

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND GRANT OF  
EASEMENTS  
FOR  
ROCKY MOUNTAIN RAIL PARK**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR ROCKY MOUNTAIN RAIL PARK (this “**Declaration**”) is made as of January 11, 2021 (the “**Effective Date**”), by Rail Land Company, LLC, a Colorado limited liability company.

**RECITALS**

A. Declarant owns fee title to the real property consisting of approximately 619.45 acres, which real property is located in Adams County (“**County**”), State of Colorado and more particularly described in **Exhibit A** (the “**Property**”). The Property is also shown on the site plan attached hereto as **Exhibit B** (the “**Site Plan**”).

B. The Property currently consists of separate, legally subdivided parcels of real property as depicted on the Site Plan. The Property is intended to be developed as an industrial rail project commonly known as “Rocky Mountain Rail Park.” The Property and the improvements located thereon (now or in the future) are referred to herein jointly as the “**Development**”.

C. This Declaration does not create a Common Interest Community (as defined by the Colorado Common Interest Ownership Act at C.R.S. §38-33.3-103(8)). Therefore, this Declaration is not governed by the Colorado Common Interest Ownership Act.

D. Declarant imposes the covenants, conditions, restrictions and easements set forth in this Declaration on the Property, and pursuant to C.R.S. § 32-1-1004. Declarant empowers the Rocky Mountain Rail Park Metropolitan District (the “**District**”) with authority to furnish covenant enforcement and design review services for the Property utilizing revenues that are derived from the Property.

E. Declarant reserves the right to add additional real property to this Declaration, or withdrawing real property from this Declaration, by recording a Supplemental Declaration.

F. This Declaration provides for the overall administration of the Development, and reasonable procedures for its expansion and contraction.

G. The Recitals of Development have the same binding effect as if set forth in the Declaration.

## DECLARATION

NOW, THEREFORE, Declarant declares that the Property is subject to this Declaration and must be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained and altered subject to the terms contained in this Declaration. The terms of this Declaration touch and concern the Property, and (a) run with the land, (b) benefit and burden the Property as an equitable servitude, (c) bind all Persons having or acquiring any interest in the Property or any part of the Property, (d) inure to the benefit of and bind every part of the Property and every interest in the Property, and (e) inure to the benefit of and are enforceable by Declarant, its Affiliates, and their respective designees, assigns and successors in interest.

### ARTICLE 1. DEFINITIONS

The following terms as used in this Declaration have the meanings set forth below. Other terms in this Declaration may be defined in specific provisions of this Declaration and have the meaning assigned by such definition.

#### Section 1.1 Definitions.

(1) “Appeals Board” means any appellate body established by the District in accordance with Section 2.6.

(2) “Affiliate” means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with Person for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to (i) vote 20% or more of the ordinary voting power of such Person, or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and either alone or in conjunction with others.

(3) “Applicable Laws” means the laws, orders, ordinances, regulations, rules and statutes of all federal, state and local, jurisdictions having authority over the Property, including the District, County, and any other statutory created governing body including, without limitation, associations.

(4) “Benefited Parties” means Declarant, the District, the Design Review Committee, the Enforcement Committee, and each of their respective parents, subsidiaries, and Affiliates and each of their agents, directors, employees, members, managers, officers, partners, and shareholders, and their respective heirs, successors, and assigns.

(5) “Claims” means any and all causes of action, claims, costs, damages, expenses, liabilities, and other claims.

(6) “County” means Adams County, Colorado, or such successor municipality designated as the approving authority for the District pursuant to C.R.S. § 32-1-204.7, as the same may be amended from time to time.

(7) “**Declarant**” means Rail Land Company, LLC, a Colorado limited liability company and/or any other Person to whom Declarant assigns one or more of Declarant rights under this Declaration (which assignment will only be the extent of Declarant rights to which such assignee succeeds).

(8) “**Declarant Development Period**” means the period of time commencing on recordation of this Declaration in the Recorder’s Office and expiring fifty (50) years after recording of this Declaration, or such shorter period as deemed necessary by Declarant to comply with Applicable Laws.

(9) “**Declaration**” means this Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Rocky Mountain Rail Park, as amended from time to time.

(10) “**Design Guidelines**” means the design standards for Rocky Mountain Rail Park, as amended from time to time, and further described in Section 2.4.

(11) “**Design Review Committee**” means the design review committee established by the District in accordance with Section 2.5.

(12) “**Development**” means the approximate 619.45-acre development known as Rocky Mountain Rail Park, located in Adams County, Colorado, which is anticipated to be developed as a rail park.

(13) “**Development Rights**” means the rights reserved to Declarant in Section 9.1.

(14) “**Director**” means a member of the board of directors of the District.

(15) “**District**” means Rocky Mountain Rail Park Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

(16) “**District Property**” means any real or personal property, including any infrastructure or other Improvements, owned, leased or being constructed by or on behalf of the District in connection with the Development. Notwithstanding anything to the contrary, including the location of the District Property within the Property, the District Property shall not be subject to this Declaration.

(17) “**District Resolution**” means the Resolution of the District, approved and adopted on December 5, 2020.

(18) “**Documents**” means this Declaration, the Design Guidelines, the Rules and Regulations (if any), and any other rules or guidelines adopted by the Design Review Committee, Enforcement Committee or the District.

(19) “**Enforcement Committee**” means the covenant enforcement committee established by the District in accordance with Section 2.2.

(20) “**Environmental Law**” means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any governmental authority or requirements of law (including, without limitation, common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or releases or threatened releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as now or may hereafter be in effect.

(21) “**Fees**” means, collectively, (i) any type of charge to any portion of the Development for any services or facilities provided through the District, or (ii) any fees imposed by the District for Design Review Committee or Enforcement Committee services.

(22) “**Fines**” means any monetary penalty imposed by the District, the Enforcement Committee or the Design Review Committee against an Owner due to a Violation of the Documents by such Owner or any Occupant.

(23) “**Hazardous Materials**” includes but is not limited to any and all substances (whether solid, liquid or gas), "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" classified as such or as regulated under applicable Environmental Law, and any other substances such as asbestos, gasoline and any other petroleum products (including, without limitation, crude oil or any fraction thereof), polychlorinated biphenyls and ureaformaldehyde insulation).

(24) “**Improvements**” means all improvements, structures, buildings, rail access or conduits, and any all landscaping features, buildings, outbuildings, geothermal systems, solar systems, satellite dishes, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler/irrigation systems, garages, roads, driveways, parking areas, fences, gates, screening walls, retaining walls, stairs, fixtures, additions, walkways, outdoor sculptures or artwork, 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. Improvements includes, without limitation, all initial Improvements constructed on any Lot and all subsequent changes, modifications, alterations or adjustments to any previously approved Improvement. Improvements do not include any District Property.

(25) “**Lot**” means any parcel of real property within the Property that is described on a recorded plat as a lot and that is not owned by the District.

(26) “**Mortgage**” means any mortgage or deed of trust or other similar security instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure the performance of an obligation or the payment of a debt and which is to be released upon performance of the obligation or payment of the debt. “**First Mortgage**” means a Mortgage which has priority over all other security interests in a Lot, other than statutory liens for taxes and special assessments.

(27) “**Mortgagee**” means a mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee. “**First Mortgagee**” means any Person named as the mortgagee or beneficiary under any First Mortgage.

(28) “**Nonresidential Use**” has the same meaning as such term is used in C.R.S. § 38-33.3-121, or any statute that from time to time may replace the same.

(29) “**Notice of Completion**” means the notice described in Section 3.7.

(30) “**Notice of Alleged Violation**” has the meaning given to that term in Section 7.5

(31) “**Notice of Noncompliance**” means the notice sent by Design Review Committee described in Section 3.9.

(32) “**Notice of Violation**” has the meaning given to that term in Section 3.9.

(33) “**Occupant**” means any Person, other than Declarant, Declarant’s Affiliates, the Enforcement Committee, the Design Review Committee and the District, from time to time that uses or occupies any portion of a Lot under an ownership right or any lease, sublease, license or concession or other use and occupancy agreement, any guests and invitees of any Owner or Occupant and any other Person that uses any portion of the Property.

(34) “**Owner**” means each fee simple title holder of a Lot, including Declarant and Declarant’s Affiliates, but does not include a Person having a security interest in a Lot, including, without limitation, a Mortgagee. If there is more than one fee simple holder of title, “Owner” includes each such Person, jointly and severally.

(35) “**Parcel**” means any parcel of real property within the Property that is described on a recorded plat that may be sold or conveyed without violation of Applicable Laws, that is not owned by the District.

(36) “**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, Declarant, Declarant’s Affiliates, the District, the Enforcement Committee, and the Design Review Committee.

(37) “**Plans and Specifications**” means any materials required by Design Review Committee, as further described in Section 3.2.

(38) “**Property**” means the real estate described on the attached Exhibit A, as supplemented and amended from time to time, provided, however, Property does not include any property that has been withdrawn as provided in Section 12.7 or any District Property.

(39) “**Property Risks**” has the meaning given to that term in Section 12.1.

(40) “**Recorded Covenants**” means any covenant recorded in the Recorder’s Office encumbering any portion of the Property, by way of example, and not by limitation, any

declaration of covenants, any public improvement fee covenants, any associations, any use restrictions or any other type of covenant that has the intent of a covenant that runs with the land.

(41) “**Recorder’s Office**” means the Clerk and Recorder’s Office for the County.

(42) “**Rules and Regulations**” means rules and regulations concerning, without limitation, (i) the appointment of members to the Design Review Committee and the Enforcement Committee, (ii) the use of the Property, (iii) rules and regulations specific to the Lots, as such rules and regulations are adopted initially by Declarant or the District and/or amended from time to time by the District. Rules and Regulations are binding upon all Owners and Occupants.

(43) “**Service Plans**” means the District Service Plans approved by Adams County on August 28, 2018, as the same may be amended from time to time.

(44) “**Special Declarant Rights**” means rights which only Declarant has the right to exercise as enumerated in this Declaration, unless assigned by Declarant.

(45) “**Supplemental Declaration**” means any supplement to this Declaration that amends this Declaration or adds or withdraws real property to the Property and is recorded in the Recorder’s Office.

(46) “**Tract**” means any parcel of real property within the Property that is described on a recorded plat as a tract and that is not owned by the District.

(47) “**Violation**” means (a) an Improvement that has been installed or constructed without obtaining the Design Review Committee’s approval, (b) an Improvement that was not installed or constructed in substantial compliance with the approval that was granted by the Design Review Committee, or (c) any other violation of the Documents by an Owner or Occupant.

**Section 1.2 Incorporation of Recitals.** The recitals are incorporated into this Declaration by this reference.

## ARTICLE 2. THE DISTRICT

**Section 2.1 Authority.** Declarant delegates certain governance matters related to the Development to the District. Declarant, through this Declaration, as may be amended by Supplemental Declarations from time to time, grants authority to the District to act on behalf of Declarant for certain matters specifically set forth in this Declaration, including implementing this Declaration. The District has accepted such delegation of authority in the District Resolution.

**Section 2.2 Enforcement of Covenants.** Declarant grants the District authority to enforce certain covenants contained in this Declaration and contained in the Documents. Declarant further grants the District the authority to create a committee to enforce the covenants to be known as the “**Enforcement Committee**”. The District has accepted such delegation of covenant enforcement in the District Resolution.

**Section 2.3**      **Adopt Rules and Regulations Implementing this Declaration.** Declarant grants the District authority to adopt certain Rules and Regulations for the effective governance of the Development to implement this Declaration. The District has accepted such delegation to adopt Rules and Regulations in the District Resolution.

**Section 2.4**      **Design Guidelines.** Declarant grants the District authority to promulgate architectural standards, rules, regulations and/or guidelines (collectively the “**Design Guidelines**”) to interpret and implement the provisions of this Declaration. The District has accepted such delegation related to the Design Guidelines in the District Resolution. The Design Guidelines may consist of one or more documents, of differing titles, and shall be adopted as a component of the Rules and Regulations of the District.

**Section 2.5**      **Design Review.** Declarant grants the District authority to review and approve Improvements in compliance with the Design Guidelines and to enforce the Design Guidelines. Declarant further grants the District the authority to create a committee to enforce the Design Guidelines to be known as the “**Design Review Committee**”. The District has accepted such delegation related to the Design Guidelines in the District Resolution.

**Section 2.6**      **Appellate Body.** Declarant grants the District the authority to create an appellate body to review decisions of the Enforcement Committee and the Design Review Committee to be known as the “**Appeals Board**”. The District has accepted such delegation related to the creation of the Appeals Board in the District Resolution. The Appeals Board may consist of a subset of the members of the District or all of the members of the District.

**Section 2.7**      **Imposition of Fees and Fines.** Declarants grants the District the authority to impose Fees and Fines related to the activities of the Enforcement Committee and the Design Review Committee and to otherwise implement the provisions of this Declaration. The District has accepted such delegation related to the imposition of Fees and Fines in the District Resolution.

### ARTICLE 3. DESIGN REVIEW

**Section 3.1**      **Composition of Design Review Committee.** Declarant will appoint and remove the members of the Design Review Committee until Declarant assigns such rights to the District or the expiration of the Declarant Development Period, whichever occurs first.

**Section 3.2**      **Design Review Requirements.**

3.2.1      Subject to the provisions of Article 3 in this Declaration, no Improvement may be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Lot, unless the Improvement is in full compliance with the provisions of this Declaration and the Design Guidelines. Complete plans and specifications of the proposed Improvement, in the requisite number and format, and containing such information as is set forth in the Rules and Regulations and/or Design Guidelines, and any other materials and information as may be required by the Design Review Committee (collectively, “**Plans and Specifications**”), must be first submitted by Owner to the Design Review Committee for review, and then approved in writing by the Design Review Committee, all in accordance with the Rules and Regulations and/or Design



Guidelines. An Owner may designate in writing a Person other than Owner to submit Plans and Specifications as a co-applicant with Owner.

3.2.2 Neither the Design Review Committee nor Declarant will review or approve any proposed Improvement regarding whether the same complies with Applicable Laws. Rather, as provided in Section 3.2.3, Owner is required to submit Plans and Specifications for any proposed Improvement to the applicable governmental entities for approval and compliance with Applicable Laws. In its review of such Plans and Specifications, the Design Review Committee may require, as a condition to it considering an approval request, that the Owner pay Fees and reimburse the Design Review Committee for expenses incurred in the process of review and approval or disapproval of the Plans and Specifications.

3.2.3 Prior to construction, erection, addition, deletion, applicable change or installation of any Improvement, Owner must obtain the approval of all governmental entities and issuance of all required permits, licenses and approvals by all such entities. Owner is solely responsible for compliance with Applicable Laws.

**Section 3.3 Design Guidelines.** If the Design Guidelines conflict with this Declaration, this Declaration controls. The Design Guidelines bind the Property and each Owner, as applicable to the specific Lot. The Design Guidelines may include, without limitation: clarification of designs and materials that may be considered in design approval, requirements for submissions, procedural requirements, specification of acceptable Improvements that may be installed without prior review or approval, protocols for the treatment of archeological, paleontological and historic resources discovered during construction and water demand management initiatives. This Declaration and the Design Guidelines may permit the District to send demand letters and notices, levy and collect Fees and/or Fines, and negotiate, settle and/or take any other actions with respect to any violation or alleged violation of any of this Declaration and/or the Design Guidelines.

**Section 3.4 Procedures.** The Design Review Committee will review each request for approval after the complete submission of the Plans and Specifications which the Design Review Committee may require in conjunction with its review and approval. The Design Review Committee may impose Fees for review and approval of Improvements and impose Fines for any violations of the Design Guidelines.

**Section 3.5 Vote.** After consideration of the recommendations of the Design Review Committee on any Improvement submitted for approval, the affirmative, majority vote of the present members of the Design Review Committee constitutes approval of such matter. That is, under this Declaration, the Design Review Committee is directed to review Improvements submitted for approval and make a determination with respect to approval of the proposed Improvement.

**Section 3.6 Prosecution of Work After Approval.** After approval of any proposed Improvement, Owner will construct the proposed Improvement promptly and diligently as possible and in complete conformity with all conditions and requirements of the approval and any provisions of the Design Guidelines relating to construction. Except for Declarant or Declarant's Affiliates, 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, constitutes noncompliance with the provisions of this Declaration; provided, however, the Design Review Committee may grant extensions of time for completion of any proposed Improvements.

**Section 3.7 Notice of Completion.** Upon the completion of any Improvement, Owner will submit a written “**Notice of Completion**” to the Design Review Committee. Until the date of receipt of such Notice of Completion, the Design Review Committee shall not be deemed to have notice of completion of any Improvement for which approval has been sought and granted as provided in this Article 3.

**Section 3.8 Inspection of Work.** The Design Review Committee, or its authorized representative, has 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 3.

**Section 3.9 Notice of Noncompliance.** If, as a result of inspections or otherwise, or following receipt of a Notice of Completion, the Design Review Committee determines that any Improvement has been constructed without obtaining the required approval, or was not constructed in substantial compliance with the approval that was granted, or was not completed within one (1) year after the date of approval (except for Declarant or Declarant’s Affiliates, who are not subject to such time requirement), subject to any extensions of time, the Design Review Committee will notify the applicant in writing of the noncompliance, specifying the particulars of the noncompliance (“**Notice of Noncompliance**”).

**Section 3.10 Correction of Noncompliance.** If the Design Review Committee determines that a noncompliance exists, the Person responsible for such noncompliance must remedy or remove the same and return the subject property or structure to a condition acceptable to the Design Review Committee, within the period specified in the Notice of Noncompliance. If such Person does not comply with the Notice of Noncompliance by amending the condition within the period specified, the Design Review Committee may submit the Notice of Noncompliance to the Enforcement Committee for enforcement pursuant to Article 7.

**Section 3.11 Cooperation.** The District has 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, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the District. Cooperation includes, without limitation, collection, payment, and disbursement of Fees, Fines or other charges.

**Section 3.12 Access Easement to Design Review Committee and the District.** Each Lot is subject to an easement in favor of the Design Review Committee and the District, including their respective agents, employees and contractors, for performing any of the actions contemplated in this Article 3. Further, the rights and easements granted in this Section 3.12 may be exercised only during reasonable hours after reasonable notice to Owners of any affected Lot; except that no such notice is required for any of the following: (i) any remediation related to non-

compliance with the Design Guidelines, (ii) in connection with any exterior, non-intrusive maintenance and (iii) in emergency situations.

**Section 3.13 No Liability.** Neither the Design Review Committee nor the District are liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing or approving any matter, the Design Review Committee and/or the District are not responsible for any issue related to the Improvements, whether structural or otherwise and whether submitted for review or otherwise. The Design Review Committee and/or the District are not responsible for any matter related to safety. The Design Review Committee and/or the District are not responsible for any Improvement's conformance with Applicable Law or compliance with any other standards or regulations, and any approval of an Improvement by the Design Review Committee and/or the District may not be deemed to represent that the Improvement conforms with Applicable Law or complies with any other standards or regulations. No Owner or other Person is a third-party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Design Review Committee and/or the District. Each Owner (i) waives and releases Benefited Parties from all Claims related to approval of any Improvements and (ii) waives and releases all Claims against the Benefited Parties. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The Design Review Committee members, acting in that capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Design Review Committee members, acting in that capacity, have no personal liability with respect to any contract or other commitment made or action taken on behalf of the Design Review Committee or the District.

**Section 3.14 Variance.** The Design Review Committee may, but under no circumstance is obligated to grant reasonable variances or adjustments from any conditions and restrictions imposed by the Design Guidelines, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of the Design Guidelines. Such variances or adjustments will be granted in the Design Review Committee's sole discretion and may only be granted if such variance does not impose a detriment or injury to other property or improvements within the Property and does not militate against the general intent and purpose of the Design Guidelines and this Declaration.

**Section 3.15 Waivers; No Precedent.** Approval or consent under this Declaration is not 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. Any changes to plans previously approved by the Design Review Committee must be reviewed and approved by the Design Review Committee in the same manner as the initial plans.

**Section 3.16 Declarant's Exemption.** Notwithstanding anything to the contrary, Declarant and Declarant's Affiliates are exempt from any and all other matters that require Design Review Committee review and/or approval. Neither Declarant nor Declarant's Affiliates are

responsible for any review or approvals by the Design Review Committee under this Declaration or any other Document.

**Section 3.17 Sprinklers.** All buildings must have a sprinkler system in accordance with all applicable laws and the standards established by the Design Review Committee.

#### ARTICLE 4. RESTRICTIONS

**Section 4.1 Property Subject to Applicable Law and this Declaration.** Notwithstanding anything in this Declaration to the contrary, the Property is subject to Applicable Laws, Recorded Covenants, and to all documents recorded in Recorder's Office. Declarant declares that all Lots shall be held and sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the provisions, conditions, limitations, restrictions, agreements and covenants in this Declaration.

**Section 4.2 No Residential Use Permitted, No Changes.** Subject to the use limitations set forth in this Declaration and Recorded Covenants, the Development may be used solely for purposes authorized by Applicable Laws related to land use and zoning regulations. However, in all events, the Development will be restricted exclusively to Nonresidential Use. Without limiting the generality of the Declarant Rights, no Owner, other than Declarant, will seek or join in any modification to the existing zoning classification pertaining to any portion of the Development, or any variance from the requirements of such existing zoning, unless the same is first given Declarant's prior written approval.

**Section 4.3 No Animals.** No animals, birds, livestock, reptiles or insects of any kind may be raised, bred, kept or boarded in or on a Lot, except for licensed service dogs, except with the prior express written consent of the Declarant or the Design Review Committee, if applicable.

**Section 4.4 Restriction on Further Subdivision.** No Lot may be further subdivided or separated into smaller units or lots by any Owner (other than by Declarant or by Declarant's Affiliates), and no portion consisting of less than all of any such Lot, nor any easement or other interest therein, may be conveyed or transferred by an Owner (other than by Declarant or by Declarant's Affiliates) without first having obtained Declarant's prior written consent, provided that this prohibition does not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar non-material corrective instruments.

#### ARTICLE 5. OTHER USE RESTRICTIONS

**Section 5.1 Temporary Structures; Unsightly Conditions.** No structure of a temporary character, including a house, trailer, tent, shack, mobile home, storage shed, or outbuilding may be placed or erected upon any Lot except (i) by Declarant or Declarant's Affiliates, (ii) by Owner during construction, alteration, repair or remodeling of Improvements, or (iii) as approved by the Design Review Committee. If placed by Owner, only necessary temporary structures for storage of materials may be erected and maintained.

**Section 5.2**      **Miscellaneous Improvements.**

5.2.1      Except as provided herein, or as permitted by the Design Review Committee and in compliance with the Rules and Regulations and Design Guidelines, no Owner may erect or maintain any advertising or signs of any character on any Lot. Notwithstanding the foregoing, signs, advertising, or billboards used by Declarant or Declarant's Affiliates in connection with the sale or rental of Lots, or otherwise in connection with development of or construction on the Lots are permissible.

5.2.2      The Design Review Committee may adopt Rules and Regulations, consistent with applicable state or federal laws and regulations, regarding the installation of satellite dishes, exterior aerials, antennas of any kind, and any wind-electric generator, further, any such devices may be erected or installed by Declarant or Declarant's Affiliates.

5.2.3      Other than fences which may be constructed, installed or located by Declarant or Declarant's Affiliates, no fences are permitted on the Property except in accordance with the Design Guidelines and with the prior written approval of the Design Review Committee. Each Lot Owner must maintain any fences on its Lot.

**Section 5.3**      **Vehicular Parking, Storage and Repairs.**

5.3.1      Stored vehicles and vehicles which are inoperable or do not have current operating licenses, or other vehicles described in the Rules and Regulations, are not permitted in the Property except with the prior consent of Declarant for an Owner's or Occupant's permitted use, and at all times in compliance with all governmental regulations. Declarant will notify the District if a particular Parcel in the Project has been granted this permitted use. For purposes of this Section 5.3, a vehicle shall be considered "stored" if, for example, it remains in the same location for more than seventy-two (72) consecutive hours.

5.3.2      If the District determines that a vehicle is parked or stored in violation of subsection 5.3.1, then the District may place a written Notice of Violation on the vehicle, and if the vehicle is not removed within the stated time in the notice, then the District may have the vehicle removed and stored at the sole expense of the owner of the vehicle, without any liability for the removal or storage of such vehicle.

5.3.3      No maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of any motor vehicles, trailers or boats may be performed or conducted in the Property except with the prior consent of Declarant for an Owner's or Occupant's permitted use, and at all times in compliance with all governmental regulations.

**Section 5.4**      Intentionally Deleted.

**Section 5.5**      **Nuisances.** No Owner or Occupant will permit a nuisance on its Lot. Owner and Occupant will not permit any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot. This Section 5.5 does not apply to any activities of Declarant or Declarant's Affiliates. Owner or Occupant will not permit any noxious or offensive activity upon any Lot.

**Section 5.6 No Hazardous Activities; No Hazardous Materials or Chemicals.**

Owners and Occupants will not conduct on any Lot or within Improvements constructed on any Lot activities which are or might be unsafe or hazardous to any person or property, except with the prior consent of Declarant for an Owner's or Occupant's permitted use, and at all times in compliance with all governmental regulations. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot or any other portion of the Development. No open fires are permitted on any Lot, except as permitted by Applicable Law. Further, no Hazardous Materials or chemicals may be located, kept or stored in, on or at any Lot except with the prior consent of Declarant for an Owner's or Occupant's permitted use, and at all times in compliance with all governmental regulations and Environmental Laws. No Owner or Occupant will produce, release, use, store, transport, handle or dispose of any Hazardous Materials within the Development, except in accordance with Environmental Laws. This Section 5.6 does not apply to the activities of Declarant or Declarant's Affiliates.

**Section 5.7 No Annoying Lights, Sounds or Odors.** No Owner or Occupant will permit any light to be emitted from any Lot which is unreasonably bright or causes unreasonable glare that is excessive for the uses permitted in the Development. No Owner or Occupant will permit any sound to be emitted from any Lot which is unreasonably loud or annoying and any odor which is noxious or offensive to others that is excessive for the uses permitted in the Development. No electromagnetic, light, laser, or any physical emission which might interfere with aircraft or communications are permitted. No Owner or Occupant will operate any drone over or within the Development except in accordance with Applicable Law, including, without limitation, rules, regulations and guidelines of the Federal Aviation Administration. This Section 5.7 does not apply to the activities of Declarant or Declarant's Affiliates.

**Section 5.8 Restrictions on Trash and Materials.** No Owner or Occupant will permit any refuse, garbage, trash, grass, shrubs or tree clippings, plant waste, scrap or debris of any kind to be kept, stored, accumulated on its Lot, nor will 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, recycling or composting. Further, no Owner or Occupant will permit any trash or materials to accumulate in such a manner as to be visible from any Lot. Owners and Occupants will keep all equipment for the storage or disposal in a clean and sanitary condition. No Owner or Occupant will permit any garbage or trash cans or receptacles to be maintained in an exposed or unsightly manner. This Section 5.8 does not apply to the activities of Declarant or Declarant's Affiliates.

**Section 5.9 Trash Removal Services and Recycling.** Declarant may require centralized trash removal and recycling services for the Lots, other than with respect to removal of construction waste resulting from Declarant's or Declarant's Affiliates' respective construction activities. Without limiting its authority, the District, may levy and collect fees, charges, and other amounts to be imposed upon the Lots for such trash removal and recycling services; provided, however that such fees, charges and other amounts must be derived from within the applicable District boundaries where the trash removal and recycling services are required or performed. The scope, frequency, and all other matters with respect to such trash removal and recycling services, shall be determined by the District. Without limiting the generality of the foregoing, the District may, for example, as a part of establishing rules and regulations related to the enforcement of the covenant to provide centralized trash removal and recycling services, elect to provide for regularly

scheduled trash pick-ups and recycling, but may require each Owner to be responsible for scheduling, and paying for, any extraordinary trash pick-ups and/or other recycling and may limit the items eligible for trash pick-up and/or recycling from time to time.

**Section 5.10 Maintenance.** Each Lot must at all times be kept in a clean and slightly condition. This Section 5.10 does not apply to the activities of Declarant or Declarant's Affiliates.

**Section 5.11 Retention Ponds and Detention Ponds.** Each Owner acknowledges that in furtherance of developing the Property, retention ponds and/or detention ponds may be constructed within or in proximity to the boundaries of the Property to hold and release storm water in accordance with storm water drainage plans approved by Declarant, the District or one or more District, as applicable. With the presence of retention ponds or detention ponds, surface water may accumulate within the area of such ponds, and there may be periods of time when the area immediately surrounding a retention pond or detention pond is subject to flooding. Additionally, certain risks and dangers of physical injury and property damage are inherent in the physical configuration of a retention pond and a detention pond. The Benefitted Parties are not liable for any injury, loss or damage arising from such flooding or otherwise arising from the retention ponds or detention ponds.

**Section 5.12 Restrictions on Storage Tanks.** Except as expressly permitted by Declarant or by the Design Review Committee, no tanks for the storage of gas, fuel, oil, or other materials may be erected, placed, or permitted above or below the surface of any Lot. This Section 5.12 does not apply to the activities of Declarant or Declarant's Affiliates.

**Section 5.13 Restrictions on Sewage Disposal Systems.** No cesspool, septic tank or other individual sewage disposal system may be installed on a Lot.

**Section 5.14 Restrictions on Wells.** No wells may be installed or maintained unless such system is approved in writing by the Design Review Committee, and is constructed, designed, equipped, and located in accordance with all Applicable Laws and the recommendations, requirements, and standards of the Design Review Committee.

**Section 5.15 Insurance Risks.** No Lot may be used for any use, and nothing may be stored on any Lot, which would constitute an unusual fire hazard, would result in jeopardizing any insurance maintained on other Lots within or on any other portion of the Property.

**Section 5.16 Mining or Drilling.** No Lot 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 or earth. This Section 5.16 does not apply to the activities of Declarant or Declarant's Affiliates.

**Section 5.17 Storage of Explosives, Gasoline and Similar Substances.** No Lot may be used for storage of explosives, gasoline or other volatile or incendiary materials or devices except in accordance with all Applicable Laws, except with the prior written approval by Declarant.

**Section 5.18 Marijuana.** No Lot may be used for growing, delivering, transferring, supplying, dispensing, disbursing, distributing or selling marijuana, whether by prescription,

medication recommendation or otherwise, and whether consisting of live plants, seeds, seedlings, or processed or harvested portions of the marijuana plant, except with the prior written approval by Declarant.

**Section 5.19 Damage or Destruction of Structures on Lots.** Any damage to or destruction of any structure or Improvement located on a Lot shall be promptly repaired and replaced by the Owner of the Lot, in accordance with this Declaration. “Repaired and replaced,” as used in this Section 5.18, means restoring the structure or Improvement to substantially the same condition in which it existed immediately prior to such damage or destruction. Except as otherwise provided in this Declaration, the cost of such repair or replacement shall be the personal obligation of the Owner of the Lot on which such work was performed.

**Section 5.20 Violation of Documents.** If any Owner or Occupants are in Violation of this Article 5, then in addition to any enforcement and remedies available to the District, and in accordance with the procedures in Section 7.5, the Enforcement Committee may invoke any one or more of the following remedies: (a) levy Fines upon such Owner for each Violation; (b) cause the Violation to be cured and charge the cost thereof to such Owner; and (c) obtain injunctive relief against the continuance of such Violation. Before invoking any of the foregoing remedies, the Enforcement Committee shall give such Owner prior written notice of the Violation, including a specific description of the Violation and require Owner to take such action as may be necessary to remedy the Violation, including the time period in which the Violation is to be remedied, which time period may not exceed forty-five (45) days.

**Section 5.21 Exclusive Uses.** No Lot will be used for any purpose that violates any restrictions or exclusive use agreement entered into between Declarant and the Owner of such Lot for the benefit of existing or future Owners and Occupants. Without limiting the foregoing, Declarant may amend or supplement this Declaration at any time during the Declarant Development Period without the consent of any Owner or any other Person in order to create an exclusive use benefitting any of the following (each an “**Exclusive Beneficiary**”): (a) any Owner or Occupant; or (b) any Person from time to time entitled by right of ownership or under any lease or sublease or other occupancy arrangement to use and occupy any portion of the Property subject to this Declaration. Notwithstanding the foregoing, Declarant may not create an exclusive use if such exclusive use would prohibit the then-current use of any Lot, so long as such then-current use is otherwise permitted by the Declaration. Any exclusive use established pursuant to Section 5.20 will be enforceable by the Exclusive Beneficiary benefitted by such exclusive use against any Person operating a business within the Property that violates the exclusive use; provided, however, that during the Declarant Development Period, Declarant will also have the right, but will be under no obligation to enforce any such exclusive use. In no event will any Exclusive Beneficiary have any right to enforce an exclusive use established pursuant to Section 5.21 against any Owner, including without limitation Declarant, as applicable, for violations committed by such Owner’s Occupant.

**Section 5.22 Prohibited Uses.** Without limiting the generality of any restrictions on use set forth in this Declaration, no Lot or any other portion of the Development that is not owned by Declarant or Declarant’s Affiliates will be used for any of the following purposes, without the prior written consent of Declarant:



- (a) Any aggregate, asphalt or concrete operation, including distribution and/or processing of such materials;
- (b) Any transloading services other than transloading operations provided by Declarant or Declarant's Affiliates;
- (c) Any asphalt or concrete production plants, except with the prior written approval by Declarant;
- (d) Transportation services (e.g., trucking), except with the prior written approval by Declarant;
- (e) Sales of aggregates, sands, gravels, landscape material, fly ash, cement or industrial minerals, except with the prior written approval by Declarant;
- (f) Any junkyard, or stockyard (except that this provision will not prohibit the temporary use of construction trailers during periods of construction or reconstruction);
- (g) Any dumping, disposing, incineration, recycling or reduction of garbage (exclusive of garbage compactors or other trash enclosures wherever located on the Development);
- (h) Any dry or liquid bulk material distribution;
- (i) Any fire sale, bankruptcy sale (unless pursuant to a court order), liquidation or auction house operation;
- (j) Any automobile, truck, trailer, or recreational vehicle sales, leasing, repair, display or storage (as opposed to temporary parking of automobiles or equipment);
- (k) Any mortuary or funeral home;
- (l) Any adult entertainment, or use, display, distribution, offering or selling of pornographic or obscene material;
- (m) Any carnival or outdoor amusement park;
- (n) Any off-track betting, casino, gambling or gaming establishment; and/or
- (o) Flea markets or similar businesses.

**Section 5.23 Easement Areas.** By taking title to any Lot, each Owner acknowledges that certain portions of the Property are subject to easement rights in favor of governmental, quasi-governmental and other parties, including easements for the benefit of utility providers, and the District, Declarant, among others, pursuant to a plat or other document creating such easement rights recorded in the Recorder's Office. No Owner may use any portion of the Property or place any Improvements on any portion of the Property that would violate any use restrictions contained in any easement, plat or other document creating easement rights.

## ARTICLE 6. EASEMENTS

**Section 6.1**      **Easements for Access.** Declarant declares, establishes, grants, and reserves easements over each Lot in favor of Declarant, its Affiliates, and the District, including each of their respective agents, contractors and employees, for performing maintenance, repair, or replacement or other services, including, without limitation, enforcement of any provision in the Documents. The access easements granted in this Section 6.1 may be exercised only during reasonable hours after reasonable notice to the Owner of any affected Lot; provided, however, that no such notice is required in connection with any exterior, non-intrusive maintenance and in emergency situations entry upon a Lot may be made at any time, provided that Owner is notified of impending emergency entry as early as is reasonably possible.

**Section 6.2**      **Easement for Maintenance.** Declarant declares, establishes, grants, and reserves easements over each Lot in favor of Declarant, Declarant Affiliates, and the District, including each of their respective agents, contractors and employees for performing maintenance, repair, or replacement of any improvements.

**Section 6.3**      **Additional Easements.** Until such time, if any, as Declarant subjects any additional property to this Declaration, and after such time, if any, as Declarant withdraws any portion of the Property from this Declaration, Declarant and Declarant's Affiliates shall have whatever easements are reasonably necessary or desirable across the Property for access to and provide utility services and drainage for the additional property added to, or the portion of the Property withdrawn from, the Property, as the case may be.

**Section 6.4**      **Limitations on Easements.** The easements established pursuant to this Declaration (a) shall in no way affect, avoid, extinguish, or modify any other covenants, easements, limitations, reservations, or restrictions affecting all or part of the Property recorded prior to this Declaration and (b) shall not be interpreted or construed as preventing or precluding the construction, operation, and use of any Lot which is otherwise permitted by the terms of this Declaration.

**Section 6.5**      **Recorded Easements.** In addition to all easements and rights-of-way of recorded at or before this Declaration, the Property, and all portions thereof, are subject to the easements shown on any plat of the Property.

**Section 6.6**      **Storm Water.**

6.6.1      Drainage and Detention. Declarant grants and conveys to the other Owners, for their use and for the use of their Occupants, a perpetual, non-exclusive easement over and under the Lots for flow of storm water from the Lots into the storm water facilities.

6.6.2      Sheet Flow. Declarant and each Owner hereby grants and conveys to the other Owners and Declarant, for their use and for the use of their Occupants, a perpetual, non-exclusive easement over and across the Lots for sheet flow of surface water into the storm water facilities ("Sheet Flow Easement").

6.6.3      General. The Storm Water Easement and the Sheet Flow Easement will be subject to the following provisions:

(a) All improvements on a Lot constructed after the Effective Date will be constructed in substantial compliance with the drainage plans approved by the County, any other applicable governmental authority, and all Applicable Laws related to the sheet flow, drainage and detention of storm water.

(b) No Owner will construct improvements on its Lot which would violate the drainage plans approved by the County and any other applicable governmental authority without obtaining revised drainage plans approved by the County, any other applicable governmental authority and the Owner of any Lot that would be materially and detrimentally impacted by the revision to such drainage plans.

**Section 6.7 Acknowledgment of Inconvenience.** Each Owner agrees that there are inconveniences which will accompany the construction of the Development, including, without limitation, construction noise, portable toilets, construction traffic, uncompleted buildings, areas not landscaped, potholes and construction supplies stored in plain view and general inconvenience associated with construction sites and related issues. Each Owner, by taking title to any Lot, waives any claims associated with the inconveniences, nuisance and hazards associated with such construction.

## ARTICLE 7. COVENANT ENFORCEMENT COMMITTEE

**Section 7.1 Committee.** Declarant grants the District the right to establish an Enforcement Committee and, upon its establishment, the members of the Enforcement Committee will be appointed and removed by the District. The Enforcement Committee shall be responsible for the ministerial administration and enforcement of the Documents and has the right to: (a) accept complaints for Violations of the Documents; (b) submit complaints regarding Violations of the Documents; (c) inspect the Property for Violations of the Documents; (d) issue various notices to Owners regarding the Documents; and (e) provide all ministerial administration and enforcement of the Documents.

**Section 7.2 Enforcement Committee Membership and Organization.** The Enforcement Committee will be composed of not less than three (3) nor more than five (5) persons. The District may adopt Rules and Regulations concerning the governance, structure and practices of the Enforcement Committee, including, without limitation, any right to appeal a decision by the Enforcement Committee to the District.

**Section 7.3 Purpose and General Authority.** The Enforcement Committee shall review all complaints and notifications provided by Declarant, Declarant's Affiliates, an Owner, or the Design Review Committee regarding any alleged Violation. The Enforcement Committee also has the right to make an investigation on its own regarding potential Violations. The Enforcement Committee has the authority to determine whether a Violation has occurred by any Owner, and upon such determination, may issue to an Owner a Notice of Violation identifying the particular circumstances or conditions of the Violation and require Owner to take such action as may be necessary to correct, remedy or otherwise remove the Violation, including the time period in which the Violation is to be remedied as further set forth in Section 7.5.

**Section 7.4**      **Fees and Expenses.** All expenses of the Enforcement Committee must be paid by the District with revenues derived from that portion of the Property with respect to which the Enforcement Committee's services are required or performed. The District has the right to charge Fees and Fines for costs of enforcement of the Documents and the costs incurred to correct, remedy or otherwise remedy Violations, in amounts which may be established by the Enforcement Committee from time to time. The District or the private management company hired by the District shall provide the Enforcement Committee with staff for the recording of committee meeting minutes and assistance with other administrative needs.

**Section 7.5**      **General Inspections; Violation Identified by Another Owner; Notice and Hearing; Remedies.**

7.5.1      **General Inspection.** Any member or authorized agent or consultant of the Enforcement Committee or the Design Review Committee, or any authorized officer, director, employee or agent of the District may enter upon any Lot, at any reasonable time after notice to Owner, without being deemed guilty of trespass, in order to investigate or inspect any portion of the Property for alleged Violations of the Documents or verify any matter.

7.5.2      **Notice of Alleged Violation; Right to a Hearing.** If (i) an investigation or inspection reveals that any part or portion of a Lot is not in compliance with the Documents, (ii) the Design Review Committee has submitted a Notice of Noncompliance with respect to a Lot, or (iii) another Owner has submitted a complaint in accordance with the Rules and Regulations, the Enforcement Committee may send a notice of alleged Violation (a "**Notice of Alleged Violation**") to the Owner of such Lot in accordance with the Rules and Regulations. Upon receipt of a Notice of Alleged Violation, an Owner shall be entitled to request a hearing with respect thereto in accordance with the Rules and Regulations.

7.5.3      **Remedies.** If, after receipt of the Notice of Alleged Violation and, to the extent requested in accordance with the Rules and Regulations, any hearing requested by an Owner, such Owner is found by the Enforcement Committee to be in Violation of the Documents and fails to remedy the Violation within the time period specified in the notice of violation ("**Notice of Violation**") issued pursuant to the Rules and Regulations, the District shall have all remedies available to it at law or in equity, including, without limitation, the following remedies:

7.5.3.1      the District may record a Notice of Violation against the Lot on which the Violation exists;

7.5.3.2      the District has the right to remove, correct or otherwise remedy any Violation in any manner the Enforcement Committee deems appropriate;

7.5.3.3      the District may file an action for injunctive relief to cause an existing Violation to be brought into compliance with the Documents and the District shall recover all costs and attorneys' fees associated with bringing the action.

7.5.3.4      the District may levy reasonable Fines for such Violation.

7.5.3.5      the District may collect, and shall have a lien against the Lot subject to the Violation to secure, (1) payment for reimbursement by the violating Owner

for any remedial work performed by the District or a District to remove, correct or otherwise remedy the Violation, (2) payment for expenses incurred in obtaining injunctive relief, including costs and attorneys' fees, plus the following amounts, to the extent not inconsistent with Applicable Laws, (3) interest on such amount at a rate equal to eighteen percent (18%), and (4) all costs and expenses of collecting the unpaid amount, including, without limitation, reasonable attorneys' fees.

7.5.4 Deemed Nuisances. Every Violation constitutes a nuisance, and every remedy allowed for such Violation at law, in equity or under the Documents against the violating Owner is available to the District.

7.5.5 Access Easement. Each Lot is subject to an easement in favor of the District, the Enforcement Committee and the Design Review Committee, including their respective members, employees, agents and representatives, for the performance of any actions contemplated by this Article 7. All Persons performing such work shall use reasonable efforts to minimize interference with Owner's use and enjoyment of the Lot when performing such work.

**Section 7.6** No Liability. Neither the Enforcement Committee nor the District are liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing any alleged Violation, the Enforcement Committee and/or the District are not responsible for any issue related to the alleged Violation. No Owner or other Person is a third-party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Enforcement Committee and/or the District. Each Owner (i) waives and releases the Benefited Parties from all Claims related to the actions of the Enforcement Committee and/or the District and (ii) waives and releases all Claims against the Benefited Parties. The foregoing release and waiver is made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The Enforcement Committee members, acting in that capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Enforcement Committee members, acting in that capacity, shall have no personal liability with respect to any contract or other commitment made or action taken on behalf of the District.

## ARTICLE 8. SPECIAL DECLARANT RIGHTS

**Section 8.1** Special Declarant Rights. Declarant reserves for itself and its successors and assigns the right during Declarant Development Period to perform the acts and exercise the rights specified below (the "**Special Declarant Rights**"). Special Declarant Rights include the following rights:

8.1.1 Add or Withdraw Real Property. The right to add or withdraw real property as set forth in this Declaration.

8.1.2 Completion of Improvements. The right to construct and complete Improvements within the Property.

8.1.3 Exercise of Development Rights. The right to exercise any Development Rights reserved in this Declaration.

8.1.4 Sales, Management and Marketing. The right to maintain sales offices, construction offices, management offices, and signs, flags and other on-site marketing and sales promotion materials on the Property. Declarant also has the right to relocate any sales offices, or management offices, from time to time at its sole discretion. Declarant also has the right to remove any sales offices and management offices. No structure used by Declarant for a sales office, construction office, or management office is the property of any party other than Declarant, unless specifically assigned, conveyed or dedicated by Declarant to such other party. Declarant has the right to assign to Declarant's Affiliates the rights specified in this subsection 8.1.4.

8.1.5 Project Management. The right to select and hire a third-party manager for the management, administration and operation of the Property or any lesser portion thereof. In addition to Declarant, the District have the rights specified in this subsection 8.1.5.

8.1.6 Construction and Access Easements. The right to use easements through the Property for the purpose of making Improvements and providing access within the Property.

8.1.7 Alteration of Lots. The right to alter any condition (including size and location of Improvements) on any Lot owned by Declarant.

**Section 8.2** Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves for itself and its successors and assigns the following additional rights (the "**Additional Reserved Rights**") during the Declarant Development Period:

8.2.1 Rules and Regulations. The right to adopt Rules and Regulations that are not inconsistent with this Declaration.

8.2.2 Amendment of Declaration. The right to amend this Declaration without Owner consent or approval in connection with the exercise of any Development Rights. Declarant also shall have the right to amend this Declaration to comply with the requirements of Applicable Law if any provision contained in this Declaration does not comply with Applicable Law.

8.2.3 Errors. The right to amend this Declaration without Owner consent or approval in order to correct clerical, typographical or technical errors, or to clarify any of the Documents or any provision of this Declaration.

8.2.4 Amendment of Plat/Re-Plats. The right to supplement plats in connection with the exercise of any Development Rights, the right to re-plat all or any portions of the Property, the right to create additional Lots and the right to subdivide or combine Lots.

8.2.5 Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Property for purposes including, without limitation, streets, paths, walkways, drainage, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Property for the benefit of Owners or the District.

8.2.6 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of the Property.

8.2.7 Irrigation Water. The right to use potable or non-potable water, from whatever source, for any of the following purposes: (i) dust control in connection with constructing and completing improvements within the Property, (ii) establishment of landscaping, (iii) establishment of grass on planned parks and trails, if any, and (iv) any other necessary use for the Development.

8.2.8 Review of Covenants. The right to review and approve, in its sole discretion, prior to recording in the Recorder's Office by any party other than a Benefitted Party, any Recorded Covenants affecting the Property.

8.2.9 Additional Covenants. The right to subject portions of the Property owned by Declarant or its Affiliates to additional or different covenants, conditions, terms and restrictions, as Declarant may determine.

8.2.10 Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

**Section 8.3** Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article 8 for the benefit of Declarant may be transferred to any Person in whole or in part by recording an instrument in the Recorder's Office describing specifically the rights transferred. Such instrument shall be executed by Declarant and the transferee.

## ARTICLE 9. RESERVATION OF DEVELOPMENT RIGHTS

**Section 9.1** Development Rights. During the Declarant Development Period, Declarant reserves for itself and its successors and assigns the following rights (the "**Development Rights**"):

9.1.1 Expansion Rights. Declarant reserves the right (but is not required) to subject additional real property to the terms, conditions and restrictions of this Declaration. Furthermore, Declarant reserves the right to subject all or any portion of any such additional real property to such other covenants, conditions and restrictions as Declarant deems appropriate by recording a Supplemental Declaration with respect thereto; provided, however, that no such other covenants, conditions and restrictions may amend or be in conflict with this Declaration, unless executed by Declarant in accordance with the provisions of this Declaration. The consent of the existing Owners shall not be required for the exercise of these rights, and Declarant may proceed to exercise such rights without limitation, at its sole option.

9.1.2 Exercise of Rights. Declarant may exercise any Development Rights with respect to all or a portion of different parcels of real property at different times in whatever order and to whatever extent Declarant, in its sole discretion, may determine.

**Section 9.2** **Interpretation.** Upon the recording of a Supplemental Declaration, the real property subject thereto, or any part thereof as specifically stated therein, shall be added to and become a part of the Property for all purposes, or for such limited purpose as are set forth in the Supplemental Declaration, and, except as set forth in the Supplemental Declaration, the definitions in this Declaration will automatically extend to encompass and refer to all real property then comprising the Property. Reference to this Declaration in any instrument includes all supplements and amendments to this Declaration without specific reference thereto.

**Section 9.3** **Transfer of Development Rights.** Any right created or reserved under this Article 9 for the benefit of Declarant may be transferred to any Person by recording an instrument in the Recorder's Office specifically describing the rights transferred. Such instrument shall be executed by the transferor, Declarant and the transferee.

## ARTICLE 10. ALTERNATIVE DISPUTE RESOLUTION

**Section 10.1** **Definitions Applicable to this Article 10.** For purposes of this Article 10 only, the following terms have the meanings set forth in this Section 10.1:

10.1.1 **"Arbiter"** means any Person agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of an arbiter under this Declaration with a minimum of ten (10) years' experience in the subject matter of the dispute that specializes in the provision of impartial mediation and arbitration services and that has a minimum of ten (10) years' experience in the provision of such services.

10.1.2 **"Bound Party"** means each of the Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article 10. Notwithstanding the foregoing, **"Bound Party"** does not include any of the parties identified in this subsection 10.1.2 if such parties have jointly entered into a separate written agreement providing for dispute resolution applicable to the Claim; in such circumstance, the dispute resolution mechanism set forth in such separate written agreement between such parties shall apply with respect to such Claim unless the parties mutually agree to submit such Claim to the provisions of this Article 10.

10.1.3 **"Claimant"** means any Bound Party having a Claim.

10.1.4 **"Claim"** means, except as exempted by the terms of this Article 10, any claim, grievance or dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to (i) the interpretation, application or enforcement of any of the Documents or the rights, obligations and duties of any Bound Party under any of the Documents; or (ii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

10.1.5 **"Notice"** means the written notification given by a Claimant to a Respondent and which shall comply with the requirements of subsection 10.5.1

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



10.1.7 “**Respondent**” means any Bound Party against whom a Claimant asserts a Claim.

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

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

**Section 10.2 Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.**

10.2.1 Each Bound Party agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit any Claims to the procedures set forth in Section 10.4.

10.2.2 By acceptance of a deed to a Lot, each Owner agrees to abide by the terms of this Article 10.

10.2.3 Any applicable statute of limitation applies i.e., to the alternative dispute resolution procedures set forth in this Article 10.

**Section 10.3 Commencement or Pursuit of Claim Against Bound Party.**

10.3.1 A Bound Party may not commence or pursue a Claim against any other Bound Party except in compliance with this Article 10.

10.3.2 Prior to any Bound Party commencing any proceeding to which another Bound Party is a party, the Respondent shall have the right to be heard by the Claimant, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

**Section 10.4 Claims.** Unless specifically exempted below, all Claims between any of the Bound Parties are subject to the provisions of Article 10. Notwithstanding the foregoing, unless all Parties otherwise agree, the following are not Claims and shall not be subject to the provisions of this Article 10:

10.4.1 any suit by the District or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary in order to enforce any of the provisions of this Declaration;

10.4.2 any suit between or among Owners, which does not also include Declarant, Declarant’s Affiliates, District, the Design Review Committee, or the Enforcement Committee as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Documents;

10.4.3 any claim, grievance or dispute involving allegations of defects in the design or construction of any Improvements;

10.4.4 any claim, grievance or dispute subject to the provisions of the Construction Defect Action Reform Act, Colo. Rev. Stat. § 13-20-801 to -808, as it may be amended from time to time; and

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

**Section 10.5 Mandatory Procedure.**

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

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

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

10.5.1.3 the proposed remedy; and

10.5.1.4 the fact that Claimant will give the Respondent an opportunity to inspect all Property and Improvements potentially involved with the Claim, and that Claimant will meet with Respondent not sooner than thirty (30) days after such inspection to discuss in good faith ways to resolve the Claim.

10.5.2 Negotiation and Mediation.

10.5.2.1 The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, any Party may appoint a representative to assist the Parties in negotiation.

10.5.2.2 Upon a Termination of Negotiations, Claimant has thirty (30) days to submit the Claim to mediation under the auspices of an Arbiter in accordance with the procedures of the Arbiter in effect on the date of the notice that is provided for in subsection 10.5.1.

10.5.2.3 If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant waives the Claim, and Respondent will be released and discharged from any and all liability to Claimant on account of such Claim.

10.5.2.4 Any settlement of the Claim through mediation must be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator must issue a notice of Termination of Mediation. The

Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

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

10.5.2.6 If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 10. In such event, the Party taking action to enforce the agreement will recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including attorneys' fees and court costs.

### 10.5.3 Binding Arbitration.

10.5.3.1 Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant may initiate final, binding arbitration of the Claim under the auspices of an Arbiter in accordance with the procedures of the Arbiter in effect on the date of the Notice that is provided for in Section 10.5 of this Declaration. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, one arbitrator who has expertise in the areas of dispute, which may include legal expertise if legal issues are involved, will arbitrate the dispute.

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

**Section 10.6 Award.** The award of the arbitrator must be accompanied by detailed written findings of fact and conclusions of law. Except as required by Applicable Law or for confirmation of an award, neither Party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties.

## ARTICLE 11. INSURANCE

**Section 11.1 District/Declarant Insurance.** The District and Declarant may carry such policies and such amounts of insurance each deems reasonably necessary.

### **Section 11.2 Owner's Insurance.**

11.2.1 Required Coverages. Each Owner will at all times maintain (or cause its Occupant(s) to maintain) in full force and effect, at its sole expense and with good and solvent

insurance companies admitted to the State of Colorado and authorized to do business in the State of Colorado, the following insurance coverages with respect to the Owner's Lot: (i) Commercial general liability insurance written on an occurrence basis against all claims for personal injury, death or property damage occurring upon, in or about any buildings located on said Owner's Lot, with combined single limits of not less than \$2,000,000 for any one occurrence. This coverage will name the Declarant as additional insureds. Such insurance will be deemed the primary insurance with respect to any occurrences occurring on any Lot. (ii) "Special form" fire and extended coverage insurance on all Improvements located upon the applicable Lot, or such other form of property insurance then available in the insurance market which is most comparable or equivalent to such "special form" coverage, in the amount of 100% of replacement cost, exclusive of foundations and footings, without any co-insurance provisions, and subject only to commercially reasonable deductibles. (iii) Workmen's compensation insurance for operations on the Owner's Lot as required under Colorado law from time to time.

11.2.2 Waiver of Subrogation. Each Owner and its Occupants (the "**Releasing Party**") hereby releases, and waives all claims, demands and causes of action against, any other Owner (or Occupant, as applicable) (the "**Released Party**"), from and for any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Development, which loss or damage is covered by insurance that is maintained or which would have been covered by insurance required under this Declaration pursuant to Section 11.2.1, irrespective of any negligence on the part of the Released Party, which may have contributed to or caused such loss. Declarant releases, and waives all claims, demands and causes of action against, any Owner and its Occupants from and for any liability for any loss or damage to all property of such Owner or Occupants located upon any portion of the Development, which loss or damage is covered by insurance that is maintained or which would have been covered by insurance required under this Declaration pursuant to Section 11.2.1 or (b), irrespective of any negligence on the part of the Released Party, which may have contributed to or caused such loss.

## ARTICLE 12. GENERAL PROVISIONS

**Section 12.1** Powers and Authority. The Property is located within the boundaries of the District. Declarant authorizes the District to perform covenant enforcement and design review services as set forth in the Declaration, and the District has agreed to perform covenant enforcement and design review services as set forth in this Declaration. The District may exercise with regard to the Property all powers and authority reasonably necessary to administer the rights and duties of District under this Declaration, including, without limitation: (a) the power to adopt and amend budgets for revenues, expenditures, and reserves; (b) the power to collect taxes and Fees from Owners to administer its duties and obligations provided in this Declaration; (c) the power to manage and enforce the Documents; (d) the power to contract with a third-party property manager for the management of the Property and/or for all other duties and responsibilities related to the overall operation of the Property; and (e) all other rights, powers and authority necessary to enforce this Declaration. The District also has the power to levy Fees, Fines and other penalties for Violations of the Documents, as allowed by Applicable Law and as set forth in this Declaration.

**Section 12.2** Delegation. The duties, easements, responsibilities, and rights that are reserved and granted under this Declaration may be delegated in whole or in part by Declarant, Declarant's Affiliates, and/or the District to an agent or management company that is acting on

behalf of Declarant, Declarant's Affiliates, and/or the District with respect to all or part of the Property. The right and authority of Declarant under this Declaration automatically ceases upon expiration of Declarant Development Period at which time the foregoing reserved rights vest solely in the District.

**Section 12.3     Enforcement.**

12.3.1     Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Rules and Regulations, the Design Guidelines and any other Documents, as at any time amended, may be by any proceeding at law or in equity against any Persons violating or attempting to violate any such provision, and possible remedies include all of those available at law or in equity. Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), Declarant and the District 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. Subject to the provisions of Article 10 of this Declaration (Alternative Dispute Resolution), in any action instituted or maintained under this Declaration or any other such documents, the prevailing party shall receive its costs and attorneys' fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by Declarant and/or the District to enforce any covenant, restriction or other provision contained in this Declaration 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 this Declaration.

12.3.2     Each Owner, by its acceptance of title to a Lot, assigns and delegates and consents to the assignment and delegation to the District, in their own name as an Owner of property within the Property, the authority, power, right, and responsibility to enforce the Documents.

**Section 12.4     Severability.** All provisions of this Declaration are severable. Invalidation of any of the provisions, including, without limitation, any provisions of Article 10 of this Declaration (Alternative Dispute Resolution), by judgment, court order or otherwise, shall in no way affect or limit any other provisions, which remain in full force and effect.

**Section 12.5     Duration, Revocation and Amendment.**

12.5.1     Each and every provision of this Declaration runs with and binds the land, perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration, and except for provisions of this Declaration regarding the rights and obligations of Declarant or Declarant's Affiliates, which may not be amended without Declarant's prior written consent, following the expiration of the Declarant Development Period, this Declaration may be amended by a vote or agreement of Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration at the time notice is provided to Owners of a vote on the proposed amendment, as determined by the District in its discretion; provided that, until the expiration of the Declarant Development Period, no amendment of this Declaration shall be effective without the prior, written consent of Declarant and the District.

12.5.2 Notwithstanding the foregoing, during the Declarant Development Period, this Declaration may be amended in whole or in part, at any time, effective upon the recordation of a Supplemental Declaration, by Declarant without the consent or approval of any other Owner or any other Person, in order to (i) correct any errors, (ii) clarify any provision of this Declaration, or (iii) change the prohibited uses (except for Residential Use shall never be permitted).

**Section 12.6 Subdivision or Replating of Lots.** Declarant reserves for itself and its successors and assigns the right to subdivide or replat any Lot owned by Declarant. Each such subdivision or replating may change the number of Lots in the Property. The foregoing reservation includes the right to move any lot lines on Lots for the purpose of accommodating Improvements which are or may be constructed. The rights provided for in this Section 12.6 terminate 50 years after recording of this Declaration in the Recorder's Office.

**Section 12.7 Withdrawal.** During the Declarant Development Period, Declarant reserves for itself and its successors and assigns the right to withdraw the Property, or any portion thereof, including one or more Lots, on a Lot by Lot basis, from this Declaration, so long as Declarant owns the portion of the Property to be withdrawn, effective upon the recordation of a Supplemental Declaration, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion be withdrawn from the Property under this Declaration. Declarant will provide a copy of the Supplemental Declaration to the District. The recording of any such written instrument and the withdrawal of any portion of the Property does not require the consent or ratification of any Owner or other owner of any portion of the Property other than Declarant but shall require the written consent of an Owner of the portion of the Property being withdrawn, if and only if at the time such portion of the Property then being withdrawn from the Property is not then owned by Declarant.

**Section 12.8 Annexation.** During the Declarant Development Period, Declarant may annex to the Property additional property, including any property which may previously have been withdrawn from the Property and such additional property will be made subject to this Declaration.

**Section 12.9 Supplements to this Declaration.** If Declarant elects to submit any additional real property to this Declaration, such additions shall be described in and effected by a Supplemental Declaration. The recording of any such Supplemental Declaration and the resulting expansion of the Property shall not require the consent or ratification of any Owner other than Declarant. A Supplemental Declaration may impose on the real property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions other than those set forth in this Declaration, taking into account the unique and particular aspects of the real property covered thereby. Upon Recordation of a Supplemental Declaration, the portion of the real property subject to the Supplemental Declaration shall become part of the Property and shall be subject to all covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration. Nothing in this Declaration may be construed to obligate Declarant to make any real property, other than the Property, subject to this Declaration.

Effective upon the recordation of a Supplemental Declaration, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion be withdrawn

from the Property under this Declaration. The recording of any such written instrument and the withdrawal of any portion of the Property does not require the consent or ratification of any Owner or other owner of any portion of the Property other than Declarant but shall require the written consent of an Owner of the portion of the Property being withdrawn, if and only if at the time such portion of the Property then being withdrawn from the Property is not then owned by Declarant.

**Section 12.10 Notice.** Unless otherwise required by Applicable Law or this Declaration, any requirement to deliver any notice, statement, demand, document or record to an Owner shall be deemed satisfied by sending the same to an Owner by electronic delivery if the Owner has provided an electronic mail or delivery address to the District. Otherwise, an Owner, shall register his mailing address with the District, and any notice, statement, demand, document or record intended to be delivered upon an Owner must be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address unless. However, if any Owner fails to notify the District of a registered address, then any notice, statement, demand, document or record may be delivered or sent to such Owner at the address of such Owner's Lot.

**Section 12.11 Limitation on Liability.** Benefitted Parties shall not be liable to any Person for any action or for any failure to act arising out of the Documents, if any, unless the action or failure to act was not in good faith and was done or withheld with malice. Further, neither the District, nor the Design Review Committee or the Enforcement Committee waives, and no provision of this Declaration is a waiver of, the immunities and limitations to which any District, the Design Review Committee and the Enforcement Committee have as a matter of law, including the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S., as amended. Any releases and waivers in this Declaration apply to this Section 12.11.

**Section 12.12 No Representations, Guaranties or Warranties.** To the fullest extent permitted by Colorado law, the Benefitted Parties disclaim all warranties of any kind, express or implied, including, without limitation, any implied warranties or habitability, suitability, or fitness for a particular purpose, and no representations, guaranties or warranties of any kind, express or implied, including, without limitation, any implied warranties of habitability, suitability, or fitness for a particular purpose are given or made by any Benefitted Parties, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects in design or construction, 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.

**Section 12.13 Disclaimer Regarding Safety.** THE BENEFITTED PARTIES DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT THE BENEFITTED PARTIES ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, 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.

**Section 12.14 Waiver of Trial.** BY ACCEPTING A DEED TO ANY LOT, EACH OWNER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS

IT MAY HAVE TO A TRIAL BY A JURY OR TO A JUDGE WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY THEM AGAINST DECLARANT OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION OR ANY DOCUMENT, OR ANY CLAIM ARISING OUT OF ALLEGATIONS OF DEFECTIVE CONSTRUCTION.

**Section 12.15 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, 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, as applicable, subject to the foregoing, and waives and releases any claim against the Benefited Parties, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 12.18 (Waiver) shall apply to this Section 12.15.

**Section 12.16 Revenues.** The District is authorized to undertake covenant enforcement and design review services within the boundaries of the District to the extent that the real property within such boundaries is subject to the Declaration, the Design Guidelines, and/or the Rules and Regulations; provided, however, that any and all revenues used to furnish such covenant enforcement and design review services in accordance with the Declaration, the Design Guidelines and the Rules and Regulations must be derived from within the District boundaries in which the services are furnished.

**Section 12.17 District May Assign.** The District may engage one or more third party independent contractors, to the extent that the services are to be furnished within the boundaries of that District, to carry out and enforce all or a portion of the provisions of the Declaration, the Design Guidelines, the Rules and Regulations and any supplemental documents and agreements related to the provision of covenant enforcement and design review services within the Property. Any such contractors shall be engaged under the sole direction and of control of the District. To the extent of the District's authority to provide covenant enforcement and design review services within its boundaries in accordance with this Declaration, the District may transfer or assign any of those rights and duties of the District under this Declaration for the property within such District's boundaries. Each such assignment or transfer, if any, will be effective upon recording the Recorder's Office a document of transfer or assignment, duly executed by the District and the assignee.

**Section 12.18 Waiver.** By acceptance of a deed to a Lot, each Owner releases, waives, and discharges the Benefited Parties from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or Property risks set forth in this Declaration.

**Section 12.19 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 12.20 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 12.21 Action.** Any action that has been or may be taken by Declarant, a District, the District, the Design Review Committee, the Enforcement 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 12.22 Sole Discretion.** All actions which are to be taken by, or on behalf of, Declarant, a District, the District, the Design Review Committee, or the Enforcement Committee, or any other Person, shall be deemed to be taken “in the sole discretion” of such Person.

**Section 12.23 Use of “Include,” “Includes,” and “Including.”** All uses, in this Declaration, of the words “**include,**” “**includes,**” and “**including,**” shall be deemed to include the words “**without limitation**” immediately thereafter.

**Section 12.24 Merger.** The properties, rights and obligations of the District, by operation of law, may be transferred to another surviving governmental entity or consolidated association similar in nature and purpose. The surviving governmental entity or consolidated association may administer the covenants and restrictions established upon any other basis as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Property.

**Section 12.25 No Waiver.** No term or condition of these Covenants shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq.

**Section 12.26 Exemption.** Notwithstanding anything in this Declaration to the contrary, (a) neither Declarant, Declarant’s Affiliates, nor any of their activities shall in any way be subject to the control of, or under the jurisdiction of the District, the Design Review Committee or the Enforcement Committee (including any Design Guidelines or Rules and Regulations), nor shall Declarant or Declarant’s Affiliates be required to seek the approval or consent of the District, the Design Review Committee or the Enforcement Committee for any construction or other work to be performed by or on behalf of Declarant in the Property and (b) nothing contained in this Declaration shall be construed to prevent or limit (i) Declarant’s exercise or enjoyment of any Special Declarant Right, Additional Reserved Right, Development Right or any other right of Declarant under this Declaration or (ii) the conduct by Declarant, Declarant’s Affiliates or their respective employees or agents, as applicable, of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of the Property or any other property.

**Section 12.27 Runs with the Land; Binding Upon Successors.** The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and

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

## ARTICLE 13. DISCLOSURES

**Section 13.1 Separate Ownership of Surface and Subsurface Rights.** Ownership of subsurface rights, including, without limitation, water rights, mineral rights, oil, gas, and other hydrocarbons, underlying the Property are separate from surface rights. The owners of such mineral rights, oil, gas and other hydrocarbons and their successors, assignees and lessees reserve the right to exercise all rights of exploration, extraction and removal of the same as allowed by Applicable Laws.

**Section 13.2 Safety and Security.** Each Owner and Occupant is responsible for their own personal safety and the security of their property in the Development. The District may, but shall not be obligated to, maintain or support certain activities within the Development designed to enhance the level of safety or security of the Development in accordance with Applicable Law. None of the Benefitted Parties shall in any way be considered insurers or guarantors of safety or security within the Development, nor be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

**Section 13.3 Disruption from Development and Construction.** Declarant makes no warranties or representations whatsoever that construction and development will not cause certain disruptions and inconveniences to Owners or Occupants. In that regard, each Owner acknowledges and agrees that construction and development is likely to cause noise, dirt, dust, odors, traffic disruption, temporary closure of facilities and other inconveniences associated with construction and development.

**Section 13.4 Airport Noise Overlay.** Due to the proximity of the Property to the Colorado Air and Space Port, located in Adams County, Colorado, the Property is covered by the Airport Noise Overlay (ANO) and/or the Airport Influence Zone (AIZ). Portions of the Property consisting of commercial or industrial structures devoted to office uses or otherwise occupied by members of the public must incorporate noise level reduction measures sufficient to achieve an interior noise level of 45 dB on the A-weighted scale. Owners or Occupants may experience noise intrusions, dust, or particulates resulting from the operation of aircraft. In that regard, each Owner acknowledges and agrees that noise intrusions, dust, particulates resulting from the operation of aircraft, or other inconveniences associated with the operation of aircraft.

IN WITNESS WHEREOF, Declarant, as the Owner of the Property, has hereunto set its hand and seal on the Effective Date.

**DECLARANT:**

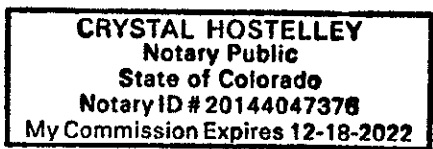
By: Gregory M. Dangler  
Name: Gregory Dangler  
Title: Authorized Signatory

STATE OF COLORADO )  
                                  DENVER ) ss.  
COUNTY OF ADAMS )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of January 2019,  
by Gregory Dangler, as Authorized Signatory of Rocky Mountain Rail Park.

Witness my hand and official seal.

{SEAL}



[Signature]  
Notary Public  
My Commission expires: 12-18-2022

EXHIBIT A

Legal Description  
(see attached)

# EXHIBIT "A"

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 26 AND THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 1 OF 2

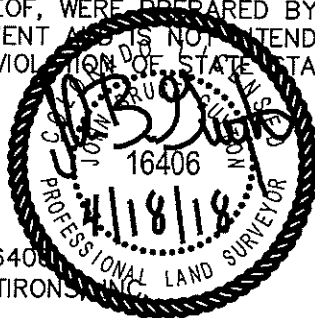
A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 26 AND THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 64 WEST OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO

CONSIDERING THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 35 TO BEAR NORTH 89°24'01" WEST, A DISTANCE OF 2657.29 FEET BETWEEN THE EAST QUARTER CORNER OF SECTION 35, BEING A FOUND #6 REBAR WITH 2 1/2" ALUMINUM CAP, "LS 5112 T3S R64W 35 36 1/4 1991" AND THE CENTER QUARTER OF SECTION 35, BEING A FOUND #6 REBAR WITH 3 1/4" ALUMINUM CAP, "T3S R67W [SIC] CENTER 1/4 SEC 35 1992 LS 10734" WITH ALL BEARINGS SHOWN HEREON ARE RELATIVE THERETO.

COMMENCING AT SAID CENTER QUARTER CORNER OF SECTION 35; THENCE ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 35, NORTH 00°24'15" WEST, A DISTANCE OF 986.62 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE, NORTH 00°24'15" WEST, A DISTANCE OF 1644.15 FEET TO THE SOUTH QUARTER CORNER OF SECTION 26; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 26, NORTH 00°54'59" WEST, A DISTANCE OF 849.46 FEET TO POINT ON THE SOUTH RIGHT-OF-WAY LINE OF EAST COLFAX AVENUE; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE, NORTH 87°56'25" EAST, A DISTANCE OF 2449.51 FEET; THENCE SOUTH 01°03'37" EAST, A DISTANCE OF 949.60 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 26; THENCE ALONG SAID SECTION LINE, SOUTH 89°43'06" EAST, A DISTANCE OF 184.57 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF PETERSON ROAD; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, SOUTH 00°12'00" EAST, A DISTANCE OF 1653.32 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, NORTH 89°31'02" WEST, A DISTANCE OF 2630.74 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 35, SAID POINT ALSO BEING THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 6,545,869 SQ. FT. OR 150.27 ACRES MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.




JOHN B. GUYTON  
COLORADO P.L.S. #16406  
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 18-71,096

JOB NUMBER: 18-71,096 DRAWN BY: M. VOYLES DATE: APRIL 17, 2018 (PARCEL 1)  
THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

**Flatirons, Inc.**  
Surveying, Engineering & Geomatics

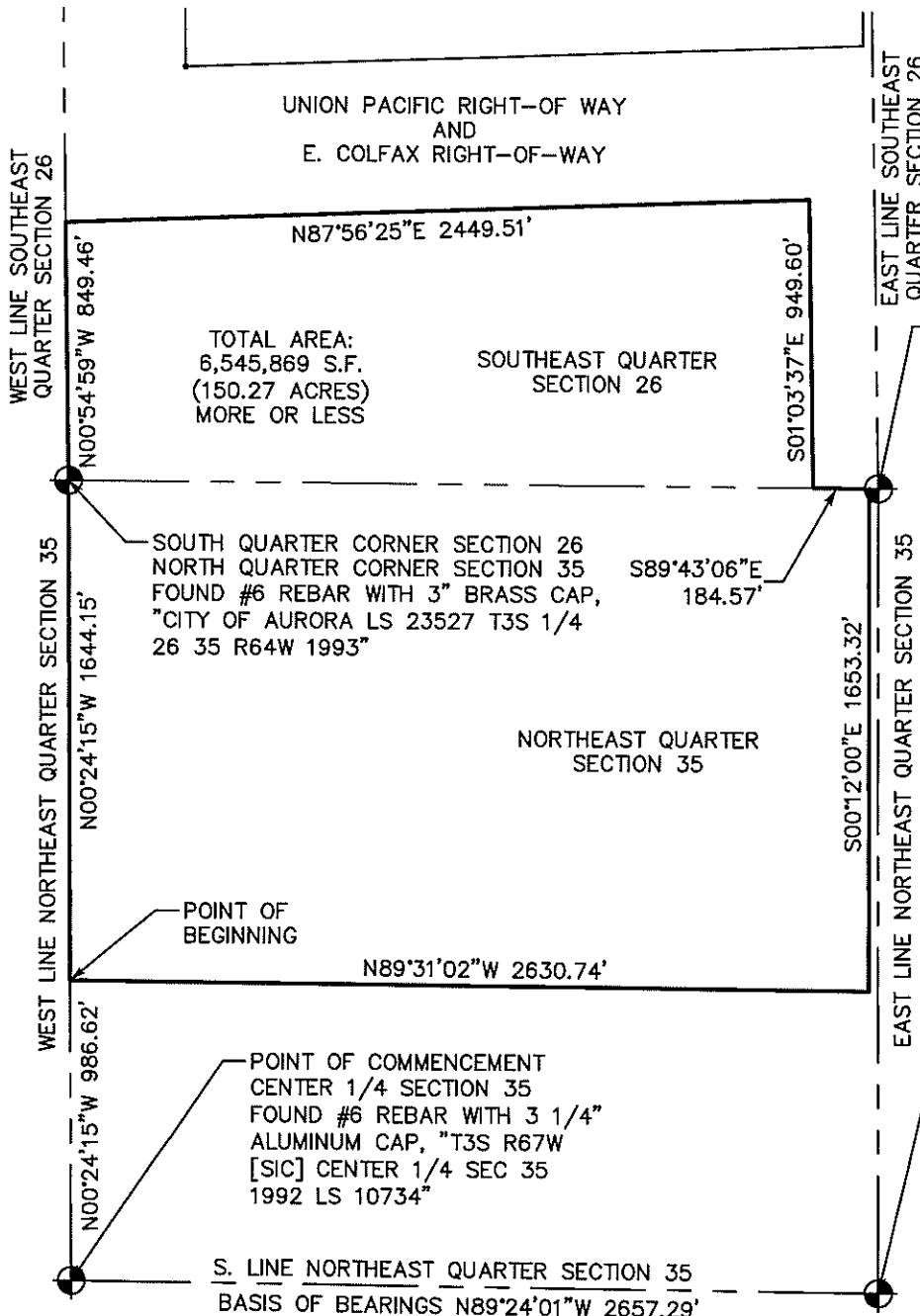


3825 IRIS AVE, STE 395  
BOULDER, CO 80301  
PH: (303) 443-7001  
FAX: (303) 443-9830  
[www.FlatironsInc.com](http://www.FlatironsInc.com)

BY: MVOYLES FILE: 71096\_LEGAL DESCRIPTIONS.DWG DATE: 4/18/2018 12:47 PM

# EXHIBIT "A"

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 26 AND THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 2 OF 2



TOTAL AREA:  
6,545,869 S.F.  
(150.27 ACRES)  
MORE OR LESS

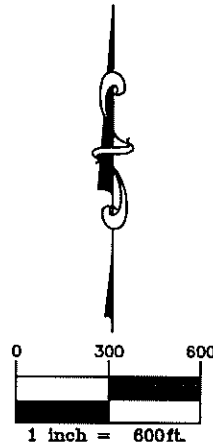
SOUTHEAST QUARTER SECTION 26

NORTHEAST QUARTER SECTION 35

SOUTHEAST CORNER SECTION 26  
NORTHEAST CORNER SECTION 35  
FOUND #6 REBAR WITH 3 1/4" ALUMINUM CAP IN RANGE BOX, "T3S R64W S26 S25 S35 S36 1994 RLS 10372"

SOUTH QUARTER CORNER SECTION 26  
NORTH QUARTER CORNER SECTION 35  
FOUND #6 REBAR WITH 3" BRASS CAP, "CITY OF AURORA LS 23527 T3S 1/4 26 35 R64W 1993"

EAST 1/4 SECTION 35  
FOUND #6 REBAR WITH 2 1/2" ALUMINUM CAP, "LS 5112 T3S R64W 35 36 1/4 1991"



**Flatirons, Inc.**  
Surveying, Engineering & Geomatics

3825 IRIS AVE, STE 395  
BOULDER, CO 80301  
PH: (303) 443-7001  
FAX: (303) 443-9830  
[www.FlatironsInc.com](http://www.FlatironsInc.com)

JOB NUMBER: 18-71,096 DRAWN BY: M. VOYLES DATE: APRIL 17, 2018 (PARCEL 1)  
THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

BY: MVOYLES FILE: 71096\_LEGAL DESCRIPTIONS.DWG DATE: 4/18/2018 12:48 PM

# EXHIBIT "A"

LOCATED IN THE EAST HALF OF SECTIONS 26 AND 23, TOWNSHIP 3 SOUTH,  
RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
COUNTY OF ADAMS, STATE OF COLORADO  
SHEET 1 OF 2

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTIONS 26 AND 23, TOWNSHIP 3 SOUTH,  
RANGE 64 WEST OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 35 AS BEARING NORTH  
89°24'01" WEST, A DISTANCE OF 2657.29 FEET BETWEEN THE EAST QUARTER CORNER OF SECTION  
35, BEING A FOUND #6 REBAR WITH 2 1/2" ALUMINUM CAP, "LS 5112 T3S R64W 35 36 1/4 1991"  
AND THE CENTER QUARTER OF SECTION 35, BEING A FOUND #6 REBAR WITH 3 1/4" ALUMINUM CAP,  
"T3S R67W [SIC] CENTER 1/4 SEC 35 1992 LS 10734" WITH ALL BEARINGS SHOWN HEREON ARE  
RELATIVE THERETO.

COMMENCING AT SAID CENTER QUARTER CORNER OF SECTION 35; THENCE ALONG THE WEST LINE OF  
THE NORTHEAST QUARTER OF SECTION 35, NORTH 00°24'15" WEST, A DISTANCE OF 2630.77 FEET TO  
THE SOUTH QUARTER CORNER OF SECTION 26; THENCE ALONG THE WEST LINE OF THE SOUTHEAST  
QUARTER OF SECTION 26, NORTH 00°54'59"W, A DISTANCE OF 1349.52 FEET TO POINT ON THE  
NORTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE ALONG SAID NORTH  
RIGHT-OF-WAY LINE, NORTH 87°56'25"E, A DISTANCE OF 400.05 FEET TO THE POINT OF BEGINNING;  
THENCE NORTH 00°54'59"W, A DISTANCE OF 1292.35 FEET; THENCE NORTH 00°54'42"W, A DISTANCE  
OF 2647.11 FEET; THENCE NORTH 00°38'13"W, A DISTANCE OF 2646.37 FEET; THENCE NORTH  
00°38'12"W, A DISTANCE OF 2643.27 FEET; TO A POINT ON THE NORTH LINE OF THE NORTHEAST  
QUARTER OF SECTION 23; THENCE ALONG SAID NORTH LINE, THENCE SOUTH 89°37'39"E, A DISTANCE  
OF 2229.51 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF PETERSON ROAD; THENCE  
ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES:

- 1) SOUTH 00°33'11"E, A DISTANCE OF 2646.70 FEET;
- 2) THENCE SOUTH 00°33'13"E, A DISTANCE OF 2646.16 FEET;
- 3) THENCE SOUTH 01°04'21"E, A DISTANCE OF 2650.03 FEET;
- 4) THENCE SOUTH 01°04'25"E, A DISTANCE OF 1191.58 FEET TO A POINT ON SAID NORTH  
RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE,  
SOUTH 87°56'25" WEST, A DISTANCE OF 2232.37 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 20,437,415 SQ. FT. OR 469.18 ACRES MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR  
AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING  
MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE  
REQUEST OF THE CLIENT AND ARE INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR  
SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.




JOHN B. GUYTON  
COLORADO P.L.S. #16406  
CHAIRMAN/CEO, FLATIRONS

FSI JOB NO. 18-71,096

JOB NUMBER: 18-71,096 DRAWN BY: M. VOYLES DATE: APRIL 17, 2018 (PARCEL 2)  
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**Flatirons, Inc.**  
*Surveying, Engineering & Geomatics*



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BOULDER, CO 80301  
PH: (303) 443-7001  
FAX: (303) 443-9830  
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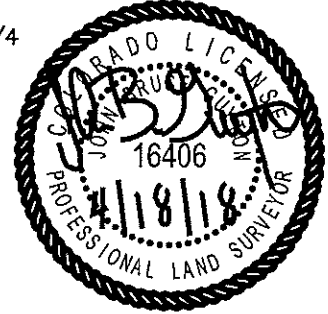
# EXHIBIT "A"

LOCATED IN THE EAST HALF OF SECTIONS 26 AND 23, TOWNSHIP 3 SOUTH,  
RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
COUNTY OF ADAMS, STATE OF COLORADO

SHEET 2 OF 2

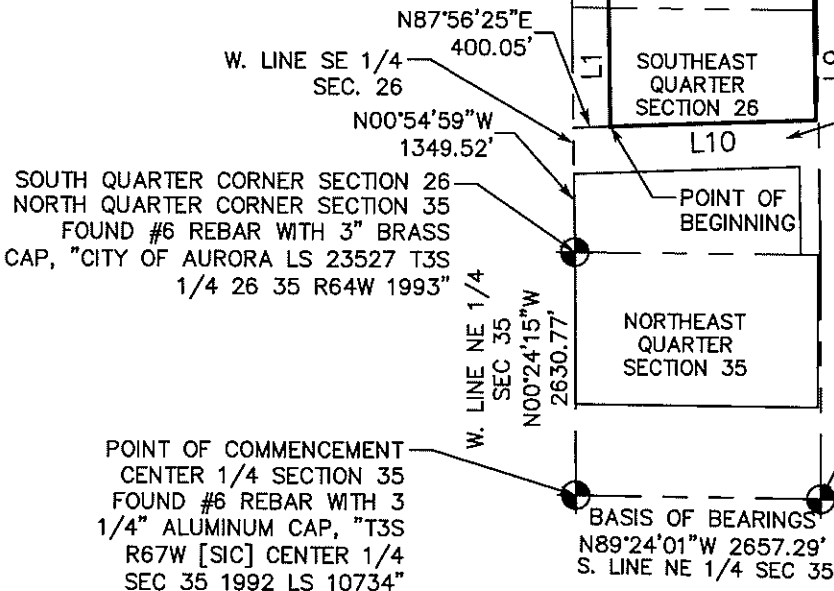
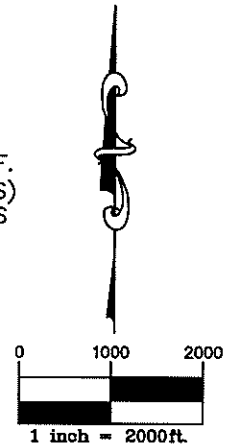
PARCEL LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	1292.35	N00°54'59"W
L2	2647.11	N00°54'42"W
L3	2646.37	N00°38'13"W
L4	2643.27	N00°38'12"W
L5	2229.51	S89°37'39"E
L6	2646.70	S00°33'11"E
L7	2646.16	S00°33'13"E
L8	2650.03	S01°04'21"E
L9	1191.58	S01°04'25"E
L10	2232.37	S87°56'25"W

L5 N LINE NE 1/4 SEC. 23



PETERSON ROAD (60' R.O.W.)

TOTAL AREA:  
20,437,415 S.F.  
(469.18 ACRES)  
MORE OR LESS



UNION PACIFIC RAILROAD RIGHT-OF-WAY

EAST 1/4 SECTION 35  
FOUND #6 REBAR WITH 2  
1/2" ALUMINUM CAP, "LS  
5112 T3S R64W 35 36  
1/4 1991"

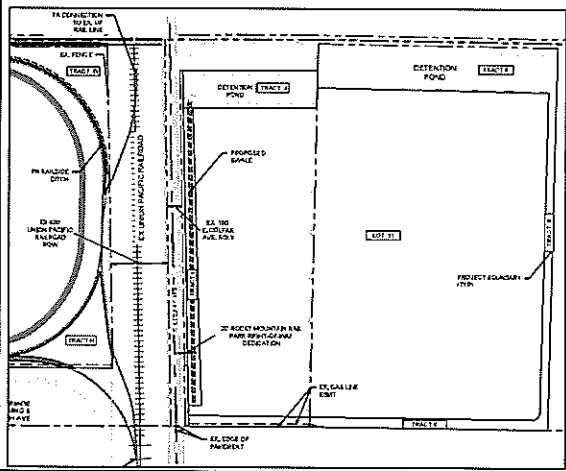
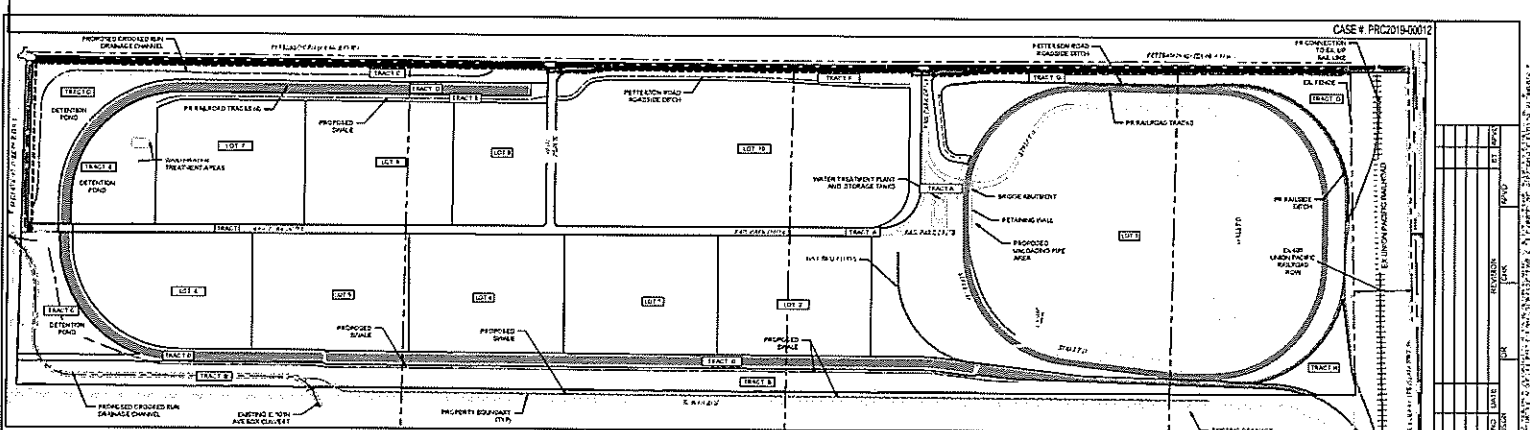
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BY: MVOYLES FILE: 71096\_LEGAL\_DESCRIPTIONS.DWG DATE: 4/18/2018 1:07 PM

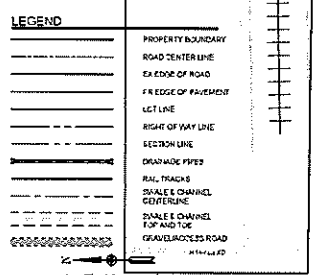


EXHIBIT B  
Site Plan  
(see attached)



**ROCKY MOUNTAIN RAIL PARK LAND USE SUMMARY**

TRACT	AREA (SQ. FT.)	ACTIVE REGULATION USE (SQ. FT.)	OPEN SPACE USE (SQ. FT.)	OWNER	REGULATION	MAINTENANCE	Alternative Use
TRACT 1	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 2	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 3	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 4	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 5	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 6	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 7	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 8	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 9	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 10	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 11	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 12	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 13	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 14	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 15	10,000	10,000	0	EC	DP-2	DP-2	DP-2
TRACT 16	10,000	10,000	0	EC	DP-2	DP-2	DP-2
<b>TOTAL</b>	<b>160,000</b>	<b>160,000</b>	<b>0</b>	<b>EC</b>	<b>DP-2</b>	<b>DP-2</b>	<b>DP-2</b>



CASE # PRC2019-00012

ENERTIA

ROCKY MOUNTAIN RAIL PARK  
FINAL DEVELOPMENT PLAN  
ADVISORY BOARD

OVERALL SITE PLAN

DATE: 01/20/2020  
FILE: S19-020  
DWG: S19-02  
SHEET: 4 OF 9