

**PROTECTIVE COVENANTS AND EASEMENTS  
OF JACOBY FARM**

THESE PROTECTIVE COVENANTS AND EASEMENTS OF JACOBY FARM ("Covenants", as hereinafter more fully defined) are made and entered into the date and year hereinafter set forth by RICHMOND AMERICAN HOMES OF COLORADO, INC., a Delaware corporation ("Declarant", as hereinafter more fully defined).

**RECITALS**

A. Declarant is the owner of that certain real property in the County of Weld, Town of Windsor ("Town"), State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference ("Property", as hereinafter more fully defined).

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

C. 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.

D. Pursuant to C.R.S. § 32-1-1004(8), it is the intention of the Declarant, in imposing these covenants and easements on the Property, to empower the Metropolitan District (as defined herein), a metropolitan district that provides service to and governs the Property, to furnish covenant enforcement, easement services, and design review services, as is more particularly described herein, and to use revenues therefor that are derived from the Property.

**DECLARATION:**

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 one or more parcels of the Property for the purpose of constructing a residence on each such parcel for sale, and/or rental, to the public, who is designated as a Builder by Declarant, and (ii) any Person designated as a Builder by Declarant who acquires one or more parcels of the Property for sale to any Person fitting the description in Section 1.1(i) and/or for constructing a residence on each such parcel for sale, and/or rental, to the public.

**Section 1.2. Covenants.**

"Covenants" means these Protective Covenants and Easements of Jacoby Farm, as amended and supplemented.

**Section 1.3. Declarant.**

"Declarant" means Richmond American Homes of Colorado, Inc., a Delaware corporation, and/or any other Person to whom the Declarant may 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 Weld County, Colorado. In lieu of such an assignment, at any time(s) during the Declarant Control Period, the Declarant may determine to contract with the Metropolitan District for the Metropolitan District to provide covenant enforcement services related to the Declarant's rights hereunder.

**Section 1.4.** Declarant Control Period.

"Declarant Control Period" means the period of time commencing on recordation of these Covenants in Weld County, Colorado, and expiring upon conveyance by Declarant of all of the Lots to Owners other than Declarant or Builders.

**Section 1.5.** Design Review Committee or DRC.

"**Design Review Committee**" or "**DRC**" means the advisory committee appointed by the Declarant until termination of the Declarant Control Period, and thereafter appointed by the Metropolitan District, all as provided in Section 2.1 of these Covenants. The DRC shall review requests for design review approval and make recommendations, for their approval or disapproval, to the Declarant until termination of the Declarant Control Period, and thereafter to the governing board of the Metropolitan District, as more fully provided in these Covenants.

**Section 1.6.** Improvements.

"**Improvements**" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including buildings, outbuildings, swimming pools, hot tubs, satellite dishes, 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 1.7.** Lot and Lots.

"**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. "**Lots**" shall mean more than one Lot.

**Section 1.8.** Metropolitan District.

"**Metropolitan District**" means Jacoby Farm Metropolitan District, and/or any other metropolitan district, to whom the then-Metropolitan District may 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 Weld County, Colorado, of a document of transfer or assignment, duly executed by the then-Metropolitan District.

**Section 1.9.** Owner.

"Owner" means each fee simple title holder of a Lot, including Declarant, any Builder and 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 1.10.** 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 each Owner, the Declarant, each Builder, the Metropolitan District, the governing body of the Metropolitan District, and the DRC.

**Section 1.11.** Property.

"Property" means the real estate described on the attached Exhibit A, as supplemented and amended, as the same may now or hereafter be improved, 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 5.6 hereof.

**ARTICLE 2. DESIGN REVIEW**

**Section 2.1.** Composition of DRC.

The DRC shall consist of three (3) or more people. Until termination of the Declarant Control Period, as provided in Section 1.4 of these Covenants, the Declarant has the right to appoint the DRC; subsequent to such date, the DRC shall be appointed by the governing board of the Metropolitan District. The appointments of all then-current members of the DRC who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the DRC expires.

**Section 2.2.** Design Review Requirements.

2.2.1. Except as provided in Section 2.4 below, No Improvements shall be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Lot, unless said Improvements are in full compliance with the provisions of these Covenants and the Guidelines (as hereinafter defined). At least two (2) sets of complete plans and specifications of proposed Improvements (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 DRC), shall have been first submitted to the DRC for review, and then approved in writing (after recommendation by the DRC) by the entity with design approval rights under these Covenants, which is the Declarant until expiration of the Declarant Control Period and thereafter the governing board of the Metropolitan District (hereinafter, the entity with design approval rights under these Covenants is referred to as the "Authorized Entity").

2.2.2. The DRC and the Authorized Entity shall exercise their reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. However, neither the DRC nor the Authorized Entity will review or approve any proposed Improvement regarding whether the same complies with governmental requirements. Rather, as provided in Section 2.2.3, below, the applicant is also required to submit proposed Improvements to the applicable governmental entities

for a determination of compliance with governmental requirements. In its review of such plans, specifications and other materials and information, the DRC may require, as a condition to considering an approval request, that the applicant(s) pay and/or reimburse the DRC and/or the Authorized Entity, as applicable, for the expenses incurred in the process of review and approval or disapproval.

2.2.3. In addition to the foregoing review and approvals, and notwithstanding anything to the contrary in these Covenants, 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 Town, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

2.2.4. The Authorized Entity may, at any time, appoint a representative to act on its behalf. If so, then the actions of such representative shall be the actions of its assignor, subject to the right of appeal as provided below. However, if such a representative is appointed, then the entity with design approval rights under these Covenants shall have full power over such representative, including the power to at any time withdraw from such representative any of such representative's authority to act on behalf of the assignor and the power to at any time remove or replace such representative.

### **Section 2.3. Guidelines.**

The Authorized Entity 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; but the Guidelines shall not be in conflict with any requirement of applicable law or regulation, nor shall the Guidelines be in conflict with these Covenants, nor shall the Guidelines single out environmental sustainability measures because environmental sustainability measures are addressed elsewhere. Such provisions may include: clarifying the designs and materials that may be considered in design approval, requirements for submissions, procedural requirements, specification of acceptable Improvement(s) that may be installed without prior review or approval; and permitting the Authorized Entity, with respect to any violation(s) or alleged violation(s) of any of these Covenants and/or the Guidelines, to send demand letters and notices, levy and collect fines, and negotiate, settle and take any other actions. 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 2.4. Declarant's and Builder's Exemption**

2.4.1 The Declarant shall be exempt from the provisions of this Article, except for the requirements contained in Section 2.2.3 hereof. This exemption shall automatically terminate upon the expiration of the Declarant Control Period.

2.4.2 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 2.2.3 hereof. This exemption shall automatically terminate upon the expiration of the Declarant Control Period.

**Section 2.5.** Procedures.

The DRC shall review each request for approval and make recommendations to the Authorized Entity within forty-five (45) days after the complete submission of the plans, specifications and other materials and information which the DRC may require in conjunction therewith. If the DRC fails to review and make such recommendations on any request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the applicant may submit its request for approval directly to the Authorized Entity. The DRC shall not be required to maintain records of plans, specifications or other documents or information that have been submitted to it for approval.

**Section 2.6.** Vote

After consideration of the recommendations of the DRC on any Improvement submitted for design approval, the affirmative, majority vote of the Authorized Entity shall constitute approval of such matter, unless the Authorized Entity has appointed a representative to act for it, in which case the decision of such representative shall control. That is, under these Covenants, the DRC is directed to review Improvements submitted for design approval, and make recommendations to the Authorized Entity, who decides with respect to such application.

**Section 2.7.** Prosecution of Work After Approval.

After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with all conditions and requirements of the approval. Except for the Declarant or Builders, 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; provided, however, that the Authorized Entity may grant extensions of time for completion of any proposed Improvements. Non-compliance with any provision of these Covenants may result in any of the remedies that are provided for in Section 5.1 of these Covenants.

**Section 2.8.** Notice of Completion.

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

**Section 2.9.** Inspection of Work.

The DRC, or its duly authorized representative, shall have the right to inspect any Improvement prior to or after completion 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 DRC has received a Notice of Completion from the applicant unless the DRC has been unable to inspect the Improvement due to events outside of the control of the DRC. In such event, the time period for inspection shall be extended until the DRC is reasonably able to conduct the inspection, but in no event longer than one hundred twenty (120) days after the DRC receives a Notice of Completion.

**Section 2.10.** Notice of Noncompliance.

If, as a result of inspections or otherwise, the DRC determines that any Improvement has been done without obtaining the required approval, 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 (except for the Declarant and Builders, who are not subject to such time requirement), subject to any extensions of time granted pursuant to Section 2.7 hereof, the DRC shall notify the applicant in writing of the noncompliance; which notice of noncompliance shall be given within ninety (90) days after the DRC receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance. Notwithstanding the foregoing, if the DRC has been unable to inspect the Improvements due to events outside of the control of the DRC, the time period for inspection shall be extended until the DRC is reasonably able to conduct the inspection, but in no event longer than one hundred twenty (120) days after the DRC receives a Notice of Completion.

**Section 2.11.** Correction of Noncompliance.

If the DRC determines that a noncompliance exists, the Person responsible for such noncompliance shall remedy or remove the same, and return the subject property or structure to its original condition, 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 DRC, or the Authorized Entity may, at their 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 DRC or the Authorized Entity, as applicable, upon demand, for all costs and expenses incurred with respect thereto.

**Section 2.12.** Cooperation.

The DRC and the Authorized Entity each have the right and authority 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, or any other Person, to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the DRC or the Authorized Entity. The costs and expenses for all such matters, if any, shall be shared or apportioned between such Persons and the Authorized Entity, as the Authorized Entity may determine. The foregoing shall include collection, payment, and disbursement of fees, charges, or other amounts. Additionally, the Authorized Entity shall have the right and authority at any time, and 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.

**Section 2.13.** Access Easement to DRC and Authorized Entity.

Each Lot shall be subject to an easement in favor of the DRC and the Authorized Entity, including the agents, employees and contractors thereof, for performing any of the actions contemplated in this Article. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any other property or any Lot, the Person responsible for the damage or expense to avoid damage, or the DRC, or the Authorized Entity, if either of the latter is responsible for such

damage, 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 notified of emergency entry as early as is reasonably possible. The interior of any residence shall not be subject to the easements provided for in this Section.

**Section 2.14. No Liability.**

The DRC, and the Authorized Entity, as well as any duly authorized representative thereof, shall not be liable in equity or damages to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter. In reviewing or approving any matter, the DRC, and the Authorized Entity, 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 Authorized Entity 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 Authorized Entity.

**Section 2.15. Variance.**

The Authorized Entity may grant reasonable variances or adjustments from any conditions and restrictions imposed by these Covenants to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and/or 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. However, any variance that may be granted under this Section is only a variance from the requirements of these Covenants, and is not a variance from the requirements of the Town or any other governmental or quasi-governmental agency or entity.

**Section 2.16. Waivers; No Precedent.**

The approval or consent of the Authorized Entity, 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 such Person, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

**ARTICLE 3. RESTRICTIONS**

**Section 3.1. Town Requirements; Additional Restrictions.**

Notwithstanding anything in these Covenants to the contrary, the Property is subject to all requirements, covenants, restrictions, ordinances, regulations, and other matters of the Town, including those 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 Weld County, Colorado, as amended. In addition to, and not in substitution of, Town requirements, 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, agreement or covenants contained in these Covenants 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 by the Declarant and recorded in the office of the Clerk and Recorder of Weld County, Colorado, provided that if any such modification or supplement affects any portion of the Property owned by a Person other than Declarant, the written consent of such Person or, in the case of a portion of the Property owned by multiple Persons, two-thirds (2/3) of such Persons, shall be required.

**Section 3.2. 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, except as otherwise provided in any Town-approved document governing the Property. Notwithstanding the foregoing, except to the extent the same is in violation of any Town rule, regulation, law, ordinance or statute, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

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

3.2.2. 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;

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

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

3.2.5. the business conforms to the Guidelines as well as any rules and regulations that may be imposed by the entity with design approval rights under these Covenants.

**Section 3.3. 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 entity with design approval rights under these Covenants has the right and authority to determine 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 Authorized Entity 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 3.4.** Temporary Structures; Unsightly Conditions.

Except as otherwise provided in these Covenants, no structure of a temporary character, including 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 3.5.** Miscellaneous Improvements, In addition to complying with Town requirements:

3.5.1. 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; except that signs that are in accordance with the Guidelines or have been submitted to the DRC for review, and approved by the Authorized Entity prior to posting of such signs. Notwithstanding the foregoing, signs, advertising, or billboards used by the Declarant (or by any Builder with the express written consent of the Declarant) 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.

3.5.2. No clotheslines, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot.

3.5.3. 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 Authorized Entity. 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.

3.5.4. Except as may be permitted by the Authorized Entity, 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. As to "**antenna**" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended, the Authorized Entity 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.

3.5.5. Other than fences which may be constructed, installed or located by the Declarant (or by a Builder as part of Improvements approved in accordance with Article 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 Authorized Entity, as well as compliance with all Town requirements and issuance of all Town-required permits. Any fences constructed on a Lot shall be maintained by the Owners of that Lot.

**Section 3.6. Vehicular Parking, Storage and Repairs.**

3.6.1. Except as may otherwise be provided in the Guidelines, vehicles may be parked only in the garages, in the driveways serving the Lots, or in appropriate spaces or areas which may be designated by the Authorized Entity, except that, any vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency.

3.6.2. Except as may otherwise be provided in the 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 Authorized Entity. 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 Authorized Entity.

3.6.3. In the event the Authorized Entity determines 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 Authorized Entity, then the Authorized Entity may have the vehicle removed at the sole expense of the owner thereof.

3.6.4. No activity, including 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, precautions and 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 3.7.** 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; provided, however, that such activities of Declarant and/or Builder shall not violate Section 3.10 or Section 3.11 below. 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 3.8.** 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 or within an outdoor fire pit powered by natural gas, propane or similar fuel. 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 3.9.** 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 3.10.** Restrictions on Trash and Materials.

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside 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. 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.

**Section 3.11.** Lots to be Maintained.

Subject to Section 3.4 hereof, each Lot shall at all times be kept in a clean and sightly condition by the Owner(s) thereof.

**Section 3.12.** Leases.

The term "lease," as used herein, shall include any agreement or arrangement for the occupancy of a Lot or any Improvements thereon by a Person other than the Owner or members of the Owner's immediate family, including month-to-month rentals, shorter term rentals, long term rentals, and subleases, and "leases" shall mean collectively all leases then in effect. Any Owner has the right to lease his entire Lot, or any portion thereof, under the following conditions:

3.12.1. All leases shall be in writing;

3.12.2. All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be for no less than thirty (30) days, be subject in all respects to these Covenants; and that any failure by the lessee to comply with these Covenants, in any respect, shall be a default under the lease, enforceable by the Authorized Entity as a third party beneficiary and in the same manner as if the Authorized Entity were the landlord; and

3.12.3. The respective Owner of the Lot related to such lease shall provide the Authorized Entity with a copy of such lease upon request.

**Section 3.13.** Landscaping.

Landscaping shall be installed on the side and back yards of each Lot by the Owner thereof (other than the Declarant or a Builder), on the earlier of: (a) as required by all applicable Town-approved documents governing the Property; or (b) within one hundred eighty (180) days after acquisition of title to such Lot by the first Owner of such Lot (other than the Declarant or a Builder) and occupancy of such Lot or any Improvements thereon; subject to delays for any applicable moratorium(s) imposed by the Town or any other governmental entity. Landscaping plans must be submitted to the Authorized Entity for review, and the approval of such plans by the Authorized Entity shall be obtained, prior to the installation of landscaping, except where installed by the Declarant or a Builder. 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 3.14.** Grade and Drainage; Irrigation Recommendations; Drainage Easement; Maintenance of Surface Drainage Improvements; Underdrains; and Non-Potable System Lines.

3.14.1. Each Owner shall maintain the grading upon his Lot, and grading around the building foundation, at the slope and pitch fixed by the final grading thereof, 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 DRC for review, and shall obtain approval by the Authorized Entity, in accordance with Article 2 of these Covenants, and any such change shall also be made in accordance with all laws, regulations, requirements and resolutions of the Town and other 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.

3.14.2. 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.

3.14.3. Declarant hereby reserves to itself, and grants to the Metropolitan District, easements for drainage and drainage facilities across the five (5) rear 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 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 and side yard drainage easements. Declarant reserves to itself and to the Metropolitan District the right to enter in and upon each such rear and side yard drainage easements, at any time, to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the Metropolitan District may determine; provided, however, that such right and authority in the Declarant terminates at such time as the Declarant Control Period terminates, as provided in Section 1.4 of these Covenants, at which time said reserved right and easement shall vest solely in the Metropolitan District.

3.14.4. Underdrains:

3.14.4.1. There are underdrain main lines (collectively, "Underdrain Mainlines"), which are (and will be) installed, generally, underneath the sanitary sewer system or at the rear of the Lots, and which serve as the main lines of the underdrain system that runs through the Property. The Underdrain Mainlines do deviate from the sewer main lines and/or rear of the Lots in certain areas. The Metropolitan District will take ownership and maintenance responsibility for all of the Underdrain Mainlines to the extent not located on a Lot.

3.14.4.2. There are underdrain service lines and related facilities (each individually an "Underdrain Service Line" and collectively the "Underdrain Service Lines"), which stub off of the Underdrain Mainlines and run to each Lot. The Underdrain Service Lines are private facilities that are to be owned and maintained by the Owner of the Lot, at such Owner's sole cost and expense, to the extent located on the Lot. That is, the Metropolitan District will not own or maintain the Underdrain Service Lines to the extent located on Lots.

3.14.5. Non-Potable System Lines.

3.14.5.1. There are non-potable water system main lines (collectively, "NPWS Mainlines"), which are (and will be) installed, generally, in the rear of the Lots, and which serve as the main lines of the non-potable water system that runs through the Property. The NPWS Mainlines do deviate from the rear of the Lots in certain areas. The Metropolitan District will take ownership and maintenance responsibility for all of the NPWS Mainlines up to the point of connection of the same to the master valve (i.e. the non-potable water valve on each NPWS Service Line (hereinafter defined) located on a Lot that is installed past the meter and closest to the residence, hereinafter referred to as the "Master Valve").

3.14.5.2. There are non-potable water system service lines and related facilities (each individually an "NPWS Service Line" and collectively the "NPWS Service Lines"), which stub off of the NPWS Mainlines into each Lot. The NPWS Service Lines are private facilities that are to be owned and maintained by the Owner of the Lot, at such Owner's sole cost and expense, to the extent located on such Lot, from the Master Valve throughout the remainder of such NPWS Service Line located on such Lot. That is, the Metropolitan District will own and maintain the NPWS Service Lines, to the extent located on Lots, only to the point of connection of the NPWS Service Line with the Master Valve.

3.14.6. The rights, obligations and easements granted in this Section 3.14 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 notified of emergency entry as early as is reasonably possible.

#### **ARTICLE 4. ALTERNATIVE DISPUTE RESOLUTION**

##### **Section 4.1. Statement of Clarification.**

Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a Claim (as defined herein), that the mandatory dispute resolution provisions contained in this Article are required.

##### **Section 4.2. Alternative Method for Resolving Disputes.**

Declarant, the Authorized Entity, their officers, directors, affiliates, agents, employees and contractors, all Owners, consultants, and any Person not otherwise subject to these Covenants but who agrees to submit to this Article (including any subcontractors and suppliers), each such entity being referred to individually as a "Bound Party" and collectively as the "Bound Parties," agree to encourage the amicable resolution of disputes involving the Property and all of its improvements without the emotional and financial costs of litigation. Accordingly, except as otherwise agreed to in writing between any Bound Parties, each Bound Party covenants and agrees to submit all Claims to mediation, and if such mediation is not successful, final binding arbitration, as set forth below in this Article, and not to otherwise bring legal or equitable action in any court.

##### **Section 4.3. Claims.**

Except as specifically excluded in this Section or as otherwise agreed to in writing between any Bound Parties, including without limitation any purchase and sale agreement or similar document (each a "Superseding Agreement"), all claims, disputes and other controversies arising out of or relating in any way to the:

4.3.1. interpretation, application or enforcement of this Declaration;

4.3.2. design, construction, sale, maintenance, habitability or condition of any improvements within the Community or any alleged defect therein, including without limitation any "action" as defined in C.R.S. §13-20-802.5(l);

4.3.3. rights, obligations and duties of any Bound Party under this Declaration, and/or any breach or alleged breach thereof;

are hereinafter referred to as a "Claim" or "Claims." All Claims shall be subject to and resolved in accordance with the terms and provisions of this Article.

Notwithstanding any contrary provision of this Article, the following shall not be Claims and shall not be subject to the provisions of this Article:

4.3.4. any legal action by the Authorized Entity against any Bound Party to enforce any payment provisions of these Covenants;

4.3.5. any legal action by the Authorized Entity to obtain a temporary or permanent restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Authorized Entity to act under and enforce the provisions of Article 2 (Design Review) or Article 3 (Restrictions); and

4.3.6. any legal action to enforce an arbitration award provided in this Article.

Any question about whether a matter is a Claim, and/or whether such matter is covered by this Article, shall be determined by the arbitrator.

**Section 4.4. Notice of Claim.**

Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

4.4.1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

4.4.2. the legal or contractual basis of the Claim (i.e., the specific authority out of which the claim arises); and

4.4.3. the specific relief and/or proposed remedy sought.

**Section 4.5. Timely Initiation.**

All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable action based on such Claim would be barred by the applicable statute of limitations or repose.

**Section 4.6. Right to be Heard.**

Upon receipt of a Claim and prior to commencing any arbitration proceeding which may fall within the scope of this Article, the Respondent shall have the right to be heard by the Claimant in an effort to resolve the Claim. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such party in negotiations. With respect to the foregoing, the Claimant and Respondent shall individually (i.e. without the joinder or inclusion of other Owners or such Claimant serving as a class representative for or becoming a class member of other Owners) mediate all Claims prior to proceeding under Section 4.8 below. The mediation shall be conducted by a single mediator. If such parties are unable to agree upon the selection of a mediator within fifteen (15) days of initiation of the Claim, then a single mediator shall be chosen in accordance with the rules governing the selection of an arbitrator under the Colorado Uniform Arbitration Act

(the "CUAA"). All mediation fees shall be split equally among the Claimant and Respondent. Prior to conducting such mediation, and consistent with Colorado law, the parties thereto shall agree in writing to limit the admissibility in arbitration or any court action of anything said, any admission made, and any documents prepared in the course of the mediation. If Claimant or Respondent commences an arbitration or other action based upon a Claim without first attempting to resolve the Claim through mediation, such party shall not be entitled to recover the costs of such action, even if the same would otherwise be available in such arbitration or other action.

**Section 4.7. Right to Inspect.**

If the Claim is asserted against Declarant and/or its officers, directors, affiliates, agents, employees, contractors or consultants and is based on a defect in the design or the construction of the Improvements within the Property, subject to Owner's prior written approval, which shall not be unreasonably withheld, Declarant shall have the right to access the affected area for purposes of inspecting the condition complained of, and the correction thereof, including any necessary redesign. This shall include, but not be limited to, notice prior to conducting any investigative or destructive testing. The Claimant shall meet with Declarant and/or its designees to discuss, in good faith, ways to resolve the Claim.

In the exercise of the inspection rights contained herein, the inspecting party ("Inspecting Party") shall be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party. The Inspecting Party shall use best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Inspection Property") and minimize any disruption or inconvenience to any person who occupies the Inspection Property; shall remove all debris placed on the Inspection Property by the Inspecting Party on a timely basis; and in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove equipment and materials from the Inspection Property placed on the Inspection Property by the Inspecting Party, and repair, replace and restore the Inspection Property to the condition of the Inspection Property as of the date of entry thereon by the Inspecting Party. The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the use of its rights to accrue against or attach to the Inspection Property. The repair, replacement and restoration work includes, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other Improvements on the Inspection Property that were damaged, removed or destroyed by Inspecting Party.

The Inspecting Party shall indemnify, defend and hold harmless the Owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from or in performance of this Section, or as a result of any Inspecting Party's breach of this Section.

**Section 4.8. Final Binding Arbitration.**

4.8.1. If the Parties do not reach a settlement of the Claim within 30 days after the mediation was conducted, the Claimant shall have 30 additional days to submit the Claim to binding arbitration in accordance with the arbitration procedures set forth below:

4.8.1.1. The parties agree that where any Claim is submitted to arbitration, and any other Bound Party other than another Owner may have liability with respect thereto, all parties to the dispute agree that other Bound Parties (other than another Owner) related to such



dispute or any intertwined or connected dispute, may be joined as additional parties in such arbitration, or if separate arbitrations exist or are separately initiated, to the consolidation of all such arbitrations. Notwithstanding anything to the contrary, each arbitration shall be conducted on an individual Owner basis to address the applicable Claim (i.e. without the joinder or inclusion of other Owners or such Claimant serving as a class representative for or becoming a class member of other Owners).

4.8.1.2. If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claims shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.

4.8.1.3. In the absence of an agreement otherwise between the applicable Bound Parties, all Claims subject to arbitration shall be conducted in accordance with the CUAA and be decided by a single private party arbitrator who is a retired Colorado state court or Federal judge or attorney licensed to practice law in Colorado.

4.8.1.4. If the parties are unable to agree upon an arbitrator within thirty (30) days from the date of the demand for arbitration, then the arbitrator shall be chosen in accordance with the rules governing the selection of an arbitrator under the CUAA.

4.8.1.5. No person shall serve as the arbitrator who may have any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the appearance of impartiality and/or actual impartiality, including any bias or financial or personal interest or relationship in the outcome of the arbitration ("Arbitrator's Disclosure"). If any party objects to the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as provided in Section 4.8.1.4. above.

4.8.1.6. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in Weld County, unless otherwise agreed by the parties.

4.8.1.7. Subject to the provisions of these procedures, the arbitration shall be conducted in accordance with rules and procedures determined by the arbitrator.

4.8.1.8. Subject to the arbitrator's right to establish rules and procedures governing formal discovery in the arbitration, no formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement of the parties. Notwithstanding the foregoing sentence, any party asserting Claims against the Declarant and/or its officers, directors, affiliates, agents, employees, contractors or consultants shall notify the Declarant prior to retaining any Person as an expert witness for purposes of any arbitration or authorized litigation, and the Declarant shall be entitled to conduct discovery, including depositions, of such expert.

4.8.1.9. The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue. An award in favor of any party shall be limited to actual damages, and the arbitrator shall not have any authority to award exemplary, punitive, special, indirect, consequential or any other damages other than actual damages. All arbitrator and arbitration fees shall be split equally among all Claimants and Respondents. Each party shall be responsible for its own costs and expenses related to the Claim and shall not be entitled to or

awarded its attorney's fees or costs incurred with respect thereto, or the arbitrator's or arbitration fees.

4.8.1.10. Unless directed by the arbitrator, there shall be no post-hearing briefs.

4.8.1.11. The arbitration award shall address each claim to be resolved in the arbitration, provide a summary of the reasons therefor and the relief granted.

**Section 4.9.** Amendment; Servitude in Gross.

The rights, terms and provision of this Article 4 are enforceable by Declarant, and shall not be amended without the written consent of Declarant. Further, this Article 4 and the rights, terms and provisions contained herein constitute a servitude in gross for the benefit of Declarant and its officers, directors, affiliates, agents, employees, contractors and consultants, shall inure to the benefit of the foregoing during the effective period of this Article, and all of the foregoing are third party beneficiaries thereof, regardless of ownership of any portion of the Property.

**Section 4.10.** Binding Effect.

BY TAKING TITLE TO ANY PORTION OF THE PROPERTY, EACH OWNER THEREOF ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 4 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP THE PROPERTY, CONSTRUCT IMPROVEMENTS AND SELL DWELLING UNITS, AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE 4, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP THE PROPERTY, CONSTRUCT IMPROVEMENTS OR SELL DWELLING UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO SUCH PORTION OF THE PROPERTY, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 4 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHTS AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL OR ACTUAL CONSTRUCTION DEFECT AFFECTING THE IMPROVEMENTS OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION ANY DWELLING UNIT.

**Section 4.11.** Duration and Waiver of Article.

Notwithstanding anything to the contrary, this Article 4 shall automatically terminate and be of no further force or effect ten (10) years after the expiration of the Declarant Control Period. Further, the Authorized Entity, at its sole option, may, on behalf of itself, voluntarily waive the requirements of this Article 4 from time to time and on a case-by-case basis.

**ARTICLE 5. GENERAL PROVISIONS**

**Section 5.1.** Enforcement.

This subsection is subject to Article 4 of these Covenants (Alternative Dispute Resolution) during the effective period thereof, except as to any enforcement actions in which the Metropolitan District is acting as the Authorized Entity. 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, and possible remedies include all of those available at law or in equity. The Declarant, Metropolitan District, and any aggrieved Owner, shall have the right, but not the duty, to institute, maintain and prosecute any such proceedings. No

remedy shall be exclusive of other remedies that may be available. Failure by the Declarant, the Metropolitan District, or any Owner, to enforce any covenant, restriction or other provision herein contained, shall in no event give rise to any liability, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other provision of these Covenants.

The foregoing shall include the right of the Metropolitan District, except with respect to the Declarant or any Builder, to send demand letters and notices, to levy and collect fines, to negotiate, settle and to take any other actions, with respect to any violation(s) or alleged violation(s) of any of these Covenants, the Guidelines, and/or any rules and regulations, or other regulations or requirements, of the Metropolitan District.

**Section 5.2. Severability.**

All provisions of these Covenants are severable. Invalidation of any of the provisions, including 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. Except as otherwise provided in these Covenants, 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, 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, until the expiration of the Declarant Control Period, no amendment of these Covenants 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, by the Declarant without the consent or approval of any other Owner or any other Person, to correct clerical, typographical, or technical errors, or to clarify these Covenants or any provision hereof. The Declarant's right of amendment set forth in the preceding sentence shall terminate concurrently with the Declarant Control 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, 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 the Declarant Control Period.

**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 an unintentional 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. In addition to the foregoing, setback requirements are set by the Town, such that any violation of the same is subject to review by, and approval of, the Town.

**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, provided that each subdivision or replatting is subject to review and approval by the Town. Each such subdivision or replatting may change the number of Lots in the Property. 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 25 years after recording of these Covenants in the office of the Clerk and Recorder of Weld County, Colorado.

**Section 5.6.** Withdrawal.

During the Declarant Control Period, the Declarant reserves the right to withdraw the Property, or any portion thereof, including one or more Lots, from these Covenants, 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 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. Notice of any such withdrawal shall be given to the Town.

**Section 5.7.** Annexation.

The Declarant may, at any time, 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 and unequivocally provides that the property 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. Notice of any such annexation shall be given to the Town.

**Section 5.8.** Declarant and Builder 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), 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 locating, maintaining and relocating management offices, signs, model

units, sales and construction trailers, and sales offices, in such numbers, of such sizes, and at such locations as it determines. 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) or require the Declarant or any Builder (but only with the express written consent of the Declarant) 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, the DRC, and their respective 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. Further, the Metropolitan District does not waive, and no provision of these Covenants shall be deemed a waiver of, the immunities and limitations to which the Metropolitan 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 5.14 (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, the DRC, 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 5.14 (Waiver) shall apply to this Section.

**Section 5.12. Disclaimer Regarding Safety.**

DECLARANT, THE BUILDERS, THE METROPOLITAN DISTRICT, THE DRC, AND THEIR RESPECTIVE 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, THE DRC, AND THEIR RESPECTIVE 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 5.14 (WAIVER) SHALL APPLY TO THIS SECTION.

**Section 5.13.** Development Within and Surrounding the Property.

Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Property, views of or from the Property or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, any Builders, the Metropolitan District, the DRC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 5.14 (Waiver) shall apply to this Section.

**Section 5.14.** Waiver.

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, each Builder, the Metropolitan District, the DRC, 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 those contained in Sections 5.10, 5.11, 5.12 and 5.13.

**Section 5.15.** 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 5.16.** 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 5.17.** Action.

Any action that has been or may be taken by the Declarant, any Builder, the Metropolitan District, the Authorized Entity, the DRC, 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 5.18.** Sole Discretion.

All actions which are to be taken by, or on behalf of, the Declarant, any Builder, the Metropolitan District, the Authorized Entity, the governing body of the Metropolitan District, the DRC, or any other Person, shall be deemed to be taken "in the sole discretion" of such Person.

**Section 5.19.** Use of "Include," "Includes," and "Including".

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

**Section 5.20.** Runs with the Land; Binding Upon Successors.

Except as otherwise provided in these Covenants, 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. Except as otherwise provided in these Covenants, 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 as of the 25<sup>th</sup> day of February, 2015.

DECLARANT:

RICHMOND AMERICAN HOMES OF  
COLORADO, INC., a Delaware corporation

By: [Signature]  
Its: vice President

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of February, 2015, by Linda M. Purdy, as Vice President of Richmond American Homes of Colorado, Inc., a Delaware corporation.

Witness my hand and official seal.

{SEAL} **HOLLY S. HOXENG**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19924007917  
My Commission Expires June 16, 2016

[Signature]  
Notary Public  
My Commission expires: 6/16/16

**EXHIBIT A**  
**TO**  
**PROTECTIVE COVENANTS AND EASEMENTS**  
**OF JACOBY FARM**

(Property)

Lots 1 through 10, inclusive, Block 1;  
Lots 1 through 26, inclusive, Block 2;  
Lots 1 through 16, inclusive, Block 3;  
Lots 1 through 20, inclusive, Block 4;  
Lots 1 through 18, inclusive, Block 5;  
Lots 1 through 18, inclusive, Block 6;  
Lots 1 through 12, inclusive, Block 7;  
Lots 1 through 8, inclusive, Block 8;  
Lots 1 through 10, inclusive, Block 9;  
Lots 1 through 9, inclusive, Block 10; and  
Lots 1 through 7, inclusive, Block 11;

Jacoby Farm Subdivision, Second Filing, Town of Windsor, County of Weld, State of Colorado, according to the plat thereof recorded in the real estate records in the Office of the Clerk and Recorder of Weld County, Colorado, on May 2, 2003, at Reception No. 3058584, being the same subdivision as Jacoby Farm Subdivision, Second Filing – Vested Property Rights, Town of Windsor, County of Weld, State of Colorado, according to the plat thereof recorded in the records in the Office of the Clerk and Recorder of Weld County, Colorado, on July 29, 2003, at Reception No. 3089022.