

**TOWNHOME DECLARATION
FOR
MONTMERE AT AUTREY SHORES**

**THIS TOWNHOME DECLARATION FOR MONTMERE AT AUTREY SHORES
CONTAINS MANDATORY ALTERNATIVE DISPUTE RESOLUTION PROVISIONS,
IN LIEU OF LITIGATION, THAT CANNOT BE AMENDED OR DELETED WITHOUT
SST CONSENT**

After Recording Return to:
Superior Shore Townhomes, LLC
5291 E Yale Avenue
Denver, Colorado 80222

**TOWNHOME DECLARATION
FOR
MONTMERE AT AUTREY SHORES**

THIS TOWNHOME DECLARATION FOR MONTMERE AT AUTREY SHORES ("**Declaration**") is made this June 15, 2022 ("**Effective Date**"), by Superior Shore Townhomes, LLC, a Colorado limited liability company ("**SST**").

RECITALS

- A. SST is the owner of the "**Lots**" located in the Town of Superior ("**Town**"), County of Boulder, State of Colorado, Colorado, described on the attached Exhibit A.
- B. Upon the construction of a Unit (as defined below) upon a Lot, there will lie along and over the shared boundaries of such Lots one or more shared walls that, in conjunction with the footings underlying and those portions of the roof thereover, form a structural part of and physically join the improvements located upon the Lots.
- C. SST desires to subject the Lots to the covenants, conditions and restrictions as set forth herein.
- D. SST reserves the right (without in any way being obligated) for a period of ten years from and after the Effective Date ("**SST Rights Period**") to withdraw from this Declaration any Lot which has not been conveyed by SST to a third-party, without the necessity of the consent or joinder thereto of Owners, their mortgagees or any other person.
- E. This Declaration does not create a planned community pursuant to C.R.S. 38-33.3-101 *et seq.* ("**Act**") and therefore is exempt from the Act.

NOW, THEREFORE, SST does hereby publish and declare the following covenants, conditions and restrictions.

**ARTICLE I
ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS**

- A. **Recitals Incorporated.** The Recitals set forth above are hereby incorporated into the terms of this Declaration.
- B. **Covenants to Run with the Project.** SST hereby declares that all of the Lots shall be held, sold and conveyed subject to the following covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of the Lots; and which shall run with title to the Lots and be a burden binding on all parties having any right, title or interest in the Lots, their heirs, personal representatives, successors and assigns and shall inure to the benefit of all Owners (as defined below), their heirs, personal representatives, successors and assigns.

In addition to the covenants, conditions and restrictions set forth in this Declaration, each Owner shall be subject to all governing documents of Subdistrict No. 1 of the Coalton Metropolitan District ("**District**"). Except as otherwise provided in Article IX below, in the event of a conflict between the provisions of this Declaration and provisions of any District documents ("**District Documents**"), the more restrictive provision shall control unless the more restrictive provision is contained within this Declaration and the provision in the District Documents expressly provides that it is to control in such event.

C. Owners and Subsequent Owners Bound. Each provision of this Declaration and each agreement, promise, covenant or undertaking to comply with or to be bound by the provisions of this Declaration that is contained herein shall:

(1) Be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument; and

(2) By virtue of acceptance of any right, title or interest in a Lot by an Owner, such Owner shall be deemed to have accepted, ratified, and adopted these agreements and promises as personal obligations of such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of all other Owners.

D. Owner Defined. As used herein, "Owner" shall mean any record owner (including SST) and a contract purchaser subject to a binding land installment contract, whether one or more persons or entities, having an ownership interest in or to any Lot, but excluding any such person or entity having an interest therein merely as a mortgagee or beneficiary under a deed of trust unless such mortgagee or beneficiary under a deed of trust has acquired title thereto in a foreclosure or any conveyance in lieu of foreclosure. A person or entity ceases to be an Owner upon the conveyance of title to their Lot by deed or upon entering into a binding installment land contract. Such cessation of ownership shall not extinguish or otherwise void any unsatisfied obligation of such person or entity existing or arising at or before the time of such conveyance.

E. Lot Defined. As used herein, "Lot" shall mean all of the land included within the Lot, together with all appurtenances and improvements, including the "Unit" and all hardscaping and landscaping, now or hereafter located thereon.

The Lot includes the roof of the Unit located on the Lot. Such roof is owned solely by the Lot Owner.

ARTICLE II MAINTENANCE

Except as otherwise provided herein, and except as otherwise may be undertaken by the District pursuant to the District Documents, each Owner shall, at their sole cost and expense, maintain, repair and replace all exterior and interior components of their Lot in a safe condition at all times, and in accordance with the terms of this Declaration. Notwithstanding the foregoing, the cost of any maintenance, repair or replacement of a Lot resulting from the negligence or intentional act or omission of another Owner, or another Owner's licensee, invitee or agent (collectively, "Owner's Agent") shall be the responsibility of such Owner.

ARTICLE III INSURANCE

A. Liability Insurance. Each Owner, at their sole cost and expense, shall obtain and maintain at all times policies of general liability insurance providing coverage for bodily injury and property damage for the benefit of the Owner in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property; *provided, however*, that such liability insurance must: (1) have a per occurrence limit of not less than Five Hundred Thousand and No/100 Dollars; (2) be written as a primary policy, not contributing with or supplementing any coverage another Owner carries; and (3) insure such

Owner against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use ownership or maintenance of the Owner's Lot.

B. Property Insurance. Each Owner, at their sole cost and expense, shall obtain and maintain at all times a policy of property/casualty insurance. At a minimum, the property/casualty insurance must insure against risks of direct physical loss for one hundred percent of the estimated full replacement cost (at the time the insurance is purchased and at the renewal date) of the Lot. The property/casualty insurance may exclude land, excavations, foundations and other items normally excluded from property/casualty policies. The property/casualty insurance will be maintained in the name of the Owner. To the extent reasonably available such property/casualty insurance will also: (1) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (2) be written as a primary policy, not contributing with and not supplemental to any coverage that any other Owner carries; (3) provide that no act or omission by a party voids the policy or is a condition to recovery under the policy; (4) provide that it may not be canceled, nor may coverage be reduced, without thirty days' prior notice to the insured and all other Owners of Units within the same building; and (5) include a so-called "inflation guard" endorsement.

Upon the unanimous written consent of all Owners of Units within the same building, such Owners may purchase a single policy of property/casualty insurance that covers all such Lots and each Owner shall share equally in the cost thereof; and in such event each Owner shall separately carry such additional property insurance as described in Subsection IV.C below to cover any gaps in insurance coverage not addressed by the single policy.

Each Owner will provide a certificate of the property/casualty insurance described above to any other Owner of a Unit within the same building within five days after requested by such Owner.

C. Additional Property Insurance. In addition to, or as a part of, the property insurance set forth in Subsection IV.B above, each Owner must maintain, at their sole cost and expense, property insurance upon the Owner's personal property and fixtures within their Lot, and all of the finished interior surfaces of the walls, floors and ceilings of their Unit, and any improvements or betterments installed by such Owner within their Lot, in such amounts, against such risks, and containing such provisions as the Owner may reasonably determine from time to time.

D. Cancellation; Modification. All policies of insurance required under this Article IV shall be written by insurance companies licensed to do business in Colorado with a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's *Insurance Reports*; an "A" or better general policyholder's rating and a financial size category of "VII" or better in Best's *Insurance Reports - International Edition*; an "A" or better rating in Demotech's *Hazard Insurance Financial Stability Ratings*; a "BBBq" qualified solvency rating or a "BBB" or better claims-paying ability rating in Standard and Poor's *Insurance Solvency Review*; or a "BBB" or better claims-paying ability rating in Standard and Poor's *International Confidential Rating Service*.

E. Prohibited Activities. No Owner shall do anything or cause anything to be kept in or upon a Lot that might cause the cancellation of any insurance policy covering a Lot.

ARTICLE IV CASUALTY

A. Duty to Restore Lots. All damaged or destroyed Lot(s) must be repaired and restored and done so in accordance with either the original plans and specifications, or other plans and specifications which have been approved pursuant to Article X below.

In the event of damage or destruction to any Lot which is covered by the property/casualty insurance required in Subsection III.B above, the insurance proceeds for such damage or destruction shall be applied to the reconstruction and repair of the damaged or destroyed Lot(s).

B. Insufficient Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Lot(s), the Owner(s) of the damaged or destroyed Lot(s) shall in any event proceed to make such repairs or reconstruction and shall be responsible for the payment of same.

C. Negligence by an Owner. Notwithstanding any other provision of this Article IV, if due to the act or negligence of an Owner or such Owner's Agent loss or damage shall be caused to any person or property or any other Lot(s), such Owner shall be liable and responsible therefore. Such Owner shall proceed with due diligence to cause the prompt repair and restoration of any such property damage, facilitating the restoration of any Lot(s) so damaged and shall compensate the person or other Owner for any direct damages sustained as a result of such intentional or negligent act.

ARTICLE V USE RESTRICTIONS

THE PROVISIONS OF THIS ARTICLE V ARE IN ADDITION TO ANY RULES AND REGULATIONS SET FORTH IN THE DISTRICT DOCUMENTS RELATED TO DISTRICT OWNED PROPERTY. DISTRICT RULES AND REGULATIONS RELATED TO DISTRICT OWNED PROPERTY ARE SUBJECT TO MODIFICATION FROM TIME TO TIME, AND DISTRICT MAY ADOPT NEW RULES AND REGULATIONS REGARDING USE OF DISTRICT OWNED PROPERTY. THE FOLLOWING USE RESTRICTIONS WILL NOT BE ENFORCED BY DISTRICT. THE FOLLOWING USE RESTRICTIONS MAY ONLY ENFORCED BY AN OWNER AGAINST ANOTHER OWNER PURSUANT TO ARTICLE IX BELOW.

A. Sound and Noises. No Owner shall operate any machines, appliances, electronic devices, sound systems, accessories or equipment in such a manner as to cause an unreasonable disturbance to others, or cause any damage to or overloading of any mechanical, electrical, plumbing, or any other system serving the Lots. There will be no loud noises or playing of musical instruments, radios, stereos, televisions, etc. in such a manner as to disturb other Owners. Volumes shall be appropriate between the hours of 10:00 p.m. and 8:00 a.m., and at all other times.

In adding or modifying a Unit's home theater or audio reproduction equipment, the Owner should be aware that the sound isolation between Units is limited in acoustical performance and there may be times when systems, like home theaters can be heard. The goal of this Subsection V.B is to maintain a level of acoustical privacy intended for the Units, given the understanding of the variability in power and capability of home theater audio systems.

Additional loudspeakers for music reproduction shall not be supported from or contact shared walls in a Unit. All loudspeakers mounted within assemblies shall have back boxes, and loudspeakers may not

be mounted within demising cavities or be supported from structural members without approval from the Owners located adjacent to the Owner's Unit.

The provisions of this Subsection V.A shall not apply to improvements initially constructed by SST.

B. Pets. No household pet or animal shall be allowed in or about the project at any time without close supervision by an Owner. Owners shall be responsible for strict compliance with all laws and regulations related to pet ownership, including, but not limited to, any laws and regulations wholly excluding or limiting the number or type of pets allowed, and each Owner shall ensure that their pet does not interfere with other Owners' quiet use and enjoyment of the project. Owners will be held responsible for any litter, waste, mess or damage created by their pets and for any offensive noises created by their pets. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pet.

C. Residential Use. Each Lot shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on a Lot except as hereinafter expressly provided. The foregoing shall not, however, be construed in such a manner as to prohibit an Owner from (1) maintaining their personal professional library in a Unit, (2) keeping their personal business or professional records or accounts in a Unit, (3) handling their personal business or professional telephone calls or correspondence from a Unit, (4) maintaining a computer or other office equipment within a Unit, or (5) utilizing administrative help or meeting with business or professional associates, clients or customers in a Unit. Any accessory business use of a Unit permitted by this Subsection V.C must be in compliance with all applicable laws and regulations, must not have any adverse impact on other Lots and must be conducted in accordance with this Declaration.

D. Trash. Disposition of garbage and trash shall be by the use of trash facilities provided by the Town (or the Town contractor). Trash and trash receptacles shall not be placed within the sidewalk portion of any Lot (if any). Trash containers may only be located outside of the Unit on the evening prior to trash collection day until 7 p.m. on trash collection day. The removal of hazardous waste or large items such as, but not limited to, building materials, furniture, appliances and hot water heaters shall be in accordance with Town regulations.

E. Roof Top Patio. Roof top patios may only be accessed by such Unit's Owner and access thereto by any other Owner (or any other Owner's Agent) is expressly prohibited. Any Owner (or such Owner's Agent) violating the foregoing restriction shall indemnify the Owner of the roof top patio from any and all claims, losses or costs resulting therefrom (including reasonable attorneys' fees). Access to those portions of a roof top patio outside of the fenced in portion thereof that was initially installed by SST shall be undertaken by the Owner thereof only for the purposes of maintenance and repair.

In no event shall an Owner penetrate or place or store anything upon the roof membrane, including, but not limited to, planters, furniture and/or fencing.

F. Hot Tubs. Hot tubs or similar facilities may not be installed, constructed or maintained anywhere within a Lot without complying with Article X below. Hot tubs are expressly prohibited on all above grade areas, including, without limitation, roof patios and balconies. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES (i) NOT TO INSTALL A HOT TUB ON ANY ABOVE GRADE AREAS, INCLUDING, WITHOUT LIMITATION, ROOF PATIOS AND BALCONIES, AND (ii) THAT SUCH OWNER HAS WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES AGAINST SST AND ITS OWNERS, OFFICERS AND AFFILIATES

FOR PERSONAL INJURY, DEATH OR PROPERTY LOSS, RESULTING FROM OR IN ANY WAY CONNECTED WITH, AN OWNER'S INSTALLATION AND USE OF A HOT TUB ON ANY ABOVE GRADE AREAS, INCLUDING, WITHOUT LIMITATION, ROOF PATIOS AND BALCONIES.

G. Grills/Fire Pits. Charcoal, propane, wood and pellet grills and fire pits are prohibited at the project. Natural gas grills and fire pits are permitted on a Lot so long as they have an automatic shut-off, otherwise they are prohibited.

H. Parking Restrictions. Owners are only permitted to park their vehicles in the garage portions of their Unit. All parking on District owned property outside of an Owner's Lot is solely for the use of visitors and guests.

I. Autrey Reservoir/Bell Flatirons Apartment Restrictions. Owners are prohibited from utilizing Autrey Reservoir and any of the Bell Flatirons Apartments community amenities.

J. Short Term Rentals. As of the Effective Date, this Declaration does not impose any prohibition on short term rentals of Lots; however, Owners may amend the Declaration in accordance with Article VIII below to establish prohibitions, restrictions and/or other rules and regulations related to short term rentals.

K. Garage Use. Garage doors shall be kept closed at all times except when in use. No portion of a garage shall be converted into a separate room, nor shall garages be used for storage or any other purpose that would prevent parking the number of vehicles the garages were designed to accommodate.

L. Decks/Patios/Porches. Decks, patios and porches (including rooftop decks) are intended for personal recreational use and may not be used for storage or other purposes, except that seasonal furniture and seasonal plants in leakproof containers may be kept thereon in season. No boxes, trash, bicycles, motorized vehicles or tires may be stored on the decks, patios or porches (including rooftop decks). All unattached items must be secured when not in use, or heavy enough so as to avoid being blown away by wind. No object of any type may be thrown, dropped or otherwise cast off of the decks, patios or porches (including rooftop decks). Loud or otherwise disturbing activities on the decks, patios and porches (including rooftop decks) are prohibited.

M. Irrigation Lines. Owners are not permitted to connect to or otherwise tie into irrigation lines which are owned and/or maintained by the District.

N. Signs/Flags/Exterior Displays/Religious Symbols.

(1) Signs.

(i) An Owner or resident of a Lot may display ONE of the signs permitted below:

• Non-Commercial and/or Political Sign Rules.

- o A non-commercial sign may be displayed within the Lot – i.e., "Black Lives Matter," "My Child Is an Honor Student," etc., or
- o A political sign; or
- o A military service flag, with a star denoting the service of the Owner, resident or a member of the Owner's or resident's immediate family in the active or reserve military service during a time of war or armed conflict.

- For Sale/For Rent/Open House Signs and Rules.

- o A professionally-lettered For Sale sign on the Lot being offered for sale or one professionally-lettered For Rent sign may be displayed on the Lot offered for sale or for rent.
- o One professionally-lettered Open House sign may be displayed on the Lot on the day of the open house and must be removed at the end of the day.
- o For Sale signs must be removed no later than the date of closing.
- o For Rent signs must be removed when the Lot is leased.

- Security Signs.

- o One professionally-lettered security sign not to exceed two square feet in size may be displayed on the Lot, and a reasonable number of professional security decals not larger than 8" by 8" may be displayed within windows in a Unit.

(ii) Rule on Size of Permitted Sign. A permitted sign may not be more than 36" by 48" in size, except security signs, as provided above.

(iii) Condition of Signs. All permitted signs and symbols must be maintained in good condition and must be replaced as necessary when damaged, worn, or faded. Permitted signs and symbols may not be illuminated, flash, blink, fluctuate or be animated.

(iv) Rules on Commercial Signs-These Signs are Prohibited. With the exception of a permitted sign allowed for above (as a non-commercial For Sale, For Rent, Open House or Security sign), all commercial, trade, marketing signs, including but not limited to, landscaping, painting, remodeling, or business advertising, are prohibited.

(v) Rules on Display of Signs.

- o Permitted signs must be displayed at the front of a Lot – not in alleys.
- o The one allowed sign may be displayed on the Lot of the Owner or within a window inside the Unit.
- o A yard sign, on property of the Owner, may not be permanently affixed to fencing or other improvements.
- o Yard signs may not damage any improvements.

(2) Flags. An Owner or resident may display ONE permitted flag, as set forth below:

- o A maximum of one flag is permitted to be displayed within the Lot at a time.
- o A flag that is not bearing a commercial message is permitted.
- o An Owner or resident may display the American flag if the display complies with the Federal Flag Code, 4 U.S.C. Secs. 4 to 10.
- o All flags bearing a commercial message, including but not limited to, trade, marketing, landscaping, painting, remodeling, or business advertising are prohibited.
- o A permitted flag may be no larger than 3' x 5'.
- o A permitted flag may be displayed within a window inside the Unit or from a balcony of the Unit or from a staff projecting horizontally or on an angle from the roof eave located at the front entryway of the Unit.
- o A flag staff may not be longer than 6' in length.
- o A flag staff may not be installed in such a way as to interfere with the entryway

of another Unit or any walkways. A staff may be attached to exterior brick, composite siding or stucco. Penetrations are the responsibility of the Owner for maintenance, repair, replacement and improvements.

- o Ground-mounted or standing flagpoles are not permitted.
- o A flag and flag staffs must be maintained in good condition and must be replaced as necessary. A permitted flag may not be illuminated, flash, blink, fluctuate or be animated.
- o A flag may only be displayed in the front of the Lot, not in the alley.

(3) Additional Rules on Exterior Displays. The following rules supplement the foregoing provisions of this Subsection V.N and any other restrictions set forth in the Declaration.

- o All portions of a Lot, including any portion of a Unit that can be observed outside of the Unit, may not be used for the placement or hanging of a banner, pull down, fan, windsock, pennant, poster or any advertising device except as expressly allowed in this Subsection V.N.

- o Any sign, flag, symbol, banner, pull down, fan, windsock, pennant, poster, and any advertising device or display not in conformance with the foregoing rules may be removed by the Declarant and any damage caused by the placement and removal of such non-conforming display must be paid for by the owner responsible for the placement of such display after invoice from the Declarant.

(4) Rules on Religious Symbols or Items.

- o A "religious item or symbol" may be displayed on an entry door or entry door frame of a Unit, individually or in combination with other religious items or symbols, as long as they do not cover an area greater than 36 square inches.

- o A "religious item or symbol" means an item or symbol displayed because of a sincerely held religious belief. A religious item or symbol may not contain graphics, language or any display that is obscene or otherwise illegal.

- o A religious item or symbol is not counted or considered a sign.

(5) Exemption for SST. SST shall be exempt from the provisions of this Subsection V.N.

ARTICLE VI EASEMENTS

A. Utility Easement. Each Owner shall have an easement for the location of any utility conduits, pipes and other facilities (including the sanitary and storm sewer lines), components and/or motors servicing the Lot if located in or upon another Lot. Each Owner shall also have an easement over the other Lots for use of the drainage pattern and drainage system created for the Lots. Such easement includes, but is not limited to, the location of all gutters, downspouts, drainage piping, drainage pans and related facilities whether located above or below grade.

B. Shared Walls.

(1) Each Lot shall be deemed to include that portion of a shared wall (if any) extending from the interior surface of the shared wall to the approximate center of the shared wall, together with the necessary easements for perpetual lateral and subjacent support, maintenance, repair and inspection of the shared wall, and with equal rights of joint use. In the event of a conflict between the Lot boundary described

in this paragraph and the description of the Lot shown on the plat for the project, the description of the Lot(s) on the plat shall control.

(2) No Owner shall have the right to remove or make any structural changes to a shared wall that would jeopardize the structural integrity of any Unit. No Owner shall subject a shared wall to the insertion or placement of timbers, beams or other materials in such a way as to adversely affect the shared wall's structural integrity. No Owner shall subject a shared wall to any use that in any manner whatsoever may interfere with the equal use and enjoyment of the shared wall by the other Owner(s) that owns a portion of the shared wall.

(3) To the extent not inconsistent with the terms and conditions of this Declaration, the general rules of law of the State of Colorado concerning shared walls shall be applicable hereto.

C. Additional Easements. Each Owner, by acquiring a Lot, acknowledges and agrees that there are additional easements that may affect their Lot and the project, including, but not limited to, the Easement Agreement recorded on July 20, 2001 at Reception No. 2175847 (as may be amended from time to time), the Access Easement Agreement recorded on June 30, 2008 at Reception No. 2939877 (as may be amended from time to time) and the Drainage Easement Agreement recorded on June 30, 2008 at Reception No. 2939878 (as may be amended from time to time). The foregoing easements may grant certain access rights subject to the terms of said documents, and the obligations set forth in said documents may be the obligations of each Owner in the event that they are not undertaken by the District. To the extent that obligations set forth in any document affecting the Lots or the project are undertaken by the District, then each Owner acknowledges and agrees that the costs related thereto may be passed through to each Owner via the District assessment.

ARTICLE VII OWNER'S ACKNOWLEDGMENT AND WAIVERS

A. Disturbances. The Lots and the project are located in a high-density urban location. Each Owner acknowledges that their Unit shares common walls with other Units in the project. Due to these factors, there may be a certain amount of unpredictable disturbances within the project ("Disturbances"). The Disturbances may include, without limitation: (a) street noise from pedestrians and automobiles; (b) noise from adjacent Units, including, but not limited to, voices, music, televisions, appliances, walking, running, opening and closing of doors, falling objects, cabinet and furniture operation, plumbing and HVAC operation; (c) noise from busy streets and highways; and (d) lights from commercial areas, including commercial areas located across Coalton Road and Autrey Drive. Each Owner, by acquiring a Lot, acknowledges that the Disturbances, and the impacts and disturbances generated by the Disturbances, may occur in and around the project, and may occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. Each Owner, by acquiring a Lot, forever waives and releases any actions or claims the Owner and its successors and assigns may have against SST and its agents and contractors (collectively, "Contractors") which in any way arise out of the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Disturbances and such impacts and disturbances.

B. Mold. Certain types of mold and fungus have been discovered in residences in Colorado. Such organisms may or may not be toxic and may have different adverse health effects. Typically, mold and fungus result from, or are caused by, the accumulation of water, condensation or moisture. By purchasing a Lot, each Owner acknowledges that mold and fungus and their growth can be caused by both natural and unnatural conditions throughout a Lot, and may be introduced through soils, building materials, or other sources over which limited control exists. Each Owner acknowledges and agrees that they have had the

right and obligation to investigate whether mold and fungus is present or is likely to develop within a Lot. Each Owner accepts their Lot "AS IS" and "WHERE IS" with respect to mold and fungus and releases SST and its Contractors from any and all liability and claims with respect to mold and fungus.

C. Radon. The Colorado Department of Health and the United States Environmental Protection Agency have detected elevated levels of naturally occurring radon gas in certain residences throughout Colorado. These agencies have expressed concern that prolonged exposure to high levels of radon gas may result in adverse effects on human health. Each Owner accepts their Lot "AS IS" and "WHERE IS" with respect to radon gas and releases SST and its Contractors from any and all liability and claims with respect to radon gas. Each Owner, by acquiring a Lot, acknowledges that as of the Effective Date, the Town has rules and regulations related to radon mitigation. Each Owner shall be solely responsible for maintaining any radon mitigation system installed on their Lot in accordance with Town rules and regulations and in accordance with all manufacturer requirements.

D. NORM. In certain locations in Colorado, above average levels of naturally occurring radioactive material ("NORM") have been detected. Some scientists think that such radioactive emissions may be hazardous to health. However, no federal or Colorado state regulations or standards set forth the acceptable levels of NORM in residential buildings. Each Owner accepts their Lot "AS IS" and "WHERE IS" with respect to NORM and releases SST and its Contractors from any and all liability and claims with respect to NORM.

E. Soils. The soils in Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of a Unit if the Lot is not properly maintained. Expansive soils contain clay materials which change volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils. Each Owner accepts their Lot "AS IS" and "WHERE IS" with respect to soil condition and releases SST and its Contractors from any and all liability and claims with respect to soil conditions.

F. As-Is Where-Is. Each Owner acknowledges and agrees that he/she has acquired their Lot in an "AS-IS" and "WHERE-IS" condition and except for a Limited Warranty delivered to each original Owner by SST, neither SST nor its Contractors have made nor shall be responsible for any warranties of any kind relating in any manner to the Lot or the project, whether express or implied, including, without limitation, those of workmanlike construction, merchantability, conformance with local building codes, fitness for a particular purpose, habitability, design, condition, quality or otherwise; and each Owner waives and agrees not to assert any claim for any express or implied warranties, other than the Limited Warranty. Each Owner agrees to save and hold harmless SST and its Contractors from and against all claims asserted or based upon any express or implied warranty, including, without limitation, those of workmanlike construction, merchantability, conformance with local building codes, fitness for a particular purpose, habitability, design, condition, quality or otherwise relating to the Lot and the project, except to the extent provided in the Limited Warranty. Each Owner further waives all non-warranty claims against SST and its Contractors relating to the construction, design and condition of the Lot and the project, including, without limitation, claims based on negligence, misrepresentation, breach of contract, and/or the Colorado Consumer Protection Act, C.R.S. § 6-1-101; *et seq.*, except to the extent set forth in the Limited Warranty. Each Owner further expressly waives any right to claim or recover treble and other statutory damages against SST and its Contractors and any officers, owners and employees of same.

G. Rocky Mountain Airport. The project is located within the airport influence area for Rocky Mountain Airport ("Airport") and just outside the airport critical zone due to its location relative to the Airport's primary runway. Buyer should be aware that the project is subject to an Aviation Easement and

may be subject to overflights by commercial, general aviation and military aircraft, and subject to noise, vibration, exhaust, air and vehicular traffic and other conditions associated with the operation of this airport. The airport is operational 24 hours per day. Flights may occur at all hours of the day and night. Owners should expect a varying degree of noise from these aircraft which some owners may find intrusive.

H. Fuel Sources. Each Owner, by acquiring a Lot, acknowledges that if (in accordance with all terms and conditions of this Declaration) the Owner or any Owner's Agent installs an outdoor grill, fire feature or heating element of any type or any fuel source on or within a Lot (including any outdoor decks, patios or other spaces), then such Owner shall be solely responsible for complying with all terms of this Declaration related thereto and all requirements, specifications and recommendations of the manufacturer thereof related to installation and use. Each Owner, by acquiring a Lot, forever waives and releases any actions or claims the Owner and its successors and assigns may have against SST and its agents and contractors which in any way arise out of the installation and use of an outdoor grill, fire feature or heating element of any type or any fuel source on or within a Lot (including any outdoor decks, patios or other spaces).

I. No View Easement. Notwithstanding anything contained in this Declaration to the contrary, each Owner, by acquiring a Lot, acknowledges and agrees that there is no easement or other right, express or implied, for the benefit of any Owner of Lot for light, view or air included in or created by this Declaration or as a result of ownership of a Lot. Likewise, each Owner, by acquiring a Lot, acknowledges and agrees that any view, sight lines, or openings for light or air available from a Lot, or anywhere else on the project, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including, but not limited to, future construction or expansion of commercial or residential buildings or facilities. EACH OWNER, BY ACQUIRING A LOT, HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW FROM SUCH OWNER'S LOT AND/OR THE PROJECT. EACH OWNER, BY ACQUIRING A LOT, HEREBY ACCEPTS SUCH DISCLAIMER, AND AGREES THAT SST AND ITS AGENTS AND CONTRACTORS WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST SST AND ITS AGENTS AND CONTRACTORS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT A LOT OR THE PROJECT.

ARTICLE VIII DURATION, AMENDMENT AND TERMINATION

All provisions of this Declaration shall continue and remain in full force and effect in perpetuity from the date of recordation of this Declaration in the real estate records of Boulder County, Colorado, until terminated as provided for herein or pursuant to law. Except as provided in the following provisions of this Article VIII, this Declaration may only be amended upon the written consent of at least seventy-five percent of the Owners; *provided, however*, in the event that an amendment affects this Article VIII, Article V above, Article VII above, Article IX below and/or Article X below, the approval of SST shall be required for a period of fifteen years after the recording of this Declaration. Notwithstanding the foregoing, SST, acting alone, reserves to itself the right and power to modify or amend this Declaration (A) to correct clerical errors, typographical errors or technical errors, (B) to comply with the requirements, standards or guidelines of recognized secondary mortgage markets and agencies, such as FHA/HUD and Fannie Mae, and (C) during the SST Rights Period, to withdraw from this Declaration any Lot which has not been conveyed by SST to a third-party.

**ARTICLE IX
DISPUTE RESOLUTION**

NOTWITHSTANDING ANY PROVISION OF THE DISTRICT DOCUMENTS, THE PROVISIONS OF THIS ARTICLE IX SHALL CONTROL AS TO ANY CLAIM RELATED TO THE MONTMERE AT AUTREY SHORES PROJECT.

A. Definitions Applicable to this Article IX. For purposes of this Article IX only, the following terms have the following meanings:

- (1) **"AAA"** means the American Arbitration Association.
- (2) **"Claimant"** means any Party having a Claim.
- (3) **"Claim"** means, except as excluded or exempted by the terms of this Article IX (including Subsection IX.C below), any claim, counterclaim, cross-claim, third-party claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based (including, but not limited to, damages, indemnity, subrogation or contribution), including, without limitation, disputes arising out of or related to, regardless of the theory of liability: (i) the interpretation, application or enforcement of this Declaration or a Limited Warranty; (ii) the location, size, marketing, planning, development, design, construction, maintenance, repair and/or condition of the Lots/Units, including, without limitation, soils; (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party relating to the foregoing; (iv) the Colorado Consumer Protection Act; and (v) damages or loss to, or the loss of, real or personal property or personal injury caused by a defect in the design or construction of the Lots/Units.
- (4) **"Lot Sales Contract"** means a contract for the sale of a Lot between SST and an original Owner.
- (5) **"Inspecting Party"** means a Party causing an inspection of the Subject Property to be made.
- (6) **"Limited Warranty"** means a written limited warranty given to a Party by SST relating to a Lot.
- (7) **"Party"** means each of the following: (i) architects, engineers, contractors, subcontractors, developers, SST and affiliates of SST, builders, builder vendors, engineers and inspectors performing or furnishing the design, supervision, inspection, construction or observation of construction of any improvement to real property that is a part of the Lots/Units or any other party responsible for any part of the design or construction of any portion of the Lots/Units, and any of such parties' affiliates, and the officers, directors, partners, shareholders, members, managers, employees and servants of any of them (each a **"Development Party"** and collectively, the **"Development Parties"**); (ii) all Owners, Owner's Agents and all other persons subject to this Declaration, their officers, owners, employees and agents; and (iii) any person not otherwise subject to this Declaration who agrees to submit to this Article IX.
- (8) **"Respondent"** means any Party against whom a Claimant asserts a Claim.
- (9) **"Subject Property"** means the property and all improvements thereon regarding which a Party contends that a Claim pertains and/or property and all improvements thereon being inspected and/or repaired under the inspection and repair right in Subsection IX.D below.

(10) "Termination of Mediation" means a period of time expiring twenty days after a mediator has been agreed upon by the Parties or chosen by AAA if the Parties cannot agree or within such other time as agreed to by the Claimant and Respondent in writing, and upon the expiration of which the Claimant and Respondent have not settled the Claim.

B. Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.

(1) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. Accordingly, each Party agrees to resolve all Claims only by using the procedures in this Article IX (in the order set forth in Subsections IX.D and IX.E below), and not by litigation. Notwithstanding the foregoing, the Parties acknowledge and agree that some Claims are barred outright by the terms of the Lot Sales Contract and Article VII above. Further, each Party agrees that the procedures in this Article IX shall be the sole and exclusive remedial process that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Article IX, such action shall be dismissed and such Party shall reimburse all costs and expenses, including attorneys' fees and court costs, incurred by the other Party in such litigation or action within ten days after written demand.

(2) By accepting a deed for a Lot, each Owner agrees on behalf of itself and its Owner's Agents to be bound by and to comply with this Article IX.

(3) The Parties agree that no Claim may be commenced after the date set forth in an applicable Limited Warranty, and if the Claim is not covered by such Limited Warranty then when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation and/or statute of repose or as otherwise limited by this Article IX.

C. Exclusions from "Claim." Unless specifically exempted by this Article IX, all Claims between any of the Parties shall be subject to the provisions of this Article IX. Unless all Parties thereto otherwise agree in writing, "Claim" does not include the following, which shall not be subject to the provisions of this Article IX: Any action by a Party to assess or collect any amounts due to it under this Declaration;

(2) Any action, suit or proceeding required to be brought pursuant to a Limited Warranty, provided that the Limited Warranty contains binding alternative dispute resolution procedures that preclude litigation and that the Parties agree to utilize and be bound by such procedures to reach final resolution of the Claim;

(3) Any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article IX or to enforce the terms of any written settlement agreement of a Claim; and

(4) Any action in which the District is a party.

D. Notice; Right to Inspect and Correct; Mediation. Before the earlier of, as applicable (1) the service of a Notice of Claim as defined in Colorado's Construction Defect Action Reform Act ("CDARA"), or (2) initiating arbitration under Subsection IX.E below (each referred to herein as "Commencing a Formal Claim"), the Claimant shall first comply with the procedures set forth in this Subsection IX.D in the order noted below: Notice: First, the Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely:

The nature of the Claim, including all persons involved and each Respondent's role in the Claim;

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

The specific relief and/or proposed remedy sought.

(ii) *Right to Inspect and Correct.* **Second**, if the Claim involves an alleged defect or damage to or duty to repair or replace any improvement or real property, then Claimant shall also provide Respondent for a period of sixty days after delivery of the foregoing notice ("**Inspection/Correction Period**"), the right to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage. In exercising these inspection and correction rights, the Inspecting Party and Respondent shall:

(W) Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any improvements on the Subject Property at issue;

(X) Attempt to minimize any disruption or inconvenience to any person who occupies the Subject Property;

(Y) Remove daily all debris caused by the inspection and remaining on the Subject Property; and

(Z) In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials brought to the Subject Property, repair and replace all damage, and restore the Subject Property to its pre-inspection condition unless the Subject Property is to be immediately repaired.

The Inspecting Party and Respondent shall not permit any lien arising from the inspection or repair to attach to the Subject Property.

(iii) *Discussion of Claim.* **Third**, in the event that (X) by the end of the Inspection/Correction Period, Respondent has elected not to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage, (Y) by the end of the Inspection/Correction Period, Claimant is unsatisfied with such actions undertaken by Respondent under Subsection IX.D(ii) above, or (Z) the Claim does not involve an alleged defect or damage to any improvement or real property, then before Commencing a Formal Claim against any Respondent, the Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(iv) *Mediation.* **Fourth**, if the Parties cannot resolve the Claim through negotiations under Subsection IX.D(iii) above after attempting to do so for fifteen days, Claimant shall have an additional ten days to submit the Claim to mediation under the auspices of the AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(W) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have fully and finally waived the Claim for all purposes, such that all Respondents shall be deemed released and discharged from all liability to Claimant for such Claim.

(X) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a complete settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

(Y) Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges. The mediation proceedings shall be conducted at a mutually agreeable location in Boulder, Colorado.

(Z) If the Parties resolve any Claim through negotiation or mediation under Subsection IX.D(iii) above or this Subsection IX.D(iv), and any Party later fails to comply with the settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with such procedures. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

E. Commencing a Formal Claim.

(1) Only after receiving a notice of Termination of Mediation may a Claimant Commence a Formal Claim.

(2) Commencing a Formal Claim may only be accomplished by:

(i) If governed by CDARA, delivering a Notice of Claim under CDARA to Respondent(s). If the Parties fail to reach agreement on an offer of settlement pursuant to CDARA's Notice of Claim process (C.R.S. §13-20-803.5) and the Claimant elects to proceed with the Claim, then the Claim may proceed only by way of the arbitration procedures set forth below, and not litigation.

Final, binding arbitration of the Claim shall be conducted under the auspices of the AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate. Claimant must provide to Respondent a "Notice of Intent to Arbitrate," within twenty days after the conclusion of the offer of settlement procedures set forth in C.R.S. §13-20-803.5. If Claimant does not timely initiate final, binding arbitration of the Claim and timely provide a Notice of Intent to Arbitrate to Respondent(s), then Claimant shall be deemed to have fully and finally waived the Claim, and Respondent(s) shall be fully and finally released and discharged from all liability to Claimant for such Claim.

(ii) If the Claim is not governed by CDARA, then only by the arbitration procedures set forth below, and not litigation. Final, binding arbitration of the Claim shall be conducted under the auspices of the AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate, in which event Claimant shall provide to Respondent a "Notice of Intent to Arbitrate," within twenty days after receiving the notice of Termination of Mediation. If Claimant does not timely initiate final, binding arbitration of the Claim and timely provide a Notice of Intent to Arbitrate to Respondent(s), then Claimant shall be deemed to have fully and finally waived the Claim, and Respondent(s) shall be deemed fully and finally released and discharged from all liability to Claimant for such Claim.

(3) *Mandatory Arbitration Procedures.* The following arbitration procedures shall govern each arbitrated Claim:

(i) The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

(ii) No person shall serve as the arbitrator where that person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator with fourteen days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

(iii) The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted at a mutually agreeable location in Boulder, Colorado.

(iv) The arbitration shall be presided over by a single arbitrator.

(v) Other than the deposition of experts and Claimant, no formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

(vi) Unless directed by the arbitrator, there shall be no post-hearing briefs.

(vii) The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than fourteen days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

(viii) The arbitrator shall determine all issues about whether a Claim is covered by this Article IX. Notwithstanding anything herein to the contrary (including, but not limited to, Subsections IX.E.ix and IX.E.x below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court 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.

(ix) The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys' fees and/or costs, to the prevailing Party. Except as set forth in Subsection IX.E.viii above, each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction.

(x) Except as otherwise provided herein, the Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

(xi) The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

(xii) Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior

written consent of all Parties to the arbitration.

F. Notice of Certain Claims. If a Claim includes a construction and/or design defect allegation, the Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective mortgagees. THE PROVISIONS OF THIS ARTICLE IX INURE TO THE BENEFIT OF SST, THE DEVELOPMENT PARTIES AND ALL OTHER PARTIES DESCRIBED IN THIS ARTICLE IX, AND, NOTWITHSTANDING ANY OTHER PROVISION OF THIS DECLARATION, SHALL NOT BE AMENDED OR TERMINATED WITHOUT THE WRITTEN AND RECORDED CONSENT OF SST, WITHOUT REGARD TO WHETHER SST OWNS ANY LOT AT THE TIME OF SUCH AMENDMENT. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE IX ARE A SIGNIFICANT INDUCEMENT TO SST'S AND THE DEVELOPMENT PARTIES' WILLINGNESS TO DEVELOP AND SELL THE LOTS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE IX, SST AND THE DEVELOPMENT PARTIES WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS FOR THE PRICES PAID BY THE ORIGINAL BUYERS.

IN THE EVENT THAT A COURT FINDS THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS ARTICLE IX ARE UNENFORCEABLE AND AS A RESULT A PARTY IS ALLOWED TO BRING A CLAIM IN COURT, ALL PARTIES AGREE THAT ANY LAWSUIT, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT IN COURT SHALL BE TRIED ONLY BY A JUDGE AND NOT BY A JURY; AND EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT.

IN THE EVENT THAT THE PROVISIONS OF THIS ARTICLE IX CONFLICT WITH ANY MANDATORY PROVISIONS OF APPLICABLE LAW, THE PROVISIONS OF THIS ARTICLE IX SHALL BE REVISED TO THE MINIMUM EXTENT NECESSARY TO COMPLY WITH THE MANDATORY PROVISIONS OF SUCH LAWS.

ARTICLE X DESIGN REVIEW

A. Generally. Other than construction undertaken by SST, each Improvement must be constructed, and removed, altered, repaired or modified only in accordance with this Article X. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by District in accordance with its procedures.

District shall have the right to form committees of District from time to time to undertake the obligations of District hereunder. In addition, this Article X and the processes and procedures described herein are subject to clarification, amendment and/or change from time to time by District (or any committee thereof).

For purposes of this Article X, "Improvements" means:

- (1) all changes to the exterior of a Unit, including any changes relating to exterior appearance, exterior cooling and heating equipment, finish material, color, texture or fences; and
- (2) change of grade, change of ground level, and change of drainage pattern; and

(3) any addition of, or change to, hardscaping features, including, but not limited to, patios, walkways, retaining walls and stairs; and

(4) any addition of, or change to, the landscaping features of a Lot; and

(5) any change, alteration, modification, expansion, or addition to any previously approved Improvement.

B. District Approval of Improvements Required. Other than construction undertaken by SST, approval by the District shall be required prior to the commencement of the construction, alteration, repair, modification, expansion, addition, removal, demolition or destruction of any Improvements on any portion of the project. The purchase of any Lot within the project does not grant any implied guarantee of approval of any Improvement to be located thereon by District.

C. Submission of Plans/Design Review Fee. Prior to the commencement of work to accomplish any proposed Improvement, the person proposing to make such Improvement ("Applicant") shall submit to District such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as District shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement. The Applicant shall also submit all approvals required of the applicable governmental agencies for the Improvements to be undertaken.

District may, in its guidelines or rules, provide for the payment of a reasonable fee to accompany each request for approval of any proposed Improvement. District may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate any consultant as District deems necessary to assist District in the performance of its duties. Members of District may be reimbursed for services rendered and for directly related out-of-pocket expenses.

Except as otherwise prohibited by law and except for Improvements constructed by SST, no Improvement of any kind shall be erected, altered, placed, or maintained within the project unless and until the final plans, elevations, and specifications therefor have received written approval from District as herein provided.

D. Waiver. The approval or consent of District or any representative thereof to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by District or any representative thereof as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

District may waive or grant reasonable variances or adjustments to any provision of this Article X in the event there is a practical difficulty or unnecessary hardship.

E. Criteria for Approval. District may approve any proposed Improvement if it deems in its reasonable discretion that (1) the Improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the project as a whole, (2) that the appearance of the proposed Improvement will be in harmony with the surrounding areas of the project, and (3) that the upkeep and maintenance of the proposed Improvement will not become a burden on District. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, adequacy of utilities.

F. Decision of District. The decision of District shall be made within 30 days after receipt by District of all materials required by District unless such time period is extended by mutual agreement of District and Applicant, or unless District's own rules provide for different timeframes. District's decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of District shall be transmitted to Applicant at the address furnished by the Applicant to District.

G. Prosecution of Work after Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and as diligently as possible and in complete conformity with the approval given by District, including the description of the proposed Improvement, any materials submitted to District in connection with the proposed Improvement and any conditions imposed by District. Failure to complete any proposed Improvement within the timeframe set forth in the approval, if any, shall constitute a violation of this Article X unless extended by District.

H. Notice of Completion. Upon completion of the Improvement, Applicant shall deliver a written "Notice of Completion" to District. Until the date of receipt of a Notice of Completion, District shall not be deemed to have notice of completion of any Improvement.

I. Inspection of Work. District, or its duly authorized representative, shall have the right to inspect any Improvement prior to, and/or after completion.

J. Letter of Noncompliance. If, as a result of inspections or otherwise, District finds that any Improvement has been done without obtaining the approval of District, or was not done in substantial compliance with the approval of District, including the description and materials furnished to, and any conditions imposed by District, or was not completed within the timeframe set forth in the approval, if any, District may notify Applicant in writing of the noncompliance ("Letter of Noncompliance"). The Letter of Noncompliance shall specify the particulars of the noncompliance and shall require Applicant to take such action as may be necessary to remedy the noncompliance.

L. Correction of Noncompliance. If District determines that a noncompliance exists, Applicant shall remedy or remove the noncompliance within a period of not more than 30 days from the date of receipt of the Letter of Noncompliance or such longer period as may be indicated in the Letter of Noncompliance. If Applicant does not comply with the Letter of Noncompliance within such time period, District may, at its option, record a "Notice of Noncompliance" against the Lot on which the noncompliance exists, or may remove the non-complying Improvement or may otherwise remedy the noncompliance, and charge the cost thereof to the Owner of the Lot.

The right of District to remedy or remove any noncompliance shall be in addition to all other rights and remedies that District may have pursuant to the District Documents or otherwise have at law or in equity.

M. No Implied Waiver or Estoppel. No action or failure to act by District shall constitute a waiver or estoppel with respect to future action by District.

N. No Liability for District Action. There shall be no liability imposed on District, any member of District or any authorized representative of District for any action or inaction of District hereunder, or for any loss, damage or injury arising out of or in any way connected with the actions or inactions of District hereunder.

O. Exemptions for SST. SST shall be exempt from the provisions of this Article X.

**ARTICLE XI
MISCELLANEOUS**

A. The provisions of this Declaration shall be in addition and supplemental to all other applicable provisions of law.

B. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

C. Unless an Owner shall notify the other Owners of a different address, any notice required or permitted to be given under this Declaration to any Owner or any other written communication to any Owner shall be either hand-delivered, posted securely on the front door or mailed to such Owner, postage prepaid, first class U.S. Mail, registered or certified, return receipt requested, to the Lot of the Owner in question. If more than one person owns a Lot, any notice or other written communication may be addressed to any one such person. Any notice or other written communication given hereunder shall be effective upon hand-delivery or posting or three days after deposit in the U.S. Mail as aforesaid.

D. The provisions of this Declaration shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Declaration, or the application thereof to any person or any circumstance, is invalid or unenforceable, (1) the invalid or unenforceable provision shall be reformed, to the minimum extent required to render such invalid or unenforceable provision enforceable in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (2) the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision.

E. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

F. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision in this Declaration.

G. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then such provision shall continue only for the period of the life of the natural person signing this Declaration on behalf of SST, and their now living descendants, and the survivors of them plus twenty-one years.

H. SST disclaims any intent to, and does not, warrant or make any representation regarding any aspect of a Lot or any improvements thereon by virtue of this Declaration.

I. This Declaration shall not be deemed waived, released or terminated by any merger of title to two or more Lots.

IN WITNESS WHEREOF, SST has executed this Declaration as of the date first written above.

SST:

Superior Shore Townhomes, LLC, a Colorado limited liability company

By: KUH Superior LLC, a Colorado limited liability company, its Managing Member

By: Koelbel and Company, a Colorado corporation, its Manager

By:

Printed Name: Scott Chmura

Its: Authorized Agent

STATE OF COLORADO)

COUNTY OF Denver)ss

The foregoing instrument was acknowledged before me this 20th day of June 2022, by Scott Chmura, as Authorized Agent of Koelbel and Company, a Colorado corporation, Manager of KUH Superior LLC, a Colorado limited liability company, Managing Member of Superior Shore Townhomes, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 5/4/24

(S E A L)

Truly L Smith
Notary Public

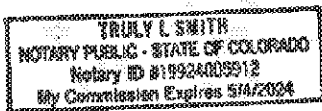


Exhibit A

(Lots)

LOTS 1-94, REPLAT A OF LOT 1, BLOCK 1, ROCK CREEK RANCH FILING NO. 17D, COUNTY OF BOULDER, STATE OF COLORADO