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

ARTICLE 6. EASEMENTS

Section 6.1. *Access Easement.*

Each Owner hereby grants to the District, and to its agents, employees and contractors, a right and easement on, over, under, across and through such Owner's Unit for and incidental to inspection and/or enforcement, incidental to any term or provision of any of the Governing Documents. The rights and easements granted in this Section may be exercised only during reasonable hours after at least twenty-four (24) hours' notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive entry. The interior of any residence shall not be subject to the easements provided for in this Section.

Section 6.2. *Utilities Easements.*

Declarant and the District hereby grant and reserve a blanket easement upon, across, over and under the Common Area for utilities and the installation, replacement, repair and maintenance of utilities, including water, sewer, gas, telephone, electricity, cable, and television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Area and to affix, repair, maintain and replace water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters, regardless of whether the aforesaid constitute portions of main distribution systems or individual services. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests specific easement(s) by separate recordable document, Declarant and the District reserve and are hereby given the right and authority to grant such easement(s) upon, across, over and/or under any part or all of the Common Area without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.20 of this Declaration. The easements provided for in this Section shall in no way affect, avoid, extinguish or modify any other Recorded easement(s) on the Common Area or any other prior recorded liens or encumbrances against the Common Area. The easement(s) described in this Section are in addition to any other utility easement(s) set forth on any plat or other recorded documents.

Section 6.3. *Intentionally Omitted.*

Section 6.4. *Drainage Easement.*

Declarant hereby reserves, to itself and to the District, easements for drainage and drainage facilities across the five (5) rear, five (5) front, and five (5) side feet of each Lot; provided, however, that if a residence is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line of such Lot to the

exterior wall of the residence on such Lot that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear, front and side yard drainage easements. Declarant reserves to itself and to the District the right to enter in and upon each such rear, front and side yard drainage easements to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as a Declarant or the District may deem necessary or desirable; provided, however, that such right and authority in the Declarant or the District shall cease at such time as the Special Declarant Rights automatically terminate as provided in Section 1.20 of this Declaration.

Section 6.5. *Easement for Unannexed Property.*

Declarant and the District hereby reserve, for the use and benefit of any property owned by Declarant and located proximately to the Community which may be annexed pursuant to Sections 10.3 or 10.5 (“**Annexable Area**”), a non-exclusive, perpetual easement for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, alleys, sidewalks, access ways and similar Common Area, now or hereafter constructed, erected, installed or located in or on the Community, and on, over, across and under the Common Area for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement, reading, and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein collectively the “**Annexable Area Easement**”). By virtue of this Annexable Area Easement, Declarant and the District generally intend to provide for pedestrian and vehicular access and for utilities services to those portion(s) of the Annexable Area which have not been included in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after Recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as the following have occurred with respect to such portion of the Annexable Area: 1. annexation of such portion of the Annexable Area to this Declaration; and 2. expiration of a Declarant’s right to withdraw such portion of the Annexable Area from this Declaration.

ARTICLE 7. RESTRICTIONS

Section 7.1. *Restrictions Imposed.*

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

Section 7.2. *Compliance with Law.*

All Owners, all Permittees, and all other Persons, who reside upon or use any Unit or any other portion of the Community, shall comply with all applicable statutes, ordinances, laws, regulations, rules and requirements of all governmental and quasi-governmental entities, agencies and authorities, including without limitation all zoning, PUD, use restrictions and other

requirements set forth in any recorded zoning documents or otherwise promulgated by any governmental authority with applicable jurisdiction.

Section 7.3. *Residential Use; Certain Permitted Business Activities.*

Subject to Section 10.4 of this Declaration (Declarant's and Each Builder's Use), Units shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied, as determined by the Board:

7.3.1. The business conducted is clearly secondary to the residential use of the dwelling unit and is conducted entirely within the dwelling unit;

7.3.2. The existence or operation of the business is not detectable from outside of the dwelling unit by sight, sound, smell or otherwise, or by the existence of signs;

7.3.3. The business does not result in an undue volume of traffic or parking that affects the Community;

7.3.4. The business conforms to all zoning provisions and is lawful in nature; and

7.3.5. The business conforms to all District Rules and Regulations and policies and procedures.

Section 7.4. *Nuisances.*

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

Section 7.5. *Animals.*

Unless approved by the Board, no animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Community; provided, however, that the Owners of each Unit 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 Community. The District shall have, and is hereby given, the right and authority to do the following, as well as take such other action(s) with regard to these matters as the Board of Directors may determine: set a maximum number of household pets; regulate the type(s) of pets or animals

that are permitted to be kept; determine that any animals or pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other governmental laws, ordinances, or other provisions related to animals or pets; or determine that an Owner is otherwise in violation of any provision of the Governing Documents. If the District determines that any of the foregoing have been or are being violated, the District may take any lawful action(s), including, without limitation, impose and collect Fees, to correct the same. An Owner's right to keep household pets (or other animals as determined by the Board) is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the District as a result of keeping such pets or animals.

Section 7.6. *Miscellaneous Improvements.*

7.6.1. No advertising or signs of any character shall be erected, placed, permitted or maintained other than: a name plate of the occupant and a street number; and a **"For Sale," "Open House," "For Rent"** or security sign(s) of not more than a total of six (6) square feet posted only for the purpose of selling, renting or evidencing the existence of a security system on such Unit; and political signs and other signs, in conformance with all other laws and regulations; and such other signs, for such length(s) of time, which have the prior written approval of the Board or are otherwise expressly permitted by the Rules and Regulation or Guidelines or by applicable law; provided, however, that any and all such advertising or signs shall be subject to any and all specifications and/or Rules and Regulations adopted by the Board of Directors. Notwithstanding the foregoing, any signs, advertising, or billboards, may be used by a Declarant, the District, or a Builder, without regard to any specifications or any Rules and Regulations, and without the prior written approval of the Board, the ACC, or any other Person.

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

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

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

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

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

7.7.1. No house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding, except as hereinafter provided, pickup trucks that are rated one (1) ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Unit, unless such parking or storage is entirely within the garage area of such Unit or will be suitably screened from view in accordance with the Rules and Regulations or prior written approval of the Board. A “**commercial vehicle**” means a vehicle that: is used to transport cargo or passengers for profit or hire, or otherwise to further the purposes of a business or commercial enterprise; and may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle. However, any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency purposes. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon. “**Recreational vehicle**” includes, but is not limited to, motor homes, pick-up trucks with camper shells, trailers, self-contained recreational vehicles, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation.

7.7.2. No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community (other than completely within a garage). An “**abandoned or inoperable vehicle**” shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been, or is incapable of being, driven under its own propulsion for a period of five (5) days or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles may be parked for such length(s) of time as determined by the Board and/or as provided in the Rules and Regulations and/or policies and procedures of the District.

7.7.3. In the event the District shall determine that a vehicle is parked or stored in violation of subsections 7.7.2 hereof, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the District, the District shall have the right to remove the vehicle at the sole expense of the owner thereof to an impound lot of the District’s choosing.

7.7.4. 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 Community unless it is done within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent the washing and

polishing, on a Unit, of any motor vehicle, boat, trailer, motor cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing subject to any then-applicable watering restrictions.

7.7.5. Section 7.7 shall be construed and applied in accordance with all applicable laws.

Section 7.8. *No Activities; No Hazardous Materials or Chemicals.*

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

Section 7.9. *No Disruptive Lights, Sounds or Odors.*

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

Section 7.10. *Restrictions on Trash and Materials.*

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

Section 7.11. *Sightly Condition of Units.*

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

Section 7.12. *Leases.*

The term “lease,” as used herein, shall include any agreement for the leasing or rental of a Unit, Improvements thereon, or any portion thereof, and shall specifically include month-to-month rentals and subleases. Any Owner shall have the right to lease his Unit, or any portion thereof, under the following conditions:

7.12.1. All leases shall be in writing and for a term of not less than thirty (30) days; and

7.12.2. All leases shall provide that the terms of the lease and lessee’s occupancy of the leased premises shall be subject in all respects to the Governing Documents; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be an automatic material default under the lease.

Section 7.13. *Non-Interference with Grade and Drainage.*

Each Owner agrees, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property located within or adjacent to the Community. Except as to Declarant, the District, and each Builder, in the event that it is necessary or desirable to change the established drainage over any Lot or Common Area, then the party responsible for the maintenance of such real property shall submit a plan to the ACC for its review and approval, in accordance with Article 4 of this Declaration (Architectural Review), and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities with appropriate jurisdiction. For purposes of this Section, “established drainage” is defined as the drainage which exists at the time final grading is completed by a Declarant, District, or a Builder.

Section 7.14. *Restrictions on Mining or Drilling.*

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

ARTICLE 8. PROPERTY RIGHTS

Section 8.1. *Use of Common Area by a Declarant.*

An easement is hereby reserved by Declarant and the District on, over, across and through the Common Area, and each portion thereof, as may be desirable for the purpose of exercising or discharging any of Declarant’s or the District’s rights or obligations, or exercising any Special Declarant Rights, and no Owner shall engage in any activity which will temporarily or permanently

interfere with Declarant's or the District's easements on, over, across and through the Common Area.

ARTICLE 9. DISPUTE RESOLUTION

Section 9.1. *Intent and Applicability of Article and Statutes of Limitation.*

9.1.1. Each Person agrees to encourage the amicable resolution of disputes under any of the Governing Documents, without the emotional and financial costs of litigation. Accordingly, each Person covenants and agrees to submit all Claims (as defined below) to final, binding arbitration in accordance with the procedures set forth in Section 9.4 hereof, and not to a court of law with appropriate jurisdiction.

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

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

Section 9.2. *Definition of "Claim" Under this Article.*

For purposes of this Article, "**Claim**" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between any Person(s) under any of the Governing Documents, and one or more other Persons, regardless of how the same may have arisen or upon what it might be based, including those arising out of or related to the interpretation, application or enforcement of any of the Governing Documents, or the rights, obligations or duties under any of the Governing Documents.

Section 9.3. *Exclusions from "Claim."*

Unless specifically exempted by this Article, all Claims shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all parties thereto otherwise agree in writing, "**Claim**" does not include any of the following, and the same shall not be subject to the provisions of this Article:

9.3.1. Any action by the ACC, the governing Board of the District, or the Declarant, to enforce Article 4 (Architectural Review) or Article 7 (Restrictions) of this Declaration, or any provision(s) of the Guidelines or the Rules and Regulations, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief), and such other ancillary relief as a court may deem necessary; or

9.3.2. Any action that asserts a Claim that would constitute a cause of action independent of the Governing Documents.

Section 9.4. *Final, Binding Arbitration*

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

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

9.4.3. 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 to such dispute nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all of the parties to the dispute.

Section 9.5. *Liability for Certain Failures of District or District.*

No director or officer of the District or ACC shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation, arbitration, or other dispute resolution, if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent.

ARTICLE 10. GENERAL PROVISIONS

Section 10.1. *Enforcement.*

10.1.1. This Section 10.1 is subject to Article 9 of this Declaration (Dispute Resolution).

10.1.2. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in any of the Governing Documents, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Remedies shall be cumulative and no remedy shall be exclusive of other remedies that may be available. The

District shall enforce the provisions of the Governing Documents and such covenant shall be enforceable by the Owners pursuant to this Section 10.1. Declarant and any aggrieved Owner shall have the right, but not the duty, to institute, maintain and prosecute any such proceedings. For each claim, including counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions or any of the Governing Documents, the prevailing party shall be awarded its reasonable collection costs and reasonable attorneys' fees and costs incurred in asserting or defending the claim; except that, any Person who brings an action against any Declarant, any Builder, the District, or the ACC, regarding enforcement, or non-enforcement, of any provision(s) of the Governing Documents, shall not be awarded their costs or any attorneys' fees. Failure by Declarant, the District or any Owner to enforce any covenant, restriction or other provision contained in any of the Governing Documents, shall in no event give rise to any liability for damages, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other provision of the Governing Documents, regardless of the number of violations or breaches that may occur.

10.1.3. The foregoing right of enforcement shall include the right of the District, to send demand letters and notices, to charge interest and/or late charges, to levy and collect Fees, to impose liens (as provided in C.R.S. Section 32-1-1001(1)(j)(I), as amended), to negotiate, settle and/or take any other actions, with respect to any violation(s), or alleged violation(s), of any of the Governing Documents. Prior to collection of any Fees, the District or the ACC shall mail a notice or demand to the Person(s) alleged to be in violation of any provision of the Governing Documents and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated, within twenty-one (21) days after the notice of violation has been mailed or such other time as the District or the ACC may decide; failure of a notified Person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

Section 10.2. *Severability.*

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

Section 10.3. *Annexation; Withdrawal.*

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

10.3.2. Declarant hereby reserves the right to Record one or more documents in order to clarify the effect of any annexation(s). Each such document(s), if any such

document(s) are Recorded by a Declarant, may state the legal description(s) of any property which has been annexed, and may include such other provisions as a Declarant may determine.

10.3.3. Declarant reserves the right to withdraw the Property, or any portion thereof, including one or more Units, from this Declaration, so long as the Declarant owns the portion of the Property to be withdrawn. Each withdrawal, if any, may be effected by the Declarant recording a withdrawal document in the Records. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn property from this Declaration so that, from and after the date of recording a withdrawal document, the property so withdrawn shall not be part of the Property or the Community, or in anyway subject to the terms hereof.

Section 10.4. *Declarant's and Each Builder's Use.*

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

10.4.1. to excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Improvements;

10.4.2. to use any Improvements on any property as sales offices, management offices, model units and/or construction offices; and/or

10.4.3. to require a Declarant to seek or obtain any approvals for any activity.

Section 10.5. *Duration, Revocation, and Amendment.*

10.5.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of Recording of this Declaration. Except as otherwise provided in this Declaration, this Declaration may be amended by the affirmative vote or agreement of Owners holding at least sixty-seven percent (67%) of the Units; provided, however, prior to the termination of the Special Declarant Rights no amendment of this Declaration shall be effective without the prior written approval of the Declarant. Further, amendments shall be applicable only to disputes, issues, circumstances, events, claims or

causes of action that arose out of circumstances or events that occurred after the Recording of such amendment; and no amendment shall be applied retroactively to any earlier occurring disputes, issues, events, circumstances, actions, claims or causes of action. Notwithstanding the foregoing, the District may unilaterally amend this Declaration to the extent required to cause the Declaration to comply with applicable law, which amendment(s) shall be subject to Declarant approval prior to expiration of Special Declarant Rights.

10.5.2. Notwithstanding anything to the contrary, any of the Governing Documents may be amended, in whole or in part, by the Declarant without the consent or approval of any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, including without limitation the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, and the federal national mortgage association. Such right of amendment shall terminate automatically as provided in Section 1.20 of this Declaration.

10.5.3. Notwithstanding anything to the contrary, any of the Governing Documents, or any map or plat, may be amended in whole or in part, by a Declarant without the consent or approval of any other Person in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.20 of this Declaration.

10.5.4. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, Recorded, and certified by any officer of the District designated for that purpose. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the District has received the requisite approvals. Amendments to this Declaration which may be made by a Declarant pursuant to this Declaration may be signed by a Declarant and shall require no other signatory.

Section 10.6. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the District, and all statements, demands and other notices intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest shall, subject to Section 2.6 of this Declaration (Authenticated Electronic Representation), be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the District of a registered address, then any statement, demand or other notice may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit or at the contact information listed in the public real estate records of the Elbert County Assessor's office. All statements, demands, or other notices intended to be served upon the Board of Directors shall be sent by U.S. mail, postage prepaid, to Declarant who then owns any portion of the Property at its registered address.

Section 10.7. *Limitation on Liability.*

Declarant, any Builder, the District, the ACC, and their respective directors, officers, shareholders, members, partners, agents and employees, shall not be liable to any Person for any action or for any failure to act arising out of any of the Governing Documents, unless the action or failure to act was not in good faith and was done or withheld with malice. Further, the District does not waive, and no provision of this Declaration shall be deemed a waiver of, the immunities and limitations to which the District is entitled as a matter of law, including the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.* C.R.S., as amended. The release and waiver set forth in Section 10.11 (Waiver) shall apply to this Section.

Section 10.8. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by a Declarant, any Builder, the District, the Board of Directors, the ACC, or their respective owners, officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 10.11 (Waiver) shall apply to this Section.

Section 10.9. *Disclaimer Regarding Safety.*

DECLARANT, EACH BUILDER, THE DISTRICT, THE BOARD OF DIRECTORS, THE ACC, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, OWNERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE DISTRICT, EACH BUILDER, THE BOARD OF DIRECTORS, THE ACC, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE GOVERNING DOCUMENTS, OR PURSUANT TO APPLICABLE LAW, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 10.11 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 10.10. *Development Within and Surrounding the Community and Adjacent Uses.*

Each Owner acknowledges that development within and surrounding the Community may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Community, views of or from the Community or the Units,

surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust, agricultural uses, horses and other livestock, operation and use of firearms on proximate properties and other inconveniences or disruptions. Without limiting the generality of the foregoing, each Owner acknowledges that a non-potable water recycling system and related facilities may be constructed within the Community, the operation and construction of which may cause noise, odors or other impacts. The Community may provide a variety of housing options for current and future residents, which may include agricultural uses. Each Owner acknowledges that adjacent or proximate properties (within or outside the Community) may be used for agricultural purposes including without limitation the storage and disposal of manure; the application of agricultural chemical fertilizers, soil amendments, herbicides and pesticides; cultivation, plowing, spraying, pruning, harvesting, crop protection, shipping and processing, animal husbandry; and the operation of machinery of any kind during any twenty-four (24) hour period, (including aircraft) which may generate dust, smoke, light, noise, odor and traffic. The inconvenience and discomforts associated with such agricultural operations shall not be considered a nuisance if such operations are consistent with the accepted customs and standards as established and followed by similar agricultural operations in the same locality. By accepting a deed to a Unit, each Owner accepts title to such Unit subject to the foregoing, and waives and releases any claim against the Declarant, any Builder, the District, the Board of Directors, the ACC, and their respective owners, officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 10.11 (Waiver) shall apply to this Section.

Section 10.11. *Waiver.*

By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges Declarant, each Builder, the District, the Board of Directors, the ACC, and their respective owners, officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including those contained in Sections 10.7, 10.8, 10.9 and 10.10.

Section 10.12. *Headings.*

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

Section 10.13. *Gender.*

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

Section 10.14. *Use of “Include,” “Includes” and “Including”.*

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

Section 10.15. *Action.*

Any action that has been or may be taken by a Declarant, the District, a Builder, the Board, the ACC, any Member, any director, any committee, or any other Person, may be taken “**at any time, from time to time**”. Each provision that authorizes, directs or permits action shall be deemed to include such language.

Section 10.16. *Sole Discretion.*

All actions which are taken by a Declarant, the District, a Builder, the Board, the ACC, any Member, any director, any committee, or any other Person, shall be deemed to be taken “**in the sole discretion**” of each of such parties.

Section 10.17. *Run with Land; Binding Upon Successors.*

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

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _____ day of _____, 20__.

DECLARANT:

Craft Bandera Acquisition Company, LLC, a Colorado limited liability company

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____ as _____ of Craft Bandera Acquisition Company, LLC, a Colorado limited liability company.

Witness my hand and official seal.

(S E A L)

Notary Public _____

My Commission Expires: _____

THE DISTRICT:

_____ Metropolitan District
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____

Name: _____

Title: _____

Attest: _____
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__
by _____ as _____ of _____
Metropolitan District, a quasi-municipal corporation and political subdivision of the State of
Colorado.

Witness my hand and official seal.

(S E A L)

Notary Public _____

My Commission Expires: _____

**EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF INDEPENDENCE**

**EXHIBIT B
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF INDEPENDENCE**

(Tracts owned or to be owned by District)

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF ASPEN RESERVE**

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