

EXHIBIT A
TO
COVENANTS AND RESTRICTIONS
OF WATERVIEW

(Property)

ROBERT C. "BOB" BALINK El Paso County, CO

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RETURN to County planning

COVENANTS AND RESTRICTIONS
OF WATERVIEW
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Exhibit A – Property

**COVENANTS AND RESTRICTIONS
OF WATERVIEW**

THESE COVENANTS AND RESTRICTIONS OF WATERVIEW (the "Covenants," as hereinafter more fully defined) are made and entered into the date and year hereinafter set forth by WATERVIEW JV PARTNERS, LLC, a Colorado limited liability company (the "Developer," as hereinafter more fully defined).

WITNESSETH:

WHEREAS, pursuant to C.R.S. §32-1-1004, as amended, the Waterview Metropolitan District (the "Metropolitan District," as hereinafter more fully defined) is designated to provide covenant enforcement and design review services for that certain real property in the County of El Paso, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property," as hereinafter more fully defined); and

WHEREAS, the Developer has recorded or will record in the Office of the Clerk and Recorder of El Paso County, Colorado that certain Reservation of Development Rights, Release of Liability and Disclosures, as amended and supplemented from time to time, applicable to the Property ("Reservation of Development Rights," as hereinafter more fully defined); and

WHEREAS, the Developer desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions, provided that all of the same shall be subject and subordinate to the Reservation of Development Rights; and

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

NOW, THEREFORE, in addition to the foregoing, the Developer hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions set forth above and herein, as the same may be amended and/or supplemented from time to time.

ARTICLE 1. DEFINITIONS

Section 1.1. *Builder.*

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

Section 1.2. *Covenants.*

"Covenants" means these Covenants and Restrictions of Waterview, as amended and supplemented from time to time.

Section 1.3. *Developer.*

"Developer" means Waterview JV Partners, LLC, a Colorado limited liability company, and/or any other Person to whom the Developer may, at any time from time to time, assign one or more of the Developer's rights (which shall be the extent of the Developer's rights to which such assignee succeeds); provided, that no assignment of any Developer rights shall be effective unless such assignment is duly executed by the assignor Developer and recorded in El Paso County, Colorado.

Section 1.4. *Governing Documents.*

"Governing Documents" means these Covenants, the Reservation of Development Rights and any Guidelines, rules and regulations, and any other documents now or hereafter adopted by or for the Metropolitan District, as amended or supplemented from time to time.

Section 1.5. *Improvements.*

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

Section 1.6. *Lot.*

"Lot" means each platted lot that is now or hereafter included in the real property described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting), as well as any other platted lots now or hereafter included in any real property annexed to these Covenants.

Section 1.7. *Metropolitan District.*

"Metropolitan District" means the Waterview Metropolitan District, and/or any other metropolitan district(s), to whom the then-Metropolitan District may, from time to time, transfer or assign any or all of the rights and duties of the Metropolitan District. Each such assignment or transfer, if any, shall be effective upon recording in El Paso County, Colorado, of a document of transfer or assignment, duly executed by the then-Metropolitan District.

Section 1.8. *Owner.*

"Owner" means each fee simple title holder of a Lot, including without limitation the Developer, any Builder or any other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.

Section 1.9. *Person.*

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

Section 1.10. *Property.*

"Property" means the real estate described on the attached Exhibit A, as supplemented and amended from time to time, as the same may now or hereafter be improved, and as the Developer may now or hereafter subdivide or resubdivide any portion thereof; provided, however, that the Property shall include any property that is annexed and shall not include any property that has been withdrawn, as provided in these Covenants.

Section 1.11. *Reservation of Development Rights.*

"Reservation of Development Rights" means the Reservation of Development Rights, Release of Liability and Disclosures, as amended and supplemented from time to time, applicable to the Property or any portion(s) thereof, recorded or to be recorded in the County of El Paso, State of Colorado.

ARTICLE 2. DESIGN AND/OR ARCHITECTURAL REVIEW

Section 2.1. *Design Review Requirements.*

2.1.1. No Improvements shall be constructed, erected, placed, altered, planted, applied or installed upon any Lot unless said Improvements are in full compliance with the provisions of the Governing Documents and unless at least two (2) sets of complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the governing board of the Metropolitan District), shall have been first submitted to and approved in writing by the governing board of the Metropolitan District.

2.1.2. The governing board of the Metropolitan District shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the governing board of the Metropolitan District may require as a condition to its considering an approval request that the

applicant(s) pay or reimburse the Metropolitan District for the expenses incurred by the Metropolitan District in the review process.

2.1.3. In addition to the foregoing review and approvals, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the applicable governmental entity, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

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

Section 2.2. *Guidelines.*

The governing board of the Metropolitan District is authorized to promulgate design and/or architectural standards, rules, regulations and/or guidelines (collectively the "Guidelines"). Any such Guidelines may be included in rules and regulations promulgated by the Metropolitan District as set forth in Section 4.1 of these Covenants (Rules and Regulations). Without limiting the generality of the foregoing, such Guidelines may contain provisions to clarify the designs and materials that may be considered in design approval, may state requirements for submissions, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the governing board of the Metropolitan District. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval, or may state that only one or more types of fences are acceptable and no other types will be approved. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with these Covenants.

Section 2.3. *Procedures.*

The governing board of the Metropolitan District shall approve or disapprove all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the governing board may require in conjunction therewith. A stamped or printed notation, initialed by a member of the governing board, affixed to any of the plans and specifications, shall be deemed a sufficient writing. However, the governing board shall not be required to maintain records of plans, specifications or other documents or

information that have been submitted to it for approval. Approval by the governing board shall be conclusive evidence of compliance with this Article 2, provided that the Improvements are constructed in compliance with the plans and specifications as approved. Failure to approve within forty-five (45) days shall be deemed disapproval.

Section 2.4. *Vote; Appeal.*

A majority vote of the governing board of the Metropolitan District is required to approve a request for architectural approval or any other matter to be acted on by the governing board of such Metropolitan District, unless the governing board has appointed a representative or committee to act for it, in which case the decision of such representative or committee shall control. In the event a representative or committee acting on behalf of the governing board of the Metropolitan District decides a request for architectural approval which is adverse to the applicant, then any Person shall have the right to an appeal of such decision to the full governing board, upon a written request therefor submitted to the governing board within ten (10) days after such decision by the governing board's representative or committee.

Section 2.5. *Prosecution of Work After Approval.*

After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within six (6) months after the date of approval of the application or to complete the Improvement in complete conformance with the conditions and requirements of the approval, shall constitute noncompliance with the requirement that approval for Improvements be obtained from the governing board of the Metropolitan District; provided, however, the governing board of such Metropolitan District, in its discretion, may grant extensions of time for completion of any proposed Improvements.

Section 2.6. *Notice of Completion.*

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

Section 2.7. *Inspection of Work.*

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

Section 2.8. *Notice of Noncompliance.*

If, as a result of inspections or otherwise, the governing board of the Metropolitan District finds that any Improvement has been done without obtaining the approval of the governing board of such Metropolitan District, or was not done in substantial compliance with the approval that was granted, or was not completed within six (6) months after the date of approval, subject to any extensions of time granted pursuant to Section 2.5 hereof, the governing board of the Metropolitan District shall notify the applicant in writing of the noncompliance; which notice of noncompliance shall be given, in any event, within sixty (60) days after the governing board of such Metropolitan District receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance.

Section 2.9. *Correction of Noncompliance.*

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

Section 2.10. *Cooperation and Delegation.*

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

Section 2.11. *Access Easement.*

Each Lot is subject to an easement in favor of the Metropolitan District and the governing board thereof, including the agents, representatives, employees and contractors thereof: for performing any of the actions contemplated in this Article, including without limitation those provided for in Sections 2.7 and 2.9 hereof; and/or for and incidental to investigation and/or enforcement of any term, provision, possible violation, or any other matter provided for in any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any other property or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Metropolitan District, if it is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to the easements provided for in this Section.

Section 2.12. *No Liability.*

The governing board of the Metropolitan District and the members thereof, as well as any representative of the governing board appointed to act on its behalf, shall not be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter within its jurisdiction hereunder. In reviewing any matter, the governing board of the Metropolitan District shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor compliance with any other standards or regulations, and any approval of an Improvement by the governing board of the Metropolitan District shall not be deemed an approval of any such matters. No Owner or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the governing board of the Metropolitan District.

Section 2.13. *Variance.*

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

Section 2.14. *Waivers; No Precedent.*

The approval or consent of the governing board of the Metropolitan District, or any representative or committee thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the governing board of the Metropolitan District or any representative or committee thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

ARTICLE 3. RESTRICTIONS

Section 3.1. *Restrictions Imposed.*

The Property is subject to all requirements, covenants, restrictions and other matters stated on the recorded plats of the Property, or any portion thereof, as well as all other applicable documents. In addition, the Developer declares that all of the Property shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in these Covenants. In addition, no unlawful use shall be permitted or made of the Property or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Property, or any portion thereof, shall be observed.

Section 3.2. *Residential Use; Professional or Home Occupation.*

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

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

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

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

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

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

Section 3.3. *Household Pets.*

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded on the Property; provided, however, that the Owners and residents of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Property. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed and accompanied by the Owner or his or her representative, who shall be responsible for collecting and properly disposing of any animal waste. The governing board of the Metropolitan District shall have, and is hereby given, the right and authority to: set size or poundage limits on pets; regulate the number(s) and/or type(s) of pets that are permitted to be kept; determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; that an Owner or resident is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to household pets; or that an Owner or resident is otherwise in violation of the provisions of this Section. In any such case, the governing board of the Metropolitan District may take such action(s) as it may deem appropriate. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred as a result of such pets.

Section 3.4. *Temporary Structures; Unsightly Conditions.*

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

Section 3.5. *Miscellaneous Improvements.*

3.5.1. No advertising or signs of any character shall be erected, placed, permitted, or maintained other than a name plate of the occupant and a street number, and except for a sign advertising a home for sale or lease that is not more than six (6) square feet and is otherwise in compliance with the requirements of the Metropolitan District; and such other signs, for such length(s) of time, which have the prior written approval of the governing board of the Metropolitan District or are expressly permitted by applicable law. Notwithstanding the foregoing, signs, advertising, or billboards used by the Developer (or by any Builder with the express written consent of the Developer) in connection with the sale or rental of Lots and Improvements, or otherwise in connection with development of or construction on the Property, shall be permissible.

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

3.5.3. No types of refrigerating, cooling or heating apparatus shall be permitted on a roof. Further, no such apparatus shall be permitted elsewhere except when appropriately screened and approved by the governing board of the Metropolitan District. Without limiting the foregoing, conventional air conditioning units located on the ground of a Lot are permissible when approved in accordance with the preceding sentence.

3.5.4. Except as may otherwise be permitted by the governing board of the Metropolitan District, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Developer or by any Builder in connection with the sale or rental of Lots, or otherwise in connection with development of or construction on the Property; and provided further, however, that the requirements of this subsection shall be subject to the Telecommunications Act of 1996 and applicable regulations, as amended from time to time.

3.5.5. Other than fences which may be constructed, installed or located by the Developer (or by a Builder with the written approval of the Developer) in its development or construction of Improvements in the Property, no fences shall be permitted except with the prior written approval of the governing board of the Metropolitan District. Any fences constructed on a Lot shall be maintained by the Owners of such Lot.

3.5.6. No wind generators shall be constructed, installed, erected or maintained.

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

3.6.1. Except as otherwise provided in Section 3.6.2 hereof and/or in rules and regulations which may be adopted by the governing board of the Metropolitan District from time to time, vehicles shall be parked only in the garages, in the driveways, if any, serving the Lots, or in appropriate spaces or areas which may be designated by the governing board of the Metropolitan District from time to time, except that any vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. Vehicles shall be subject to such reasonable rules and regulations as the governing board of the Metropolitan District may adopt from time to time. The Developer and/or Metropolitan District may designate certain parking areas for visitors or guests, and the governing board of the Metropolitan District may adopt reasonable rules and regulations, from time to time, governing such areas.

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

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

3.6.3. In the event the governing board of the Metropolitan District determines that a vehicle is parked or stored in violation of subsections 3.6.1 or 3.6.2 hereof, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the governing board of the Metropolitan District in its discretion from time to time, the governing board of such Metropolitan District shall have the right to remove the vehicle at the sole expense of the owner thereof.

3.6.4. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on the Property unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle on a Lot, together with those activities normally incidental and necessary to such washing and polishing.

Section 3.7. *Nuisances.*

No nuisance shall be permitted which is visible within or otherwise affects any portion of the Property, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the term "nuisance" shall include each violation of these Covenants and the Guidelines and rules and regulations, if any, but shall not include any activities of the Developer or a Builder. No noxious or offensive activity shall be carried on, nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 3.8. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted which are or might be unsafe or hazardous to any natural person or property. Without limiting the generality of the foregoing, no firearms shall be

discharged and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 3.9. *No Annoying Light, Sounds or Odors.*

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

Section 3.10. *Restrictions on Trash and Materials.*

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

Section 3.11. *Lots to be Maintained.*

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

Section 3.12. *Leases.*

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

Section 3.13. *Landscaping.*

Within the time frames as hereinafter provided, the Owner (other than Developer or a Builder) of each Lot shall install landscaping on all of the Lot which is not covered or enclosed by a building, fence or other structure. The Owner of each Lot (other than Declarant or a Builder) shall

install landscaping on such Lot within one hundred eighty (180) days after acquisition of such Lot by such Owner if said acquisition occurs between April 1 and October 1; if said acquisition does not occur between such dates, then such landscaping shall be installed by such Owner by the following October 1. Landscaping plans and other required documents shall be professionally done and must be submitted to the governing board of the Metropolitan District for review, and the approval of such plans shall be obtained from the governing board prior to the installation of landscaping, except where installed by the Developer or a Builder who is exempt from Article 2 hereof. Each Owner shall maintain all landscaping on such Owner's Lot in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds and debris, and replacement of landscaping.

Section 3.14. *Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.*

3.14.1. Each Owner shall maintain the grading upon his Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner agrees that he will not in any way interfere with the established drainage pattern over his Lot. In the event that it is necessary or desirable to change the established drainage over any Lot, then the Owner thereof shall submit a plan to the governing board of the Metropolitan District for its review and approval, in accordance with the provisions of Article 2 of these Covenants and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities, including without limitation the Metropolitan District. However, each Owner understands and acknowledges that any such change may affect or void any warranties. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Lot by the Developer, or by a Builder, is completed.

3.14.2. The Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery by "controlled hand-watering," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls and slabs.

ARTICLE 4. GENERAL PROVISIONS

Section 4.1. *Rules and Regulations.*

Rules and regulations concerning and governing the Property may be adopted, enacted, modified, amended, repealed, and re-enacted from time to time by the governing board of the Metropolitan District. Any such rules and regulations may be included in Guidelines promulgated by the Metropolitan District as set forth in Section 2.2 hereof. Such rules and regulations are incorporated into these Covenants and the Metropolitan District may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the

violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations, clarifications and applications of these Covenants and law, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The governing board of the Metropolitan District has the authority to adopt or vary one or more rules and regulations that are different for different types of Lots, if any. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, these Covenants.

Section 4.2. *Enforcement.*

4.2.1. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in these Covenants, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. The Metropolitan District and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under these Covenants or any other Governing Documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Metropolitan District or any Owner to enforce any covenant, restriction or other provision herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

4.2.2. Without limiting the generality of the foregoing, the Metropolitan District shall have the right to send demand letters and notices, to levy and collect fines, to negotiate, settle and to take any and all other actions with respect to any violation(s) or alleged violation(s) of any of the Governing Documents.

Section 4.3. *Annexation; Withdrawal.*

4.3.1. The Developer may at any time, from time to time, annex to the Property additional real estate and Improvements, including without limitation any real estate and Improvements which may previously have been withdrawn from the Property. By each such annexation, if any, the Developer shall be deemed to have amended the term "Property" to include such annexed property. Each such annexation, if any, shall be accomplished by recording of an annexation document that expressly and unequivocally provides that the real property and Improvements described therein shall be subject to these Covenants and all terms and provisions hereof. Any such annexation may include provisions which, as to the property described therein, adds to or changes the rights, responsibilities and other requirements of these Covenants.

4.3.2. The Developer reserves the right to withdraw the Property, or any portion thereof, from these Covenants so long as the Developer owns the portion of the Property to be withdrawn. By each such withdrawal, if any, the Developer shall be deemed to have amended the term "Property" to exclude such withdrawn property. The right to withdraw any portion(s) of the Property includes the right to withdraw one or more Lots, or other portion(s) of the Property, at different times and from time to time. Each withdrawal, if any,

may be effected by the Developer recording a withdrawal document in the office of the Clerk and Recorder of the county in which such withdrawn property is located. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn property from these Covenants so that, from and after the date of recording a withdrawal document, the property so withdrawn shall not be part of the Property.

Section 4.4. *Developer's and Builder's Exemption.*

Notwithstanding anything to the contrary contained in any of the Governing Documents, the Developer (and any Builder designated in writing by the Developer) shall be exempt from the Governing Documents, including without limitation the requirement to obtain architectural approval from the governing board of the Metropolitan District and the restrictions set forth in Article 3 of these Covenants. Notwithstanding the foregoing, neither the Developer nor any Builder shall be exempt from the requirement to obtain approval from all governmental entities with jurisdiction over the Property as set forth in Section 2.1.3 of these Covenants.

Section 4.5. *Conflict of Provisions.*

In the case of any conflict between the Reservation of Development Rights and these Covenants, any Guidelines, rules and regulations, or any other document now or hereafter adopted by or for the Metropolitan District, the Reservation of Development Rights shall control.

Section 4.6. *Duration, Amendment and Supplement.*

4.6.1. Each and every provision of these Covenants shall run with and bind the land perpetually from the date of recording of these Covenants. Subject to subsection 4.6.2 of this Section, these Covenants may be amended and/or supplemented by the affirmative vote or agreement of sixty-seven percent (67%) of the Owners. Notwithstanding the foregoing, the Metropolitan District shall not be required to comply with or enforce any such Owner adopted amendments or supplements to these Covenants until such time as the Metropolitan District receives a recorded copy of such amendment and/or supplement in compliance with Section 4.10 of these Covenants (Notices).

4.6.2. Notwithstanding anything to the contrary, until twenty (20) years after conveyance of all the Property to the first Owners thereof other than the Developer or a Builder, no amendment or supplement of these Covenants shall be effective without the prior written approval of the Developer.

4.6.3. Notwithstanding anything to the contrary, these Covenants may be amended in whole or in part, at any time from time to time, by the Developer without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

4.6.4. Notwithstanding anything to the contrary, these Covenants may be amended in whole or in part, at any time from time to time, by the Developer without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to correct any clerical, typographical or technical errors in these Covenants or to clarify provision(s) of these Covenants.

4.6.5. None of the subsections of this Section 4.6 may at any time(s) be amended or deleted without the prior, written approval of the Developer.

Section 4.7. *Severability.*

All provisions of these Covenants are severable. Invalidation of any provision of these Covenants by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 4.8. *Minor Violations of Setback Restrictions.*

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

Section 4.9. *Liability.*

The Developer, the Builders, the Metropolitan District, and their directors, officers, shareholders, partners, members, agents or employees shall have limited liability as further provided in the Reservation of Development Rights, including without limitation, in Sections 3.1 through 3.8, inclusive, thereof.

Section 4.10. *Notices.*

Any notice permitted or required in these Covenants shall be deemed to have been given and received upon the earlier to occur of (a) personal delivery upon the Person to whom such notice is to be given; or (b) two (2) days after deposit in the United States mail, postage prepaid, addressed to the Owner at the address for such Owner's Lot.

Section 4.11. *Headings.*

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

Section 4.12. 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 4.13. Runs with the Land; Binding Upon Successors.

The benefits, burdens, and all other provisions contained in these Covenants shall be covenants running with and binding upon the Property and all Improvements which are now or hereafter become a part of the Property. The benefits, burdens, and all other provisions contained in these Covenants shall be binding upon, and inure to the benefit of the Metropolitan District, the Developer, the Builders and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Developer herein has hereunto set their hands this 14th day of May, 2007.

DEVELOPER:

WATERVIEW JV PARTNERS, LLC,
a Colorado limited liability company

By: *Keth Schunover*
Its: _____

STATE OF COLORADO)
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this 14th day of May, 2007, by Keth Schunover as _____ of WATERVIEW JV PARTNERS, LLC, a Colorado limited liability company, Developer.

Witness my hand and official seal.

{SEAL}

Lynne Sorsby
Notary Public
My Commission expires: 4/13/09

